The pace of international activity in the anti-money laundering (AML) field accelerated in 1989 when the Group of Seven nations, which gathered for its annual economic summit in Paris, launched the Financial Action Task Force (FATF). With France serving as its first chairman, this multinational group started working toward a coordinated effort against international money laundering.

Originally referred to as the G-7 Financial Action Task Force, today FATF serves as the vanguard in promulgating guidance for AML to governmental bodies around the globe. The International Monetary Fund (IMF) and the World Bank have both offered important new perspectives to the field.

FATF has brought significant changes in the customary ways that banks and businesses around the world conduct their affairs. It also has provoked changes in laws and in governmental operations.

The intergovernmental body is based at the Organization for Economic Cooperation and Development (OECD) in Paris, where it has its own small secretariat.
MEMBERS AND OBSERVERS

There are currently 36 members of FATF; 34 jurisdictions and 2 regional organizations (the Gulf Cooperation Council1 and the European Commission). These 36 members are positioned to combat money laundering and terrorist financing. There are also 29 international and regional organizations that are Associate Members or Observers of FATF and participate in its work.

Member Jurisdictions include: Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Finland, France, Germany, Greece, Hong Kong (China), Iceland, India, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, the Russian Federation, Singapore, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

The following two-step criteria must be met for a jurisdiction to become a Member of FATF:

Step 1 — Fundamental criteria of membership

a) The jurisdiction should be strategically important:

Indicators

- Size of gross domestic product (GDP).
- Size of the banking sector.
- Impact on the global financial system, including the degree of openness of the financial sector and its interaction with international markets.
- Regional prominence in AML/CFT efforts.
- Level of commitment to AML/CFT efforts.

1 Although the Gulf Cooperation Council (GCC) is a full Member of FATF, the individual member countries of the GCC (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) are not.
**Additional considerations**

- Level of adherence to financial sector standards.
- Participation in other relevant international organizations.
- Level of AML/CFT risks faced and efforts to combat those risks.

b) If the jurisdiction were to become a member, FATF’s geographic balance should be enhanced.

**Step 2 — Technical and other criteria**

a) The country should provide a written commitment at the political level:

(i) Endorsing and supporting the FATF 40 Recommendations, the Nine Special Recommendations (together referred to as the FATF Recommendations) and the FATF AML/CFT Methodology (as amended from time to time).

(ii) Agreeing to implement all of the FATF Recommendations within a reasonable timeframe (three years).

(iii) Agreeing to undergo a mutual evaluation during the membership process for the purposes of assessing compliance with FATF membership criteria, using the AML/CFT Methodology applicable at the time of the evaluation, as well as agreeing to undergo subsequent periodic mutual evaluations following admission as a full member.

(iv) Agreeing to participate actively in FATF and to meet all the other commitments of FATF membership, including supporting the role and work of FATF in all relevant forums.
b) The country should be a full and active member of a relevant FATF-style regional body.

c) The overall mutual evaluation needs to be regarded as satisfactory, and in particular the level of compliance with the Recommendations dealing with the money laundering and terrorist financing offenses (Recommendation (R). 1 & Special Recommendations (SR).II), freezing and confiscation (R.3 & SR.III), customer due diligence (R.5), record-keeping (R.10), suspicious transaction reporting (R.13 & SR.IV), financial sector supervision (R.23), and international co-operation (R.35, R.36, R.40, SR.I & SR.V) need to be acceptable.

- In determining whether the overall level of compliance is satisfactory, some flexibility may be allowed with respect to Recommendation 5 due to its complexity and multi-faceted requirements. The assessed country, however, is expected to demonstrate significant progress toward full compliance with the components of Recommendation 5.

- It is expected that a country should obtain ratings of fully or largely compliant for all FATF Recommendations listed above in paragraph c. If that is not achieved, however, then the country must, at a minimum, achieve ratings of LC or C for a large majority of these Recommendations, and, for the remainder, should demonstrate substantial progress toward full implementation and should provide a clear commitment at the Ministerial level to come into compliance within a reasonable timeframe and with a detailed action plan setting out the steps to be taken.

**Objectives**

FATF focuses on several important tasks including:

1. Spreading the anti-money laundering message worldwide:
The group promotes the establishment of a global AML and anti-terrorist financing network based on expansion of its membership, the development of regional anti-money laundering bodies in various parts of the world, and cooperation with other international organizations.

2. Monitoring implementation of the FATF Recommendations among FATF members.

Implementation is monitored through a two-pronged approach:

- An annual self-assessment exercise where member countries are required to fill out detailed standard questionnaires on the status of their compliance with the Recommendations. This information is then compiled and analyzed, and provides the basis for assessing the extent to which the Recommendations have been implemented by both individual countries and the group as a whole.

- The more detailed mutual evaluation procedure. Each member country is examined by FATF on the basis of an on-site visit conducted by a team of three or six experts in the legal, financial and law enforcement fields from other member governments. The experts write a report assessing the extent to which the evaluated country has moved forward in implementing an effective system to counter money laundering and to highlight areas in which further progress is still required.

The FATF Anti-Money Laundering/Combating Terrorist Financing (AML/CFT) Methodology 2004, updated in February 2009, is used to help assessors determine whether countries are in compliance with the FATF Recommendations. The Methodology reflects the principles of the FATF 40 Recommendations and 9 Special Recommendations. It is also based on the experience of FATF and FATF-style regional bodies.
in their mutual evaluations of the IMF and the World Bank’s Financial Sector Assessment Program and of the IMF’s Offshore Financial Center Assessment Program.

FATF does not have the power to impose fines or penalties against recalcitrant member-nations. However, in 1996, FATF launched a policy for dealing with nations that fail to comply with the FATF Recommendations that it describes as “a graduated approach aimed at enhancing peer pressure.” The first step is requiring the country to deliver a progress report at plenary meetings. The country may then receive a letter from the FATF president or a visit from a high-level mission. FATF may also apply Recommendation 21, which calls for financial institutions to give special attention to business relations and transactions with persons, companies and financial institutions domiciled in the non-complying country. Then, as a final measure, FATF may suspend the membership of the country in question.

In September 1996, Turkey became the first FATF member exposed to the “peer pressure” policy. Although a member since 1990, Turkey had yet to criminalize money laundering. FATF issued a warning to financial institutions worldwide to be vigilant of business relations and transactions with persons and entities in Turkey due to its lack of laundering controls. One month later, Turkey enacted a money laundering law. Thus, FATF, since 1989, has made significant strides in fostering money laundering controls around the world.


Faced with a financial system that has no geographic horizons, operates around the clock in every time zone, and maintains the pace of the global electronic highway, criminals can constantly search for new points of vulnerability and can adjust their laundering techniques
to respond to counter-measures introduced by FATF members and other countries. FATF members gather information on money laundering trends in an effort to ensure that its Recommendations remain up to date.

Since its creation in 1989, FATF has been working under five-year mandates. In May 2004, its members extended the organization’s charter by a record eight years, signaling the possibility that it may become a permanent institution in global money laundering and terrorist financing control efforts.

FATF members agreed that the organization would continue to operate until December 2012, subject to renewal.

A mid-term review was conducted in 2007 to ensure that FATF is equipped to respond flexibly to new challenges. The FATF mandate, revised through this mid-term review process, is set to expire in December 2012.

FATF, since its establishment, has focused its work on three main activities: standard setting, ensuring effective compliance with the standards and identifying money laundering and terrorist financing threats. These activities will remain at the core of FATF’s work for the remainder of this mandate. Going forward, FATF will build on this work and respond to new and emerging threats, such as proliferation financing and vulnerabilities in new technologies which could destabilize the international financial system.

The members also agreed to continue the review of the 40 Recommendations and Nine Special Recommendations on Terrorist Financing and to issue implementation guidelines. They said they would “consider the advisability of integrating the two sets” of recommendations into a “single, unified standard.”

**FINANCIAL ACTION TASK FORCE 40 RECOMMENDATIONS**

A key element of FATF’s efforts is its detailed list of appropriate standards for countries to implement. These measures are set out in the “40 Recommendations,” which were first issued in 1990 and were revised in 1996 and 2003. Since then, FATF has issued various Interpretative Notes which are designed to clarify the
application of specific Recommendations and to provide additional
guidance. After the events of September 11, 2001, FATF adopted
Nine Special Recommendations of Terrorist Financing. The first
eight Special Recommendations were adopted on October 31,

The combined 40 + 9 Recommendations have become the world’s
blueprint for effective national and international AML and CTF
related controls.

The IMF and the World Bank have recognized the 40 + 9
Recommendations as the international standard for combating
money laundering and terrorist financing. In 2002, the IMF, the
World Bank and FATF agreed to a common methodology to assess
compliance with the FATF Recommendations.

The 40 Recommendations provide a complete set of
countermeasures against money laundering, covering:

- The criminal justice system and law enforcement.
- The financial system and its regulation.
- International cooperation.

FATF recognizes that because countries have different legal and
financial systems they cannot use identical measures to fight money
laundering and terrorist financing. The Recommendations set
minimum standards of action for countries to implement according to
their particular circumstances and constitutional frameworks.

With its 2003 revisions of the 40 Recommendations, FATF
expanded the reach of its global blueprint for cracking down
on illicit movements of funds. It introduced substantial changes
intended to strengthen measures to combat money laundering and
terrorist financing, which established further enhanced standards
by which countries can better combat money laundering and
terrorist financing.

The most important changes made to the Recommendations were
in 2003 and are as follows:

- Expanded coverage to include terrorist financing.
### Compliance Standards for Anti-Money Laundering and Combating the Financing of Terrorism

- **Group I:** Legal Systems
  - The scope of criminal offenses and such measures as confiscation.

- **Group II:** Measures taken by financial and non-financial institutions
  - Customer due diligence, recordkeeping, etc. measures for non-compliant countries, and regulation and supervision.

- **Group III:** Institutional Measures
  - Powers and resources of authorities and transparency of legal persons

- **Group IV:** International Cooperation
  - Mutual legal assistance, extradition and other forms of cooperation.

- widened the categories of business that should be covered by national laws, including real estate agents, precious metals dealers, accountants, lawyers and trust services providers.

- Specified compliance procedures on issues such as customer identification and due diligence, including enhanced identification measures for higher-risk customers and transactions.

- Adopted a clearer definition of money laundering predicate offenses.

- Encouraged prohibition of so-called “shell banks,” typically set up in offshore secrecy havens and consisting of little more than nameplates and
mailboxes, and urged improved transparency of legal persons and arrangements.

- Included stronger safeguards, notably regarding international cooperation in, for example, terrorist financing investigations.

Some highlights of the 40 Recommendations are:

**Designated Categories of Offenses**: For the first time, the Recommendations specify crimes, called “designated categories of offenses,” that should serve as money laundering predicates — meaning that trying to conceal them through financial subterfuge would constitute criminal money laundering. (See Recommendation 1 and the definition of “designated categories of offenses” in the Glossary of the 40 Recommendations.)

**Knowledge and Criminal Liability**: The Recommendations include the concept that knowledge required for the offense of money laundering may be inferred from objective factual circumstances. This is similar to what is known, in some countries, as “willful blindness,” or deliberate avoidance of knowledge of the facts. In addition, the Recommendations urge that criminal liability and, where that is not possible, civil or administrative liability, should apply to legal persons as well.

**Expanded Coverage of Industries**: The revised Recommendations expand the fight against money laundering by adding new businesses to the roster of financial institutions that are the usual focus of AML efforts. Expanding the scope of anti-money laundering scrutiny is a key area where many governments have been aiming their AML arsenal in response to an increased flow of illicit money. The institutions and professions FATF recommends should be added to those subject to AML regulations include:

- Casinos, when customers engage in financial transactions equal to or above a designated threshold. (At a minimum, casinos should be licensed; authorities should prevent criminals from participating in casino operations and should supervise casinos to ensure
compliance with requirements to combat money laundering and terrorist financing.)

- Real estate agents, when they are involved in transactions for clients concerning buying and selling properties.

- Dealers in precious metals and stones, when they engage in any cash transaction with a customer at or above a designated threshold.

- Lawyers, notaries and independent legal professionals and accountants when they prepare or carry out transactions for clients concerning: buying and selling real estate; managing client money, securities or other assets; establishing or managing bank, savings or securities accounts; organizing contributions for the creating or managing companies; creating, operating or managing legal persons or arrangements, and buying and selling businesses.

- Trust and company service providers when they prepare or carry out transactions for a client concerning certain activities (e.g., when acting as a formation agent of legal persons; acting as a director or secretary of a company; acting as a trustee of an express trust; or acting as a nominee shareholder for another person).

FATF also designated specific thresholds that trigger AML scrutiny. For example, the threshold that financial institutions should monitor for occasional customers is €15,000; for casinos, including Internet casinos, it is €3,000; and for dealers in precious metals, when engaged in any cash transaction, it is €15,000.

(See the definition of “designated non-financial businesses and professions” and “financial institutions” in the Glossary of the 40 Recommendations.)

**Beneficial ownership:** The Recommendations stress the need for improved “transparency” concerning the beneficial ownership of companies and trusts. Financial institutions should identify
beneficial owners, and should take reasonable measures to verify the identity of beneficial owners so that the institution is satisfied that it knows who the beneficial owners are. For legal persons and arrangements, financial institutions should take reasonable steps to understand the ownership and control structure of the customer. Financial institutions should verify the identity of the customer and beneficial owner before or while establishing a business relationship or before conducting transactions for occasional customers. The Recommendations say that, if a financial institution cannot determine the beneficial owner of an account, it should not open the account or commence business relations with the prospective client.

According to the Recommendations, a “beneficial owner” is the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It includes those persons who exercise ultimate effective control over a legal person or arrangement. Countries could consider measures to facilitate access to beneficial ownership and control information to financial institutions undertaking the customer due diligence requirements set out in Recommendation 5. (See Recommendation 5, the Interpretative Note of Recommendation 5, Recommendations 23, 24, 33 and 34, and the definition of “beneficial owner” in the Glossary of the 40 Recommendations.)

**Customer Due Diligence (CDD) measures:**

Covered institutions must:

- Identify the customer and verify that customer’s identity using reliable, independent source documents, data or information.

- Identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements, this should include taking reasonable steps to understand the ownership and control structure of the customer.

- Obtain information on the purpose and intended nature of the business relationship.
Conduct ongoing due diligence on the business relationship and scrutinize transactions undertaken in the course of that relationship to ensure that the transactions are consistent with the institution’s knowledge of the customer, the customer’s business and risk profile, including, where necessary, the source of funds.

(See Recommendation 5 and its Interpretative Note.)

Customer Due Diligence on PEPs and Correspondent Accounts: The Recommendations also seek tougher customer due diligence checks on high-risk business areas, such as correspondent banking or dealings with people who are or have been high level politicians or are close associates of such people. FATF insists that enhanced due diligence measures be applied to high-risk customers and transactions, including correspondent banking and politically exposed persons (PEPs). In addition to performing standard due diligence reviews, financial institutions should have appropriate risk management systems to determine whether a prospective customer is a PEP. (See Recommendation 6, as well as its Interpretative Note, and Recommendation 7.)

Accounts in Anonymous or Fictitious Names: The Recommendations stress that financial institutions should not keep accounts that are either anonymous or are held in obviously fictitious names. They should undertake customer due diligence measures, including identifying and verifying the identity of their customers. (See Recommendation 5.)

Shell Banks: Countries should not approve the establishment or accept the continued operation of shell banks. Financial institutions should refuse to enter into, or continue, a correspondent banking relationship with shell banks. (See Recommendation 18.)

Currency Transaction Reporting: The Recommendations say that countries should consider setting up a currency transaction reporting system. (See Recommendation 19.)

International Cooperation: Several Recommendations deal with strengthening international cooperation. Countries should rapidly, constructively and effectively provide the widest possible range of
mutual legal assistance in money laundering and terrorist financing investigations. (See Recommendations 35-40.)

For detailed information on these and other important issues, see the 40 Recommendations and their Interpretative Notes.

**FATF GUIDANCE ON DISMANTLING TERRORIST FINANCING AND “SPECIAL RECOMMENDATIONS”**

Since money laundering became an international concern in 1986, nothing has galvanized the nations of the world and some of its most powerful organizations to strengthen money laundering laws more than the September 11, 2001, terrorist attacks on the United States and the subsequent global dragnet to capture those responsible.

That is why, soon after the attacks, FATF expanded its focus to include terrorist financing and issued a list of Special Recommendations for fighting terrorist financing. The Special Recommendations were adopted by FATF in a meeting in Washington, D.C., in October 2001.

The Special Recommendations, which initially numbered eight, committed members to:

1. Take immediate steps to ratify and implement the relevant United Nations instruments regarding terrorist financing, such as the 1999 UN International Convention for the Suppression of the Financing of Terrorism. Countries were also advised to immediately implement UN resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly Security Council Resolution 1373.

2. Criminalize the financing of terrorism, terrorist acts and terrorist organizations and ensure that these offenses are designated as money laundering predicate offenses.

The first half of the interpretative note to this Recommendation defines relevant terms like “funds,”
“terrorist act,” and “terrorist financing.” It explains that terrorist financing encompasses “the financing of terrorist acts, terrorists and terrorist organizations.”

The note emphasizes that terrorist financing offenses should extend to any person who “willfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used — or with the knowledge that they are to be used — (a) to carry out a terrorist act(s); (b) by a terrorist organization; or (c) by an individual terrorist.”

In a section called “Characteristics of the Terrorist Financing Offense,” the note explains that terrorist financing offenses “should extend to any funds whether from a legitimate or illegitimate source.” These offenses, the note says, “should not require that the funds: (a) were actually used to carry out or attempt a terrorist act(s); or (b) be linked to a specific terrorist act(s).”

“It should also be an offense to attempt to commit the offense of terrorist financing,” the note says. Yet it asserts that “criminalizing terrorist financing solely on the basis of aiding and abetting, attempt, or conspiracy does not comply with this Recommendation.”

This section also mentions money laundering because of “the close connection” between international terrorism and money laundering — “terrorist financing offenses should be predicate offenses for money laundering,” the note says.

3. Implement measures to freeze, without delay, funds or other assets of terrorists, those who finance terrorism and terrorist organizations. Each country should also implement measures that enable authorities to seize and confiscate property that either derives from or is to be used in the financing of terrorism.

The Interpretative Note to this Recommendation explains how these obligations should be fulfilled.
FATF also identified a set of best practices on this topic, which are based on countries' experiences and may serve as a benchmark for developing institutional, legal, and procedural frameworks for an effective program to freeze terrorist financing.

4. Report suspicious transactions linked to terrorism. If businesses or entities subject to anti-money laundering obligations suspect that funds are linked to terrorism, they should be required to report promptly their suspicions to the authorities.

5. Provide the widest possible range of assistance to other countries' law enforcement and regulatory authorities for terrorist financing investigations.

6. Impose anti-money laundering requirements on alternative remittance systems. An alternative remittance system, or informal value transfer system (IVTS), refers to any network or mechanism that can be used to transfer funds or value from place to place either without leaving a formal paper-trail of the entire transaction or without going through regulated financial institutions. IVTS includes various ethnic systems, such as hawala, hundi, fei chien, phoe kuan, and black market peso exchange.

7. Strengthen customer identification measures in international and domestic electronic funds. In the Interpretative Note to this Recommendation, FATF says that cross-border funds transfers should be accompanied by accurate and meaningful originator information. It added that information that accompanies a cross-border electronic funds transfer should always contain the name and address of the originator.

8. Ensure that entities, in particular non-profit organizations, cannot be used to finance terrorism.

Wittingly or unwittingly, charitable organizations have proven to be vehicles for raising and laundering funds
destined for terrorist activities. As a result, some charities, particularly those with Muslim connections, have seen a large drop in donations or have become targets of what they claim are unfair investigations or accusations.

In October 2002, FATF released a set of “international best practices” for “Combating the Abuse of Non-Profit Organizations,” addressed by the last of the initial eight Special Recommendations. The practices cover all levels of a charity’s operation, from administration and accounting to bank accounts and foreign offices. FATF recommends that non-profit organizations:

- Maintain and be able to present full program budgets that account for all expenses.
- Conduct independent internal audits and external field audits, the latter to ensure funds are being used for intended purposes.
- Identify every member of the board of directors and formalize the process by which they are elected, appointed and terminated.

FATF recommends charities use formal bank accounts to store and transfer funds so they are subject to the bank’s regulations and controls. The banks where the accounts are established, in turn, should treat the non-profit organizations like other customers and should apply their Customer Due Diligence rules and report suspicious activities, says FATF.

In October 2004, FATF added a key element to the Special Recommendations. The new measure, Special Recommendation Nine, calls on countries to stop cross-border movements of currency and monetary instruments related to terrorist financing and money laundering and to confiscate such funds. It also calls for enhanced information sharing between countries on the movement of illicit cash related to money laundering and terrorist financing.
Since October 2001, many non-FATF members and international organizations have endorsed the Special Recommendations on terrorist financing.

FATF has developed further interpretation (interpretative notes) and guidance (best practices papers) on how to achieve effective implementation with respect to individual Special Recommendations.

NON-COOPERATIVE COUNTRIES

FATF had a practice of “naming and shaming” countries that it determined maintained inadequate anti-money laundering controls or did not cooperate in the global money laundering effort.

For years, FATF was engaged in this initiative to identify “Non-Cooperative Countries and Territories” (NCCTs) in the global fight against money laundering. It developed a process to seek out critical weaknesses in specific jurisdictions’ anti-money laundering systems, which obstruct international cooperation in this area.

According to a June 2000 paper, “Review to Identify Non-Cooperative Countries or Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures,” FATF’s assessment of a jurisdiction under 25 distinct criteria covered the following four broad areas:

1. Loopholes in financial regulations:
   - No or inadequate regulations or supervision of financial institutions
   - Inadequate rules for the licensing or creation of financial institutions, including assessing the backgrounds of managers and beneficial owners
   - Inadequate customer identification requirements for financial institutions.
   - Excessive secrecy provisions regarding financial institutions.
Lack of efficient suspicious transactions reporting.

2. Obstacles raised by other regulatory requirements:
   - Inadequate commercial law requirements for registration of business and legal entities.
   - Lack of identification of the beneficial owner(s) of legal and business entities.

3. Obstacles to international cooperation:
   - Obstacles to cooperation from administrative authorities.
   - Obstacles to cooperation from judicial authorities.

4. Inadequate resources for preventing and detecting money laundering activities:
   - Lack of resources in public and private sectors.
   - Absence of a financial intelligence unit or equivalent mechanism.

The goal of the NCCT process was to reduce the vulnerability of the financial system to money laundering by ensuring that all financial centers adopt and implement measures for the prevention, detection and punishment of money laundering according to internationally recognized standards.

On February 14, 2000, FATF published an initial report on NCCTs. The report set out the 25 criteria that help identify relevant detrimental rules and practices and that are consistent with the 40 Recommendations. It described a process whereby jurisdictions having such rules and practices can be identified and encouraged to implement international standards in this area.

The next step in the NCCT initiative was the publication in June 2000 of the first Review identifying 15 specific NCCTs (refer to table below). Additions were made to the NCCT list through September 2001. From that
point on, the only modifications to the list were the gradual removal of nations, culminating with Nigeria and Myanmar being taken off the list on June 23, and October 13, 2006, respectively.

On March 18, 2010, FATF published a new document which cited a number of jurisdictions as having deficiencies in their AML/CFT regimes. This new FATF publication came in response to the G-20 leaders’ call for FATF to reinvigorate its process for assessing countries’ compliance with international AML/CFT standards, to publicly identify high-risk jurisdictions and to issue regular updates on jurisdictions with strategic deficiencies.

THE BASEL COMMITTEE ON BANKING SUPERVISION

The Basel Committee on Banking Supervision, established in 1974 by the central bank governors of the G-10 countries, promotes sound supervisory standards worldwide. The Committee’s secretariat is provided by the Bank for International Settlements (BIS) in Basel, Switzerland. The BIS is an international organization that fosters cooperation among central banks and other agencies in pursuit of monetary and financial stability. Its services are provided exclusively to central banks and international organizations.

Banking supervisors are not generally responsible for criminal prosecution of money laundering in their countries. But they have a role in ensuring that banks have procedures in place, including strict AML policies, to avoid involvement with drug traders and other criminals, as well as in the general promotion of high ethical and professional standards in the financial sector. The BCCI scandal of the early 1990s, the indictments and guilty pleas of former officials of the Atlanta branch of the Italian Banca Nazionale del Lavoro in 1992 and other international banking scandals have prompted banking regulators in the richest nations to agree on basic rules for the supervision and operation of multinational banks.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Countries</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>17</td>
<td>19</td>
<td>15</td>
<td>11</td>
<td>10</td>
<td>9</td>
<td>7</td>
<td>6</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Bahamas</td>
<td>Cook Islands</td>
<td>Cook Islands</td>
<td>Cook Islands</td>
<td>Cook Islands</td>
<td>Cook Islands</td>
<td>Cook Islands</td>
<td>Cook Islands</td>
<td>Cook Islands</td>
<td>Myanmar</td>
<td>Myanmar</td>
<td>Myanmar</td>
<td>Myanmar</td>
</tr>
<tr>
<td>Cook Islands</td>
<td>Dominica</td>
<td>Dominica</td>
<td>Dominica</td>
<td>Egypt</td>
<td>Egypt</td>
<td>Egypt</td>
<td>Guatemala</td>
<td>Indonesia</td>
<td>Nauru</td>
<td>Nigeria</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cayman Islands</td>
<td>Egypt</td>
<td>Egypt</td>
<td>Egypt</td>
<td>Grenada</td>
<td>Guatemala</td>
<td>Guatemala</td>
<td>Indonesia</td>
<td>Myanmar</td>
<td>Nigeria</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dominica</td>
<td>Guatemala</td>
<td>Grenada</td>
<td>Grenada</td>
<td>Guatemala</td>
<td>Indonesia</td>
<td>Indonesia</td>
<td>Myanmar</td>
<td>Nigeria</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Israel</td>
<td>Hungary</td>
<td>Guatemala</td>
<td>Guatemala</td>
<td>Indonesia</td>
<td>Myanmar</td>
<td>Myanmar</td>
<td>Nauru</td>
<td>Nigeria</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lebanon</td>
<td>Indonesia</td>
<td>Hungary</td>
<td>Indonesia</td>
<td>Myanmar</td>
<td>Nauru</td>
<td>Nauru</td>
<td>Nigeria</td>
<td>Philippines</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>Israel</td>
<td>Indonesia</td>
<td>Marshall Islands</td>
<td>Nauru</td>
<td>Nigeria</td>
<td>Nauru</td>
<td>Philippines</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marshall Islands</td>
<td>Lebanon</td>
<td>Israel</td>
<td>Myanmar (Guam)</td>
<td>Egypt</td>
<td>Nigeria</td>
<td>Philippines</td>
<td>Philippines</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nauru</td>
<td>Marshall Islands</td>
<td>Lebanon</td>
<td>Nigeria</td>
<td>Philippines</td>
<td>St. Vincent &amp; The Grenadines</td>
<td>Ukraine</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Niue</td>
<td>Marshall Islands</td>
<td>Marshall Islands</td>
<td>Nigeria</td>
<td>St. Vincent &amp; The Grenadines</td>
<td>Ukraine</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Panama</td>
<td>Nauru</td>
<td>Myanmar (Guam)</td>
<td>Nauru</td>
<td>Ukraine</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Philippines</td>
<td>Nauru</td>
<td>Nauru</td>
<td>Philippines</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Russia</td>
<td>Nigeria</td>
<td>Nauru</td>
<td>Russia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>St. Kitts &amp; Nevis</td>
<td>Philippines</td>
<td>Nigeria</td>
<td>St. Vincent &amp; The Grenadines</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>St. Vincent &amp; The Grenadines</td>
<td>Russia</td>
<td>Philippines</td>
<td>Ukraine</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>St. Kitts &amp; Nevis</td>
<td>Russia</td>
<td>St. Vincent &amp; The Grenadines</td>
<td>Ukraine</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The Committee’s members come from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.

In 1988, the Basel Committee issued a Statement of Principles called “Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering” in recognition of the vulnerability of the financial sector to misuse by criminals. This was a step toward preventing the use of the banking sector for money laundering, and it set out principles with respect to:

- Customer identification.
- Compliance with laws.
- Conformity with high ethical standards and local laws and regulations.
- Full cooperation with national law enforcement to the extent permitted without breaching customer confidentiality.
- Staff training.
- Record keeping and audits.

These principles preceded anti-money laundering legislation that provided for disclosure of client information to enforcement agencies and protection from civil suits brought by clients for breach of client confidentiality. Therefore, these principles stressed cooperation within the confines of confidentiality.

In 1997, the Basel Committee issued its “Core Principles for Effective Banking Supervision,” a basic reference for authorities worldwide. “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,” said the guide. It also urged nations to adopt the 40 Recommendations of the Financial Action Task Force. (See previous section in this chapter.) The Core Principles were prepared with the assistance of 15 non-G-10 nations, including Brazil, Chile, Hong Kong, Mexico, Russia, Singapore and Thailand.

To facilitate implementation and assessment, the Committee in October 1999 developed the “Core Principles Methodology.”

Since 1997, however, significant changes have occurred in banking regulation, much experience has been gained with implementing the Core Principles in individual countries, and new regulatory insights in regulation have become apparent. These developments made it necessary to update the Core Principles and the associated assessment Methodology.

The Committee has identified deficiencies in a large number of countries’ Know Your Customer (KYC) policies, based on the findings of an internal survey of cross-border banking conducted in 1999. “KYC policies in some countries have significant gaps and in others they are non-existent. Even among countries with well developed financial markets, the extent of KYC robustness varies,” observed the Committee in an October 2001 paper, called “Customer Due Diligence for Banks.” The paper follows a consultation document issued in January 2001.

The Committee’s interest in KYC centers on the use of due diligence requirements to mitigate the dangers of bad customers. Without due diligence, banks can be subject to reputational, operational, legal and concentration risks, which can result in significant financial cost. Sound KYC policies and procedures are critical to protecting the safety and soundness of banks, as well as the integrity of banking systems. An example is the BCCI scandal that began in 1988 when nine BCCI officials were arrested in Florida, United States, for allegedly laundering drug money. It escalated, and, in 1991, BCCI was shut down by regulators, resulting in a £9 billion loss for depositors.

This 21-page paper reinforces the principles established in earlier Committee papers by providing more precise guidance on the essential elements of KYC standards and their implementation. In
developing the guidance, the Working Group drew on practices in member countries and took into account evolving supervisory developments. The essential elements presented in this paper are guidance as to minimum standards for worldwide implementation for all banks. These standards may need to be supplemented or strengthened with further measures tailored to the risks in particular institutions and in the banking system of individual countries. For example, enhanced due diligence is required for higher-risk accounts and for banks that seek high net-worth customers. A number of specific sections in this paper offer recommendations for tougher standards of due diligence for higher risk areas within a bank.

The paper has five sections:

1. Introduction.
2. Importance of KYC standards for supervisors and banks.
3. Essential elements of KYC standards.
4. The role of supervisors.
5. Implementation of KYC standards in a cross-border context.

The Committee discusses the following issues in the paper:

- Banks should not only establish the identity of their customers, but should also monitor account activity to identify transactions that do not conform to the normal or expected transactions for that customer or type of account. “To ensure that records remain relevant, there is a need for banks to undertake regular reviews of existing records. An appropriate time to do so is when a transaction of significance takes place, when customer documentation standards change substantially, or when there is a material change in the way that the account is operated.”

- The paper does not prohibit numbered accounts. Instead it says that numbered accounts should be
subjected to exactly the same KYC procedures as other customer accounts. KYC tests may be carried out by selected staff, but the identity of customers must be known to an adequate number of staff if the bank is to be sufficiently diligent. “Such accounts should in no circumstances be used to hide the customer identity from a bank’s compliance function or from the supervisors,” urged the Committee.

The paper has identified seven specific customer identification issues:

- Trust, nominee and fiduciary accounts.
- Corporate vehicles, particularly companies with nominee shareholders or entities with shares in bearer form.
- Introduced businesses.
- Client accounts opened by professional intermediaries, such as “pooled” accounts managed by professional intermediaries on behalf of entities such as mutual funds, pension funds and money funds.
- Politically exposed persons.
- Non-face-to-face customers, i.e., customers who do not present themselves for a personal interview.
- Correspondent banking.

Banks should develop customer acceptance policies and procedures describing the customer’s background, country of origin, business activities and other risk indicators, and should develop clear and concise descriptions of who is an acceptable customer.

Private banking accounts should “under no circumstances” be allowed to escape KYC policies.
Banks should make every effort to know the identity of corporations that operate accounts and, when professional intermediaries are involved, should verify the exact relationship between the owners and intermediary.

Banks should use standard identification procedures when dealing with “non-face-to-face” customers and should never agree to open an account for persons who are adamant about anonymity.

Periodic bank-wide employee training should be provided that explains the importance of the KYC policies and AML requirements.

Internal auditors and compliance officials should regularly monitor staff performance and adherence to KYC procedures.

Continued monitoring of high-risk accounts by compliance personnel should be conducted to obtain a greater understanding of the customers’ “normal activities” and to enable the updating of identification papers and the detection of suspicious transaction patterns.

Bank regulators should ensure that bank staff follow KYC procedures, review customer files and a sampling of accounts, and emphasize that they will take the “appropriate action” against officers who fail to follow KYC procedures.

The four key elements of KYC, according to this paper are:

- Customer identification;
- Risk management;
- Customer acceptance; and
- Monitoring.
In its paper, the Basel Committee referred to the intention of the Working Group on Cross-border Banking to develop guidance on customer identification. Customer identification is an essential element of an effective customer due diligence program, which banks need in order to guard against reputational, operational, legal and concentration risks. It is also necessary in order to comply with anti-money laundering legal requirements and to be able to identify bank accounts related to terrorism.

In February 2003, the Committee issued account opening and customer identification guidelines and a general guide to good practices based on the principles of the Committee’s paper on Customer Due Diligence for Banks. This document, which was developed by the Working Group on Cross-border Banking, does not cover every eventuality, but instead focuses on some of the mechanisms that banks can use in developing an effective customer identification program.

The need for rigorous customer due diligence standards is not restricted to banks. The Basel Committee believes similar guidance needs to be developed for all non-bank financial institutions and professional intermediaries of financial services, such as lawyers and accountants.

In October 2004, the Committee released another important publication on KYC: “Consolidated KYC Risk Management.” The publication is a complement to the Basel Committee’s Customer Due Diligence for Banks issued in October 2001. It examines the critical elements for effective management of KYC risk throughout a banking group. The paper addresses the need for banks to adopt a global approach and to apply the elements necessary for a sound KYC program to both the parent bank or head office and all of its branches and subsidiaries. These elements consist of risk management, customer acceptance and identification policies, and ongoing monitoring of higher-risk accounts.
EUROPEAN UNION DIRECTIVES ON MONEY LAUNDERING

FIRST DIRECTIVE


Like all Directives adopted by the Council, it required European Union member states to achieve (by amending national law, if necessary) specified results. The Directive required the members to enact legislation to prevent their domestic financial systems from being used for money laundering. The unique nature of the EU as a “Community of States” makes it fundamentally different from other international organizations. The EU can adopt measures that have the force of law even without the approval of the national Parliaments of the various member states. Plus, European law prevails over national law in the case of directives.

In this respect, EU Directives have far more weight than the voluntary standards issued by groups such as the Basel Committee or the Financial Action Task Force. Of course, the Directive applies only to EU member states and not to other countries.

The first directive of 1991 was confined to drug trafficking, as defined in the 1988 Vienna Convention. However, member states were encouraged to extend the predicate offenses to other crimes.

SECOND DIRECTIVE


Member states agreed to implement it as national law by June 15, 2003; however, only Denmark, Germany, the Netherlands and
Finland met the deadline, with Ireland and Spain complying shortly afterwards. Other member states eventually followed.

The following were the key features of the Second Directive:

- It extended the scope of the First Directive beyond drug-related crimes. The definition of "criminal activity" was expanded to cover not just drug trafficking, but all serious crimes, including corruption and fraud against the financial interests of the European Community.

- It explicitly brought bureaux de change and money remittance offices under AML coverage.

- The Directive said that knowledge of criminal conduct can be inferred from objective factual circumstances.

- It provided a more precise definition of money laundering to include:
  - The conversion or transfer of property with knowledge that it is derived from criminal activity or from participation in that activity, for the purpose of concealing or disguising the illicit origin of the property, or assisting anyone who is involved in the commission of the activity to evade the legal consequences of his action.
  - Concealing or disguising the nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that the property is derived from criminal activity or from an act of participation in that activity.
  - The acquisition, possession or use of property, knowing, when it is received, that it was derived from criminal activity or from an act of participation in the activity.
  - Participation in, association to commit, the attempt to commit, and the aiding, abetting, facilitating or
counseling the commission of any of the mentioned actions.

- It widened the businesses and professions that are subject to the obligations of the Directive. Certain persons, including lawyers when they participate in the movement of money for clients, were required to report to authorities any fact that might indicate money laundering. Covered groups included: auditors, external accountants, tax advisers, real estate agents, notaries and legal professionals.

The Second Directive was a tremendous step forward because its applicability included many of the important financial centers of the world. It went well beyond similar standards issued by other organizations such as the UN and even FATF. In many respects, it exceeded the norms contained in U.S. law and regulations.

THIRD DIRECTIVE


The Third Directive was to be implemented by the member states by December 15, 2007. While several countries did not meet this original deadline, the directive has since been implemented by all members.

In line with the FATF money laundering recommendations, the Third EU Directive extended the scope of the directives by:

- Defining “money laundering” and “terrorist financing” as separate crimes. The directive’s measures were expanded to cover not only the manipulation of money derived from crime, but also the collection of money or property for terrorist purposes.

- Extending customer identification and suspicious activity reporting obligations to trusts and company service providers, life insurance intermediaries and
dealers selling goods for cash payments of more than 15,000 Euros.

- Detailing a risk-based approach to customer due diligence. The extent of due diligence that is performed on customers, whether simplified or enhanced, should be dependent on the risk of money laundering or terrorist financing they pose.

- Protecting employees who report suspicions of money laundering or terrorist financing. This provision instructs member states to “do whatever is in their power to prevent employees from being threatened.”

- Obligating member states to keep comprehensive statistics regarding the use of and results obtained from suspicious transaction reports such as: the number of suspicious transaction reports filed; the follow-up given to those reports; and the annual number of cases investigated, persons prosecuted and persons convicted.

- Requiring all financial institutions to identify and verify the “beneficial owner” of all accounts held by legal entities or persons. “Beneficial owner” refers to the natural person who directly or indirectly controls more than 25 percent of a legal entity or person.

The Third Money Laundering Directive applies to:

- Credit institutions;
- Financial institutions;
- Auditors, external accountants and tax advisors;
- Legal professionals;
- Trust and company service providers;
- Estate agents;
High value goods dealers who trade in cash over 15,000 Euro; and

Casinos.

The scope of the Third Money Laundering Directive differs from the Second Money Laundering Directive in that:

- It specifically includes the category of trust and company service providers.
- It covers all dealers trading in goods who trade in cash over 15,000 Euros.
- The definition of financial institution includes certain insurance intermediaries.

There were three main points of contention with regard to the Third Directive: the definition of politically exposed persons (PEPs); the inclusion of lawyers among those who are required to report suspicious activity; and the precise role of a “comitology committee.” The European Commission coined the term “comitology,” which means the EU system that oversees implementation of acts proposed by the European Commission.

The Third Money Laundering Directive includes the following definition of a politically exposed person:

“Politically exposed persons” means natural persons who are or have been entrusted with prominent public functions and the immediate family members, or individuals known to be close associates, of such persons.

Close associates must be identified only when their relationship with a PEP is publicly known or when the institution suspects there is a relationship. Finally, the commission said persons should not be considered PEPs after at least one year of not being in a prominent position.
REGIONAL AND OTHER INTERNATIONAL INITIATIVES

REGIONAL FATF-STYLE BODIES AND FATF ASSOCIATE MEMBERS

There are eight regional FATF-style bodies and FATF Associate Members that have similar form and functions to those of FATF. Many FATF member countries are also members of these bodies.

- Asia/Pacific Group on Money Laundering (APG).
- Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG).
- Eurasian Group (EAG).
- Financial Action Task Force of South America against Money Laundering (GAFISUD – Grupo de Acción Financiera de Sudamérica)
- Intergovernmental Action Group against Money-Laundering in West Africa (GIABA – Groupe Intergouvernemental d’Action contre le Blanchiment d’Argent en Afrique de l’Ouest)
- Middle East and North Africa Financial Action Task Force (MENAFATF)

Some of these are discussed below.

Some of these are discussed below.
ASIA/PACIFIC GROUP ON MONEY LAUNDERING

The APG, an autonomous regional anti-money laundering body, was established in February 1997 at the Fourth Asia/Pacific Money Laundering Symposium in Bangkok, where it adopted its “Terms of Reference.”

The Terms of Reference recognized that the FATF’s 40 Recommendations constituted the international money laundering control benchmark. The Terms included a commitment that APG members would implement these recommendations according to their particular cultural values and constitutional frameworks. The Terms also said that, to ensure a global approach, members of the APG would work closely with FATF. The Terms of Reference were revised at the 2006 Annual Meeting.

The APG:

- Provides a focus for cooperative AML and anti-terrorist financing efforts in the Asia/Pacific region.
- Provides a forum in which:
  - Regional issues can be discussed and experiences shared.
  - Operational co-operation among member jurisdictions is encouraged.
  - Facilitates the adoption and implementation by member jurisdictions of internationally accepted AML and anti-terrorist financing measures.
  - Enables regional and jurisdictional factors to be taken into account in the implementation of international AML and anti-terrorist financing measures.
  - Encourages jurisdictions to implement AML and anti-terrorist financing initiatives, including more effective mutual legal assistance.
 Coordinates and provides practical support, where possible, to member and observer jurisdictions in the region, when requested.

The APG is voluntary and cooperative in nature. The APG was established by agreement among its members and is autonomous. It is not derived from an international treaty. It is not part of any international organization. The work done by the APG and its procedures are decided by mutual agreement among its members.

The APG also uses similar mechanisms to those used by FATF to monitor and facilitate progress. Since its inception, the APG has worked closely with FATF. The APG and FATF have reciprocal rights of attendance at each other’s meetings, as well as reciprocal sharing of documents. However, the APG, like other autonomous anti-money laundering bodies, determines its own policies and practices.

Membership of the APG is open to any jurisdiction within the Asia/Pacific region that:

- Recognizes the need for action to combat money laundering and terrorist financing.
- Recognizes the benefits to be obtained by sharing knowledge and experience.
- Has taken or is actively taking steps to develop, pass and implement anti-money laundering and anti-terrorist financing legislation and other measures based on accepted international standards.
- Subject to its domestic laws, commits itself to implementing the decisions made by the APG.
- Commits itself to participation in the mutual evaluation program.
- Contributes to the APG budget in accordance with arrangements agreed to by the APG.
It is not a precondition for participation in the APG that anti-money laundering or anti-terrorist financing laws already be enacted.

The APG Secretariat is located in Sydney, Australia. The APG’s homepage is: [www.apgml.org](http://www.apgml.org).

**CARIBBEAN FINANCIAL ACTION TASK FORCE**

Given its proximity to the world’s largest cocaine producers and exporters in South America’s Andean region and one of the largest drug markets (the U.S.), the Caribbean basin has long been a convenient banking center for many international criminals, including drug dealers. The Caribbean Financial Action Task Force (CFATF) fosters money laundering controls in the Caribbean region. The main objective of the CFATF is to secure effective compliance with its recommendations to prevent and control money laundering and to combat the financing of terrorism. The CFATF home page can be found at: [www.cfatf.org](http://www.cfatf.org).

The group consists of dozens of states in the Caribbean basin that have agreed to implement common countermeasures to address the problem of criminal money laundering and the financing of terrorism. It was established as the result of meetings convened in Aruba in May 1990 and Jamaica in November 1992. Countries such as Canada, France, Mexico, the Netherlands, Spain, the United Kingdom and the U.S. serve as “Cooperating and Supporting Nations.”

At the Aruba meeting, representatives from the Caribbean and Central America got together to develop a common approach to fighting the laundering of the proceeds of crime. Nineteen recommendations were formulated. These recommendations, which have specific relevance to the region, are complementary to the FATF 40 Recommendations and were revised in 1999.
The Jamaica Ministerial Meeting was held in Kingston in November 1992. Ministers issued the Kingston Declaration in which they endorsed and affirmed their governments' commitment to implement the FATF and Aruba Recommendations, the OAS Model Regulations, and the 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. They also mandated the establishment of a secretariat.

The declaration recommended laws:

- Defining money laundering based on the model laws issued by the Organization of American States.
- Concerning the seizure and forfeiture of drug proceeds and linked assets which enable the identification, tracing and evaluation of property subject to seizure, and which permit freezing orders.
- Allowing judicial challenges to seizure orders by an administrative body.
- Permitting forfeiture in all cases following conviction.
- Permitting courts to decide that “all property obtained during a prescribed period of time by a person convicted of drug trafficking has been derived from such criminal activity.”

The Caribbean nations agreed to enter into mutual assistance agreements with each other to assist in money laundering investigations. They also agreed that money laundering should be an extraditable offense, subject to simplified procedures and that forfeited assets should be shared among cooperating nations.

The declaration’s terms:

- Permit continuation of numbered accounts at financial institutions with the understanding that account information would be made available to “competent authorities” upon request, and that there are strong legal requirements for customer identification.
Insist that, in large currency transactions, customer identification procedures and record keeping are “mandatory.”

Amend bank secrecy laws to allow the reporting of suspicious transactions by financial institutions, but leave it optional whether a statute is required.

The CFATF monitors members’ implementation of the anti-money laundering recommendations through the following activities:

- Self-assessment of the implementation of the recommendations.
- An ongoing program of mutual evaluation of members.
- Coordination of, and participation in, training and technical assistance programs.
- Biennial plenary meetings for technical representatives.
- Annual ministerial meetings.

FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING IN SOUTH AMERICA (GAFISUD — GRUPO DE ACCIÓN FINANCIERA DE SUDAMÉRICA)

The Financial Action Task Force on Money Laundering in South America was created in December 2000 in Cartagena de Indias, Colombia. Its member countries are Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama, Paraguay, Peru, and Uruguay, and its main objective is to implement anti-money laundering measures in South America.

GAFISUD, with a secretariat in Argentina, was created by an intergovernmental agreement that left the door open for more countries to join. GAFISUD’s website can be found at: [http://www.gafisud.info/home.htm](http://www.gafisud.info/home.htm)
GAFISUD has adopted the FATF’s 40 + 9 Recommendations and expects to develop its own Recommendations for the improvement of national policies against both money laundering and terrorist financing.

MIDDLE EAST AND NORTH AFRICA
FINANCIAL ACTION TASK FORCE

At an inaugural Ministerial Meeting held in Manama, Bahrain, in November 2004, the governments of 14 countries decided to establish a Financial Action Task Force-style regional body for the Middle East and North Africa. Currently, the body, known as the Middle East and North Africa Financial Action Task Force (MENAFATF) consists of the following 18 members:

1. Algeria.
2. Bahrain.
3. Egypt.
5. Kuwait.
7. Libya.
8. Morocco.
10. Qatar.
11. Iraq.
13. Sudan.
15. Tunisia.

16. United Arab Emirates.

17. Yemen.

The MENAFATF is voluntary in nature and was established by agreement between its members. It is not derived from an international treaty. It is independent of any other international organization and sets its own work, rules and procedures, which are determined by consensus of its members. It cooperates with other international bodies, notably FATF, to achieve its objectives.

Member countries of the MENAFATF agreed on the following objectives and are working towards achieving them:

- To adopt and implement the 40 Recommendations of FATF against money laundering.

- To adopt and implement the Special Recommendations of FATF against terrorist financing.

- To implement the relevant UN treaties and agreements and United Nations Security Council Resolutions dealing with fighting money laundering and terrorist financing.

- To cooperate to raise compliance with these standards and measures within the MENA region and to work with other international organizations to raise compliance worldwide.

- To work together to identify money laundering and terrorist financing issues of a regional nature, to share experiences with these problems and to develop regional solutions for dealing with them.

- To build effective arrangements throughout the region to effectively fight money laundering and terrorist financing in accordance with the particular cultural values, constitutional framework and legal systems of the member countries.
The MENAFATF is headquartered in Bahrain. Its website is www.menafatf.org.

EURASIAN GROUP ON COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

Another Financial Action Task Force-style regional body, the Eurasian Group (EAG), was formed in October 2004 in Moscow. Its current members are: Belarus, China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Turkmenistan, and Uzbekistan. The EAG is open to other states of the Eurasian region which can become members of the Group after approval of the EAG Plenary meeting.

Former FATF president Jean-Louis Fort said that the organization, initiated by the Russian Federation, “spans a huge area of the globe and provides a new and necessary mechanism for fighting terrorists and money launderers in this region.” Countries such as Georgia, Uzbekistan, Ukraine, Italy, the United Kingdom and the United States, as well as international organizations such as FATF, the World Bank and the IMF, sit as observers of the organization. The website of the group is www.euroasiangroup.org.

EASTERN AND SOUTH AFRICAN ANTI-MONEY LAUNDERING GROUP

Fourteen countries from East Africa to the southern tip of Africa make up this FATF-style regional body, which consists of a ministerial council, a task force of senior officials and a secretariat. In 1999, the group developed a memorandum of understanding among its member states. Its objectives are to:

- Adopt and implement the 40 Recommendations of the Financial Action Task Force.
- Apply AML provisions to all serious crimes.
- Implement any other measures contained in multilateral agreements and initiatives to which member states subscribe pertaining to the prevention
and control of the laundering of proceeds from all serious crimes.

All 14 member states have signed the memorandum. The website of the group is www.esaamlq.org.

OTHER ANTI-MONEY LAUNDERING INITIATIVES

ORGANIZATION OF AMERICAN STATES: INTER-AMERICAN DRUG ABUSE CONTROL COMMISSION (COMISIÓN INTERAMERICANA PARA EL CONTROL DEL ABUSO DE DROGAS) (CICAD)

In May 1992, the Organization of American States (OAS) became the first permanent international body to reach an agreement on the details of model legislation aimed specifically at dealing with money laundering. At its annual general assembly held in Nassau, the Bahamas, the OAS unanimously approved a set of 19 articles, written in statutory language, which it recommended its member nations enact.

The OAS action was not an overnight affair. The vote was the culmination of a two-year effort by the Inter-American Drug Abuse Control Commission, an OAS entity that goes by the acronym CICAD (Comisión Interamericana para el Control del Abuso de Drogas). CICAD in 1990 gathered a “group of experts” from 14 nations.

CICAD:

- Serves as the Western Hemisphere’s policy forum on all aspects of the drug problem.
- Fosters multilateral cooperation on drug issues in the Americas.
- Executes action programs to strengthen the capacity of member states to prevent and treat drug abuse, to combat production and trafficking of illicit drugs; and to deny traffickers their ill-gotten gains.
Promotes drug-related research, information exchange, specialized training and technical assistance.

Develops and recommends minimum standards for drug-related legislation; treatment; the measurement of both drug consumption and the cost of drugs to society; and drug-control measures, among others.

CICAD’s core mission is to strengthen the human and institutional capabilities and to harness the collective energy of member states to reduce the production, trafficking and use of illegal drugs in the Americas.

Within CICAD is an Anti-Money Laundering Unit (CICAD-AMLU) established in 1999. The Unit focuses its efforts on providing technical assistance and training to all member states in judicial and financial measures and law enforcement. It also acts as secretariat of CICAD’s Group of Experts for the Control of Money Laundering.

Through the Group of Experts, Model Regulations are developed on money laundering offenses related to drug trafficking and other crimes. These regulations serve as permanent legal documents providing a legal framework to member states. They were influenced by and are compatible with the FATF Recommendations.

The entire set of Model Regulations is at: http://www.cicad.oas.org.

CICAD’s work on the Model Regulations has not been without its obstacles. One was the variety of legal systems among the nations of the hemisphere. Most have legal systems that were inherited from, or were strongly influenced by, their colonial rulers, including Spain, England, France, Portugal and even the Netherlands.

In 1999, the Inter-American Development Bank (IADB) and CICAD started a program in eight South American countries to train employees from financial institutions and from the financial regulatory agencies responsible for enforcing anti-money laundering requirements. In 2001, another program was developed.
and conducted for judges and prosecutors among the eight countries, and, in 2002, a long term project was begun to establish Financial Intelligence Units in Argentina, Chile, Ecuador, Bolivia, Brazil, Peru, Uruguay and Venezuela.

In addition, CICAD-AMLU has the capacity to develop, supervise and offer technical assistance and training courses related to the legal framework of anti-money laundering, be it through analysis or development of laws, or their application (law enforcement). CICAD also launched a joint training program called “Mock Trial on Money Laundering” in various Latin American countries.

Other CICAD efforts have specifically targeted:

- Bankers and Regulators: Created with the IADB in 1999, it was developed to provide training and technical assistance to financial entities in formulating typologies of money laundering offenses found in financial institutions.

- Judges and Prosecutors: Developed from 1999 to 2002 in conjunction with Spanish authorities and coordinated with the IADB, it seeks to train national judicial bodies on money laundering techniques and their criminalization.

- Financial Intelligence Units: This program, coordinated by CICAD and IADB, seeks to develop and create, through technical assistance and training, institutions that can analyze and control organized crime efforts to launder assets.

- Law Enforcement: Law enforcement agencies are trained in strategic techniques to: 1) facilitate financial investigations involving the proceeds from serious crimes; 2) improve prosecutions of money laundering/terrorism financing offenses; and 3) improve procedures and techniques for the seizure of property related to these criminal activities.

CICAD’s website is http://www.cicad.oas.org.
EGMONT GROUP OF FINANCIAL INTELLIGENCE UNITS

In 1995, a number of national financial intelligence units (FIUs) began working together in an informal organization known as the Egmont Group (named for the location of the first meeting, the Egmont-Arenberg Palace in Brussels). The goal of the group is to provide a forum for FIUs around the world to improve cooperation in the fight against money laundering and financing of terrorism and to foster the implementation of domestic programs in this field. This support includes:

- Expanding and systematizing cooperation in the reciprocal exchange of information.
- Increasing the effectiveness of FIUs by offering training and promoting personnel exchanges to improve the expertise and capabilities of personnel employed by FIUs.
- Fostering better and secure communication among FIUs through the application of technology, such as the Egmont Secure Web (ESW).
- Promoting the operational autonomy of FIUs.
- Promoting the establishment of FIUs in conjunction with jurisdictions with an AML/CFT program in place, or in areas with a program in the early stages of development.

In 1996, based on the work of its Legal Working Group, Egmont approved a definition of an FIU. It was amended in 2004 to reflect the FIUs’ role in combating terrorism financing as follows:

- A central, national agency responsible for receiving (and, as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information:

- Concerning suspected proceeds of crime and potential financing of terrorism.
Required by national legislation or regulation, in order to combat money laundering and terrorism financing.

In 1999, the Egmont Training Working Group undertook an initiative to draw together cases from the fight against money laundering waged by Egmont Group member FIUs.

In 2001, the group issued a document, “Principles for Information Exchange Between Financial Intelligence Units for Money Laundering and Terrorism Financing Cases,” which sets out guidelines for sharing information among FIUs. In 2004, the group issued “Best Practices for the Exchange of Information Between Financial Intelligence Units.”

As of June 30, 2010, there were 117 Egmont member FIUs.

THE WOLFSBERG GROUP

The Wolfsberg Group is an association of 11 global banks that aims to develop financial services industry standards and related products for Know Your Customer, Anti-Money Laundering and Counter Terrorist Financing policies.

The Group first came together in 2000 at the Wolfsberg castle in Switzerland, accompanied by representatives of Transparency International, to draft anti-money laundering guidelines for private banking that, when implemented, would mark an unprecedented private-sector assault on the laundering of corruption proceeds.

Their principles hold no force of law and carry no penalties for those who do not abide by them.

The Wolfsberg Anti-Money Laundering Principles for Private Banking was published in October 2000 and was revised in May 2002. These principles recommend controls for private banking that range from the basic, such as customer identification, to enhanced due diligence, such as heightened scrutiny of individuals who “have or have had positions of public trust.” The banks that released the principles with Transparency International said that the principles
would “make it harder for corrupt people to deposit their ill-gotten gains in the world’s banking system.”

The principles say banks will “endeavor to accept only those clients whose source of wealth and funds can be reasonably established to be legitimate.” They highlight the need to identify the beneficial owner of funds “for all accounts” when that person is someone other than the client, and urge private bankers to perform due diligence on “money managers and similar intermediaries” to determine that the middlemen have a “satisfactory” due diligence process for their clients or a regulatory obligation to conduct such due diligence. The principles recommend that “at least one person other than the private banker” should approve all new clients and accounts.

The principles list several situations that require further due diligence, including activities that involve:

- Public officials, including individuals holding, or having held, positions of public trust, as well as their families and close associates.

- High-risk countries, including countries “identified by credible sources as having inadequate anti-money laundering standards or representing high-risk for crime and corruption.”

- High-risk activities, involving clients and beneficial owners whose source of wealth “emanates from activities known to be susceptible to money laundering.”

The Wolfsberg principles say that banks should have written policies on the “identification of and follow-up on unusual or suspicious activities,” and should include a definition of what is suspicious, as well as examples of such activity. They recommend a “sufficient” monitoring system that uses the private banker’s knowledge of the types of activity that would be suspicious for particular clients. They also outline mechanisms that can be used to identify suspicious activity, including meetings, discussions and in-country visits with clients and steps that should be taken when suspicious activity is detected.
The principles also address:

- Reporting to management of money laundering issues.
- AML training.
- Retention of relevant documents.
- Deviations from policy.
- Creation of an anti-money laundering department and an AML policy.

In May 2002, the Wolfsberg Principles for Private Banking were revised. A section was added prohibiting the use of internal non-client accounts (sometimes referred to as “concentration” accounts) to keep clients from being linked to the movement of funds on their behalf (i.e., banks should forbid the use of such internal accounts in a manner that would prevent officials from appropriately monitoring movements of client funds).

The Wolfsberg Group also issued guidelines in early 2002 on “The Suppression of the Financing of Terrorism,” outlining the roles of financial institutions in the fight against money laundering and terrorism financing.

The Wolfsberg recommendations include:

- Providing official lists of suspected terrorists on a globally coordinated basis by relevant authorities.
- Including adequate information in the lists to help institutions search customer databases efficiently.
- Providing prompt feedback to institutions following circulation of the official lists.
- Providing information on the manner, means and methods used by terrorists.
- Developing government guidelines for business sectors and activities identified as high-risk for terrorism financing.
Developing uniform global formats for funds transfers that assist in the detection of terrorism financing.

The group also recommends that financial institutions be protected by a safe harbor immunity to encourage them to share information and to report to authorities.

The Wolfsberg Group also committed itself to recommending enhanced due diligence for “business relationships with remittance businesses, exchange houses, casas de cambio, bureaux de change and money transfer agents…” and committed its members to taking enhanced due diligence steps for high-risk customers or those in high-risk sectors, and activities “such as underground banking businesses or alternative remittance systems.”

In 2002, Wolfsberg issued guidelines on “Anti-Money Laundering Principles for Correspondent Banking” that outlined steps financial institutions should take to combat money laundering and terrorism financing through correspondent banking.

Correspondent accounts are accounts established by one financial institution with another financial institution to hold deposits, make payments on its behalf, and process other transactions. The 14 Wolfsberg guidelines extend to all correspondent banking relationships an institution maintains, including those with banks, broker-dealers, mutual funds, money services businesses, hedge funds and credit card issuers.

Some of the more notable recommendations include the following:

- Due diligence should be risk-based, depending on the location, type of business, ownership, customer base, regulatory status and AML controls of the correspondent banking client or business.

- An institution should not offer its products or services to a shell bank.

- Generally, the new principles should not apply to central banks and monetary authorities of member countries of FATF or multinational institutions, such as the International Monetary Fund and the World Bank.
All correspondent banking client information should be reviewed and updated periodically based on risk factors.

The principles should be part of a financial institution’s larger AML program.

The Wolfsberg Group began collaborating with the Banker’s Almanac in 2004 and the International Due Diligence Repository that has subsequently been developed is available at [www.bankersalmanac.com/addcon/products/due_diligence.aspx](http://www.bankersalmanac.com/addcon/products/due_diligence.aspx) Details in the Repository include copies of company by-laws, relevant licenses, extracts from commercial registers or certificates of incorporation, the most recent annual reports, information about shareholders with stakes of more than 5 percent, biographies of board members and senior management, information about each financial institution’s AML policies and procedures, etc. The initiative is a move towards standardizing due diligence information, which in itself provides a potential cost-saving in time spent seeking information from a variety of sources. Since its launch, the Banker’s Almanac has added further functionality to the Repository with the inclusion of an alert service which updates users with any changes to documents or status of an institution.

The Wolfsberg Group, which has no enforcement powers, issued the guidelines to manage its members’ own risks, to help make sound decisions about clients and to protect their operations from criminal abuse.

The group released the “Monitoring, Screening and Searching Wolfsberg Statement” in September 2003. This document discussed the need for appropriate monitoring of transactions and customers to identify potentially unusual or suspicious activity and transactions, and for reporting such to competent authorities. In particular, it covered issues related to the development of risk-based processes for monitoring, screening and searching transactions and customers.

All of the Group’s publications can be found on its website at [www.wolfsberg-principles.com/standards.html](http://www.wolfsberg-principles.com/standards.html)

As of June 2010, the Wolfsberg Standards listed on the website were:
Wolfsberg AML Guidance on Credit/Charge Card Issuing and Merchant Acquiring Activities (May 2009).


Wolfsberg Group, Notification for Correspondent Bank Customers (April 2007).

The Wolfsberg Statement against Corruption (February 2007).


Wolfsberg Statement on Monitoring, Screening and Searching (September 2003).

Wolfsberg Principles for Correspondent Banking (November 2002).


THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND

The International Monetary Fund (IMF) and the World Bank have supported the efforts of FATF in addressing the resistance of certain nations to joining the international battle against money laundering. Since 2001, the two institutions have required countries that benefit from their financial and structural assistance programs to have effective money laundering controls.
In an April 2000 joint policy paper called “Enhancing Contributions To Combating Money Laundering,” the two organizations detailed the steps that they would take to strengthen the global assault on money laundering.

In September 2001, the IMF and the World Bank started to “fully integrate” the battle against money laundering and other financial crimes into its “surveillance exercises and programs.” That month, the International Monetary and Financial Committee (IMFC), the advisers to the IMF’s board of governors, issued a communiqué that said it would “explore incorporating work on financial abuse, particularly with respect to international efforts to fight against money laundering, into its various activities, as relevant and appropriate.”

The IMFC asked the IMF and the World Bank to prepare a joint paper outlining their appropriate roles in the effort and suggesting how to integrate the subject into their work. In response, an IMF background paper, “Financial System Abuse, Financial Crime and Money Laundering,” issued in February, 2001, explored how the institutions could “play … role[s] in protecting the integrity of the international financial system from abuse” through use of their influence to promote national anti-corruption programs.

Since then, the IMF and the World Bank have become more active in combating money laundering by:

- Concentrating on money laundering over other forms of financial abuse.
- Helping to strengthen “financial supervision and regulation” in countries.
- More closely interacting with the OECD and the Basel Committee on Banking Supervision.
- Insisting on the application of international AML standards in countries that ask for financial assistance.

In a joint meeting in April 2004 of their boards of directors, the two bodies agreed to adopt, on a permanent basis, their pilot program that assesses a nation’s compliance with international AML and
anti-terrorist financing standards. The program put an end to FATF’s practice of publicizing Non-Cooperative Countries and Territories (NCCT).

The World Bank and the IMF have established a collaborative framework with FATF for conducting comprehensive assessments, using a single global methodology, of countries’ compliance with the FATF 40+9 Recommendations on methods to fight money laundering and to combat the financing of terrorism. The assessments are carried out as part of the Financial Sector Assessment Program and result in the “Report on Observance of Standard and Codes.”

In 2002, the World Bank and the IMF developed the “Reference Guide to Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT)” in an effort to provide practical steps for countries implementing AML/CFT regimes in accordance with international standards. The guide describes the global problem of money laundering and terrorist financing on the development agenda of individual countries and across regions. It explains the basic elements required to build an effective AML/CFT legal and institutional framework and summarizes the role of the World Bank and the IMF in those efforts.

For more information, see: http://www1.worldbank.org/finance/html/comprehensive_reference_guide__0.html.

OTHER INTERNATIONAL ORGANIZATIONS

Other international organizations with anti-money laundering and terrorist financing initiatives include:

- African Development Bank.
- Asia Development Bank.
- The Commonwealth Secretariat.
- European Bank for Reconstruction and Development (EBRD).
European Central Bank (ECB).

Europol.

Inter-American Development Bank (IADB).

Interpol.

International Organization of Securities Commissions (IOSCO).

Offshore Group of Banking Supervisors (OGBS).

World Customs Organization (WCO).

KEY U.S. LEGISLATIVE AND REGULATORY INITIATIVES APPLIED TO TRANSACTIONS INTERNATIONALLY

This guide contains an overview of the principal elements of United States laws related to money laundering and terrorism financing that bear on international transactions and jurisdictions.

USA PATRIOT ACT

Motivated by the attacks of September 11, 2001, and the urgent need to decipher and disable mechanisms that finance terrorism, the U.S. Congress enacted the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act) in October 2001 to strengthen money laundering laws and the Bank Secrecy Act to levels unseen since the original passage of the BSA in 1970 and the world's first anti-money laundering law in 1986.

Title III of the USA Patriot Act (U.S. Public Law 107-56), entitled the International Money Laundering Abatement and Anti-Terrorist
Financing Act of 2001, contains most, though not all, of the anti-money laundering-related provisions in this diverse law.

The USA Patriot Act has implications for U.S. institutions and non-U.S. institutions that do business in the United States. It is important to note that the regulations issued under the USA Patriot Act by the U.S. Treasury Department provide the detailed requirements that financial institutions must follow to comply with the provisions of the Act. These regulations are compiled in 31 Code of Federal Regulation Part 103.

Key provisions of the USA Patriot Act stem from the premise that international access points to the U.S. financial system must be controlled. Thus, the law covers a wide range of anti-money laundering and terrorism financing provisions affecting foreign businesses. These include:

**Section 311**: Special Measures for Primary Money Laundering Concerns (31 U.S.C. 5318A). This section provides the U.S. Treasury Department with the authority to apply graduated, proportionate measures against a foreign jurisdiction, a foreign financial institution, a type of international transaction or a type of account that the Treasury Secretary determines to be a “primary money laundering concern.” By designating a country or a financial institution as a “primary money laundering concern,” the U.S. government can force U.S. banks to halt many of their financial dealings with the designee. Once identified, the Treasury Department can require U.S. financial institutions to follow any or all of the following five special measures:

1. Keep records and/or file reports on certain financial transactions, including a description of the transactions, the identities and addresses of the participants in the transactions and the identities of the beneficial owners of the funds involved.

2. Obtain information on the beneficial ownership of any account opened or maintained in the U.S. by a foreign person or a foreign person’s representative.

3. Identify and obtain information about customers who
are permitted to use, or whose transactions are routed through, a foreign bank’s “payable-through” account.

4. Identify and obtain information about customers permitted to use, or whose transactions are routed through, a foreign bank’s “correspondent” account.

5. Close certain payable-through or correspondent accounts.

To ensure that all relevant factors are considered, the Secretary of Treasury must consult with the Secretary of State and the Attorney General before designating a jurisdiction, institution or a particular type of transaction or account as a primary money laundering concern. The U.S government has used Section 311 to cut financial ties to countries such as Myanmar (formerly known as Burma), and has also singled out specific institutions, including banks in Latvia, Syria, Macau and Myanmar.

Section 312: Correspondent and Private Banking Accounts (31 U.S.C. 5318(i)). Requires due diligence and, in certain situations, “enhanced due diligence” for foreign correspondent (which includes virtually all account relationships that institutions can have with a foreign financial institution) and private banking accounts for non-U.S. persons.

The correspondent banking portions of the rule apply to U.S. banks, credit unions, thrift institutions, trust banks, broker-dealers, futures commission merchants and introducing brokers in commodities and mutual funds and U.S.-based agencies and branches of foreign banks.

Foreign financial institutions covered by the rule include foreign banks, foreign branches of U.S. banks, foreign businesses that would be considered broker-dealers, futures commission merchants, introducing brokers in commodities, or mutual funds if they operated in the United States, and money transmitters or currency exchangers organized in a foreign country.

The due diligence program must include “appropriate, specific and risk-based,” and, where necessary, enhanced policies, procedures and controls reasonably designed to identify and report suspected
money laundering in a correspondent account maintained in the United States. This due diligence program must also be included in the institution’s anti-money laundering program.

The due diligence program must address three measures:

- Determining whether enhanced due diligence is necessary.
- Assessing the money laundering risk presented by the correspondent account.
- Applying risk-based procedures and controls reasonably designed to detect and report suspected money laundering.

Pursuant to the implementing regulation, enhanced due diligence procedures must be applied to a correspondent account established for a foreign bank operating under:

- An offshore banking license.
- A license issued by a foreign country designated as non-cooperative by an international organization, with which designation the Treasury Secretary agrees.
- A license issued by a foreign country that has been designated by the U.S. as warranting special measures pursuant to Section 311 of the USA Patriot Act, described above.

The enhanced due diligence that must be implemented in these situations includes:

- Conducting enhanced scrutiny for possible money laundering and suspicious transactions, including:
  - Obtaining information relating to the foreign bank’s AML program.
  - Monitoring transactions in and out of the correspondent account in a manner reasonably
designed to detect possible money laundering and suspicious activity.

- Obtaining information about the correspondent account that is being used as a payable-through account.

- Determining whether the correspondent account is being used by other foreign banks that have a correspondent relationship with the foreign bank for which the correspondent account was established, and taking reasonable steps to assess and mitigate the money laundering risks associated with such accounts.

- Determining, for any such foreign bank whose shares are not publicly traded, the identity of each of the owners of the foreign bank with the power to vote 10 percent or more of any class of securities of the bank, and the nature and extent of the ownership interest of each such owner.

The private banking portions of the rule apply to the same institutions covered by the correspondent banking provisions of the rule. Such institutions must maintain a due diligence program for private banking accounts and must conduct enhanced scrutiny of private banking accounts maintained for senior foreign political figures, their immediate family and their close associates.

Under the rule, a private banking account is defined as an account with a minimum aggregate deposit of $1 million for one or more non-U.S. persons and which is assigned to a bank employee acting as a liaison with the non-U.S. person.

The private banking due diligence program must include policies and procedures designed to detect and report suspected money laundering or suspicious activity in the U.S. account.

For covered private banking accounts, U.S. institutions must take reasonable steps to:

- Ascertain the identity of all nominal and beneficial owners of the accounts.
- Ascertain whether any such owner is a “senior foreign political figure.”
- Ascertain the source of the funds in the account and the purpose and expected use of the account.
- Monitor the account to ensure the activity in the account is consistent with the information provided as to the source of funds and the purpose and expected use of the account, as needed to guard against money laundering and to report any suspected money laundering or suspicious activity.

In ascertaining whether an account owner is a “senior foreign political figure,” the institution must take reasonable steps to determine if the person is a “current or former senior official in the executive, legislative, administrative, military or judicial branches of a foreign government.” The definition also covers officials of foreign political parties and government-owned commercial enterprises. The definition includes immediate family members and persons who are “widely and publicly known” to be close associates.

An institution that maintains accounts for these individuals must conduct “enhanced scrutiny” that is reasonably designed to detect if the funds “may involve the proceeds of foreign corruption,” which includes any asset or property obtained “through misappropriation, theft or embezzlement of public funds, the unlawful conversion of property of a foreign government, or . . . bribery or extortion.”

**Section 313**: Prohibition on correspondent accounts for foreign shell banks (31 U.S.C. 5318(j)). Prohibits U.S. banks and securities brokers and dealers from maintaining correspondent accounts for foreign unregulated “shell” banks that have no physical presence anywhere. The term “physical presence” is defined as a place of business that is maintained by a foreign bank; is located at a fixed address (as opposed to solely an electronic address) where it is authorized to conduct banking activities; employs one or more individuals on a full-time basis at that location; maintains operating records at that location; and is subject to inspection by the banking authority which licensed it at that location. The term shell bank does not include a
bank that is a regulated affiliate of a bank that maintains a physical presence.

The section also requires financial institutions to take reasonable steps to ensure that foreign banks with correspondent accounts do not themselves permit access to such accounts by foreign shell banks. Banks and securities brokers are permitted to use a certification form to comply with the rule. That process requires the foreign banks to certify at least once every three years that they are not themselves shell banks and that they do not permit shell banks access to the U.S. correspondent account through a nested correspondent relationship.

Section 319(a): Forfeiture from U.S. Correspondent Account (18 U.S.C. 981(k)). In situations where funds have been deposited with a foreign bank, this section permits the U.S. Government to seize funds in the same amount from a correspondent bank account in the U.S. that has been opened and maintained for the foreign bank. The U.S. Government is not required to trace the funds, as they are deemed to have been deposited into the correspondent account. However, the owner of the funds may contest the seizure order.

Section 319(b): Records relating to Correspondent Accounts for Foreign Banks (31 U.S.C. 5318(k)). Allows the appropriate Federal banking agency to require a financial institution to produce within 120 hours (five days) records or information related to the institution’s AML compliance or related to a customer of the institution or any account opened, maintained, administered or managed in the U.S. by the financial institution.

The section also allows the Secretary of the Treasury or the Attorney General to subpoena records of a foreign bank that maintains a correspondent account in the U.S. The subpoena can request any records relating to the account, including records located outside the United States. If the foreign bank fails to comply with or fails to contest the subpoena, the Secretary or the Attorney General can order the U.S. financial institution to close the correspondent account within ten days of receipt of such order.

Additionally, the section also requires foreign banks to designate a registered agent in the U.S. to accept service of subpoenas pursuant
to this section. Furthermore, U.S. banks and securities brokers and dealers that maintain correspondent accounts for foreign banks must keep records of the identity of the 25 percent owners of the foreign bank, unless it is publicly traded, as well as the name of the correspondent bank’s registered agent in the U.S. Generally this information is collected on the certification form used to comply with Section 313 above and must be updated at least every three years or more frequently if the information is no longer correct.

THE REACH OF THE U.S. CRIMINAL MONEY LAUNDERING AND CIVIL FORFEITURE LAWS

First enacted in 1986, the criminal money laundering law of the United States is a powerful legal weapon, but it may be used only if the property involved in the financial transaction at issue represents the proceeds of at least one designated underlying crime — a “specified unlawful activity” (SUA). However, SUAs include virtually every U.S. crime that produces economic advantage, including aircraft piracy, wire fraud, bank fraud, copyright infringement, embezzlement, export violations, illegal gambling, narcotics offenses, racketeering and even some environmental crimes. (18 USC 1956 and 1957.)

This money laundering law also reaches foreign individuals and foreign financial institutions if the financial transaction occurs in whole or in part in the U.S. or if the foreign financial institution maintains a bank account at a U.S. financial institution.

Although the prosecution must prove the existence of an SUA’s proceeds, it need not prove that the accused “knew” the exact source of the funds. The prosecution must prove only that the defendant knew that the funds came “from some form . . . of activity that constitutes a felony under state, federal, or foreign law, regardless of whether or not such activity” is an SUA (18 USC 1956(c)(1)). Courts have often ruled that “willful blindness,” which has been defined as “the deliberate avoidance of knowledge of the facts,” is the equivalent of actual knowledge. Willful blindness may
be proven by the circumstances surrounding the transaction and the defendant's conduct.

Finally, Section 319(a) of the USA Patriot Act, discussed above, greatly strengthened the forfeiture powers over the funds of foreign persons and institutions. If the funds the U.S. pursues are deposited in a foreign bank, which keeps an “interbank account” at a U.S. bank, the U.S. may bring a case to forfeit the crime-tainted funds in the U.S. account.

**OFFICE OF FOREIGN ASSETS CONTROL**

In addition to these laws and regulations, financial institutions and businesses in other countries must recognize the extraterritorial reach of regulations enforced by the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC).

OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC acts under presidential wartime and national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and to freeze foreign assets under U.S. jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.

OFAC rules prohibit transactions and require the blocking of assets of persons and organizations that appear on one of a series of lists that OFAC issues periodically. The agency has the power to impose significant penalties on those who are found to be in violation of the blocking orders.

All U.S. persons must comply with OFAC regulations, including all U.S. citizens and permanent resident aliens, regardless of where they are located; all persons and entities within the United States; and all U.S. incorporated entities and their foreign branches. In
the cases of certain programs, such as those regarding Cuba and North Korea, all foreign subsidiaries owned or controlled by U.S. companies also must comply. Certain programs also require foreign persons in possession of U.S.-origin goods to comply.

See: [www.treasury.gov/offices/enforcement/ofac](http://www.treasury.gov/offices/enforcement/ofac).

**SUMMARY**

International cooperation is a key to success in the anti-money laundering and anti-terrorist financing battle due to the nature of criminal proceeds and laundering offenses, and the speed with which international financial transactions can take place.

The Financial Action Task Force on Money Laundering (FATF), which is part of the Organization for Economic Cooperation and Development based in Paris, was formed by the Group of Seven industrial nations in 1989. FATF is the group that has issued recognized standards in the worldwide effort against money laundering and terrorism financing.

Its 40 Recommendations, published in 1990 and revised in 1996 and 2003, form a comprehensive regime against money laundering and have been accepted worldwide as a basis for tackling money laundering and terrorism financing.

FATF issued eight Special Recommendations on Terrorist Financing in 2001, shortly after the September 11 terrorist attacks in the U.S., and, in 2004, updated the eight Special Recommendations and issued a ninth Special Recommendation.

FATF also issues guidance on money laundering typologies or trends.

While the original FATF list of Non-Cooperative Countries and Territories no longer exists, in 2009 FATF issued a statement on high-risk and non-cooperative jurisdictions. Further, in March 2010, FATF issued guidance concerning how it would identify...
certain high-risk countries and set forth the countries’ specific strategic AML deficiencies.

As of June 2010, FATF comprised 34 Members and two Regional Organizations, representing most major financial centers in all parts of the globe. The following eight regional FATF-style bodies (FSRBs) are FATF Associate Members and have a similar form and functions to those of FATF. Some FATF members are also members of these bodies. There are 21 International organizations that have FATF Observer status.

The Basel Committee, established by the central bank governors of the G-10 countries in 1974, promotes sound supervisory standards worldwide. It has recognized that sound Customer Due Diligence (CDD) policies and procedures are critical in protecting the safety and soundness of banks and the integrity of banking systems, and, in October 2001, it issued a paper called “Customer Due Diligence for Banks.”

The first European Union Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering was adopted by the Council of Europe in 1991. In December 2001, the European Union issued a Second Directive that widened money laundering offenses beyond drugs to all serious crimes and extended the scope of financial sector compliance beyond credit and financial institutions to bureaux de change and money remittance offices, auditors, tax advisors, lawyers and external accountants. European law prevails over national law in the case of directives. A Third Directive was adopted in 2005, and broadened the scope of the directives by defining “money laundering” and “terrorist financing” as separate crimes and extending customer Identification and STR requirements to trusts and company service providers and dealers selling goods for cash in excess of 15,000 Euros. The Third Directive also detailed a risk-based approach to customer due diligence; instructed member states to provide a safe haven for employees filing STRs; obligated member states to keep comprehensive statistics on STRs and required all financial institutions to identify and verify beneficial owners of accounts.

In May 1992, the Organization of American States (OAS) became the first permanent international body to reach agreement on the
details of model legislation aimed specifically at dealing with money laundering.

In addition, the United States, realizing its role as major financial market, has implemented AML/CFT laws that have an extraterritorial reach. These laws show the increased importance countries are placing on AML/CTF efforts, by expanding their scope to go beyond just imposing requirements on the financial institutions that operate in the jurisdiction to applying the requirements to those persons and financial institutions that want to maintain accounts in the jurisdiction.
<table>
<thead>
<tr>
<th>Group</th>
<th>What is It?</th>
<th>Important Documents</th>
</tr>
</thead>
</table>
| Financial Action Task Force on Money Laundering | - Intergovernmental body with 34 member countries and two international organizations.  
- Sets money laundering standards. | - 40 Recommendations on Money Laundering.  
- Special Recommendations on Terrorist Financing (Last updated 2004). |
| Basel Committee on Banking Supervision | - Established by the central bank governors of the G-10.  
- Sharing of financial records between jurisdictions in connection with the fight against terrorist financing (2002).  
| Wolfsberg Group | - Association of 11 global banks.  
- Aims to develop standards on money laundering controls for banks. | - Wolfsberg Anti-Money Laundering Principles for Private Banking (last updated 2002).  
| APG, GAFISUD, CFATF, MENAFATF, Eurasian Group, Eastern and South African AML Group | - FATT-style regional bodies | - Typologies, etc. |
| Egmont Group | - Informal networking group of Financial Intelligence Unit | - Statement of Purpose (last updated 2004).  
- Principles for Information Exchange Between Financial Intelligence Units for Money Laundering Cases (2001).  
| CICAD | - Commission within the Organization of American States that deals with drug-related issues, including money laundering. | - Model Regulations |
| World Bank and International Monetary Fund | - These organizations work together and in conjunction with FATF in, among other things, encouraging countries to have adequate anti-money laundering laws and reviewing and anti-money laundering laws and procedures of FATF member countries. | - Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism: A Manual for Countries to Establish and Improve Their Institutional Framework 2002 (revised 2007). |
Historic overview of important developments in the international AML arena:

<table>
<thead>
<tr>
<th>Year</th>
<th>Important Developments in the International AML Arena</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986</td>
<td>• U.S. enacts its Money Laundering Control Act, codified at 18 U.S.C. Section 1956 and 1957, the first law in the world to make money laundering a crime.</td>
</tr>
</tbody>
</table>
| 1988 | • Vienna Convention (UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances) is agreed to.  
     • Statement of principles is issued by Basel Committee on Banking Regulations and Supervisory Practices. |
| 1990 | • FATF issues its 40 Recommendations on Money Laundering.  
     • Caribbean Financial Action Task Force is established and issues CFATF 19 Recommendations on Money Laundering.  
     • Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime is issued. |
| 1991 | • FATF members agree on "mutual assessment" process.  
     • Council of Europe Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering (91/308/EEC) is issued. |
| 1992 | • Organization of American States (OAS) model anti-money laundering regulations and legislation are adopted.  
     • Kingston (Jamaica) Declaration on Money Laundering of the CFATF is issued. |
| 1993 | • UN model law on Money Laundering, Confiscation and International Cooperation in Relation to Drugs is proposed. |
| 1995 | • Egmont Group of Financial Intelligence Units is formed. |
| 1996 | • The FATF 40 Recommendations are revised to extend predicate offenses beyond drugs to other serious crimes.  
     • The first FATF Typologies Report is released. |
| 1997 | • Asia/Pacific Group on Money Laundering (APG) is established.  
     • PC-R-EV (now MONEYVAL) is established, which conducts self-assessments of AML measures in European countries that are not FATF members. |
<p>| 1998 | • OAS Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Other Serious Offenses are amended. |</p>
<table>
<thead>
<tr>
<th>Year</th>
<th>Important Developments in the International AML Arena</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>- FATF issues guidance on the interpretation of the FATF 40 Recommendations requiring tax evasion to be recognized as a predicate offense.</td>
</tr>
</tbody>
</table>
| 2000 | - Non-Cooperative Countries and Territories (NCCT) criteria are issued by FATF, which also publishes first NCCT list.  
    - Wolfsberg AML Principles on Private Banking are issued. |
| 2001 | - UN Security Council Resolution 1373 (S/RES/1373 (2001)) is passed calling on states to work together to prevent and suppress terrorist acts, through increased cooperation and full implementation of the relevant international conventions relating to terrorism and to, among other things, freeze terrorist assets without delay.  
    - Customer Due Diligence for Banks paper is issued by the Basel Committee.  
    - Eight Special FATF Recommendations on Terrorist Financing are issued.  
    - USA Patriot Act is enacted, which brought about substantial changes in U.S. money laundering controls.  
    - The International Monetary Fund Executive Board concludes that money laundering threatens financial system integrity. |
| 2002 | - Wolfsberg Statement on the Suppression of the Financing of Terrorism is issued.  
    - Wolfsberg issues its AML Principles on Correspondent Banking.  
    - Basel Report on Sharing Information on Terrorist Financing is issued.  
    - Guidance for Financial Institutions on Detecting Terrorist Financing is issued by FATF.  
    - Wolfsberg Group issues revised AML Principles for Private Banking.  
<table>
<thead>
<tr>
<th>Year</th>
<th>Important Developments in the International AML Arena</th>
</tr>
</thead>
</table>
| 2003 | - The Basel Committee issues its paper Customer Due Diligence for Banks.  
      - FATF revises its 40 Recommendations.  
      - Wolfsberg’s Statement on Monitoring Screening and Searching is issued.  
      - UN Security Council Resolution 1455 (S/RES/1455 (2003) is passed condemning the terrorist acts of the Taliban and Al-Qaida and stressing the need for improved coordination and increased exchange of information concerning terrorism. |
| 2004 | - Member nations of FATF extend its charter by a record eight years, signaling the possibility that it may become a permanent institution.  
      - FATF issues Special Recommendation IX, calling on countries to stop cross-border movements of currency and monetary instruments related to terrorism financing and money laundering and to confiscate such funds.  
      - The Basel Committee releases publication “Consolidated KYC Risk Management.”  
      - Financial Action Task Force-style regional body MENAFATF is established.  
      - FATF-style regional body, the Eurasian Group (EAG), is formed.  
      - UN Security Council Resolution 1526 (S/RES/1526 (2004) is passed urging all States to establish internal reporting requirements and procedures on the trans-border movement of currency based on applicable thresholds. |
      - FFEIC releases first BSA/AML Examination Manual.  
      - Egmont Group of Financial Intelligence Units exceeds 100-member mark. |
<table>
<thead>
<tr>
<th>Year</th>
<th>Important Developments in the International AML Arena</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td></td>
</tr>
<tr>
<td>EU Commission issues implementing measures for 3rd Directive with regard to the definition of politically exposed persons and the criteria for simplified customer due diligence procedures.</td>
<td></td>
</tr>
<tr>
<td>EU establishes the “EU Financial Intelligence Untis’ Platform” as an informal group to facilitate cooperation among FIUs.</td>
<td></td>
</tr>
<tr>
<td>Final regulation issued implementing the enhanced due diligence requirements for foreign correspondent bank accounts set forth in Section 312 of the USA Patriot Act.</td>
<td></td>
</tr>
<tr>
<td>Wolfsberg’s Statement on Anti-Money Laundering Guidance for Mutual Funds and Other Pooled Investment Vehicles Is Issued.</td>
<td></td>
</tr>
<tr>
<td>Wolfsberg’s Statement on Guidance on a Risk Based Approach to Managing Money Laundering Risks is issued.</td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td></td>
</tr>
<tr>
<td>US agencies issue revised BSA/AML Examination Manual.</td>
<td></td>
</tr>
<tr>
<td>FATF issues &quot;Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing.&quot;</td>
<td></td>
</tr>
<tr>
<td>EU’s regulation on cash controls at European Community borders becomes applicable.</td>
<td></td>
</tr>
<tr>
<td>FATF issues new guidance on the implementation of financial prohibitions to combat the threat of Weapons of Mass Destruction proliferation.</td>
<td></td>
</tr>
<tr>
<td>Wolfsberg issues Statement Against Corruption.</td>
<td></td>
</tr>
<tr>
<td>Wolfsberg issues Clearing House Statement on Payment Message Standards.</td>
<td></td>
</tr>
<tr>
<td>Wolfsberg issues Notification for Correspondent Bank Customers.</td>
<td></td>
</tr>
<tr>
<td>Basel Committee issues Statement on Transparency in Payments Messages.</td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td></td>
</tr>
<tr>
<td>FinCEN issues Guidance to Financial Institutions on Filing Suspicious Activity Reports regarding the Proceeds of Foreign Corruption.</td>
<td></td>
</tr>
<tr>
<td>FATF revised mandate issued and extended to 2012.</td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td></td>
</tr>
<tr>
<td>Wolfsberg issues Trade Finance Properties.</td>
<td></td>
</tr>
<tr>
<td>Wolfsberg Issues &quot;AML Guidance on Credit/Charge Card Issuing and Merchant Acquiring Activities.&quot;</td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td></td>
</tr>
<tr>
<td>FinCEN issues Joint Guidance on Obtaining and Retaining Beneficial Ownership Information.</td>
<td></td>
</tr>
<tr>
<td>FFEIC updates BSA/AML Examination Manual.</td>
<td></td>
</tr>
</tbody>
</table>
Review Questions

- Describe the FATF Special Recommendations on Terrorist Financing.
- Explain the Customer Due Diligence for Banks Paper of the Basel Committee.
- Are the European Union Directives on Money Laundering binding? If so, for whom?
- How can FATF, with no enforcement authority, be the leading international organization in establishing global policies and measures in the AML field?
- In which areas of money laundering controls has the Wolfsberg Group issued guidelines? Are they binding?
- How can members of the Egmont Group help improve a nation’s efforts against money laundering?
- What is the role of the Basel Committee in the fight against money laundering and terrorism financing?
- What is OFAC?
- What are the due diligence requirements for foreign correspondent accounts with U.S financial institutions?
- What implications could the extraterritorial reach of the U.S. laws have in the global commercial relationships of non-U.S. financial institutions and individuals?
- How can the operations and customers of a non-U.S institution be affected by U.S. laws and regulations?