





FINANCIAL ACTION TASK FORCE

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

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## FINANCIAL INVESTIGATIONS GUIDANCE

### I. PURPOSE OF THE GUIDANCE

1. During the latest revision of Financial Action Task Force (FATF) standards, greater attention was given to the operational anti-money laundering/countering the financing of terrorism (AML/CFT) framework. One goal was to strengthen the law enforcement standards (Recommendations 30 and 31) to enhance the functions, responsibilities, powers and tools of law enforcement to effectively conduct money laundering (ML), terrorism financing (TF) and asset-tracing investigations. The revised standards now recognise financial investigations as one of the core elements of the FATF's operational and law enforcement Recommendations. This guidance note is not a standard or interpretative note and is only intended to help countries better understand law enforcement's role in the larger AML/CFT context, specifically addressing the role of financial investigations. The intention of this guidance note is to assist policy makers as well as practitioners by providing ideas and concepts that they can incorporate into their AML/CFT frameworks that might lead to more effective financial investigations. These ideas can go beyond the scope of the standards but are intended to provide examples of ways in which countries conduct financial investigations. As an added benefit, the guidance can also be useful to future AML/CFT assessments and could assist countries in improving the effectiveness of the operational AML/CFT regime.

2. The term *financial investigation*, for the purpose of this guidance note, means an enquiry into the financial affairs related to criminal conduct. The major goal of a financial investigation is to identify and document the movement of money during the course of criminal activity. The link between the origins of the money, beneficiaries, when the money is received and where it is stored or deposited can provide information about and proof of criminal activity.<sup>1</sup> By identifying the extent of criminal networks, the scale of criminality, by tracing proceeds of crime, terrorist funds and other proceeds subject to confiscation and by developing evidence which can be used in criminal proceedings, the overall effectiveness of a country's AML/CFT regime will be enhanced. This guidance contains overarching concepts, strategies and techniques which are meant to be applicable to different legal systems and different types of operational frameworks and is intended to assist countries on how best to implement the FATF Recommendations associated with conducting financial investigations. This guidance will highlight areas where training and technical assistance for financial investigators and prosecutors<sup>2</sup> can be sought but is not to be viewed as a training manual on financial investigations. Throughout the document references are made to information that provides further detail on financial investigation.<sup>3</sup>

3. Before any of the requirements of the FATF standards can be implemented by operational authorities, a comprehensive legal framework is necessary to underpin these requirements, and the

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<sup>1</sup> See FATF (2012), Interpretative Note to Recommendation 30, 2<sup>nd</sup> paragraph.

<sup>2</sup> For the purposes of this guidance note the term prosecutor also includes investigative magistrate and investigative judge

<sup>3</sup> See also the list of selected sources relating to financial investigation at the end of this document.

use of investigative techniques can only be applied if they are permitted by and within the possibilities of the basic principles of a country's domestic legal system. This guidance will highlight elements of the Palermo Convention<sup>4</sup> which are necessary to implement many of the law enforcement powers and techniques described in this guidance.

## STANDARDS RELATED TO LAW ENFORCEMENT

4. The FATF Recommendations are designed to detect illicit financial activity, protect the integrity of financial markets, bring criminals to justice and prevent threats to national security. Law enforcement should seek to prevent, deter and disrupt ML, associated predicate offences, the financing of proliferation of weapons of mass destruction and TF activity. Also, law enforcement should be aiming to deprive criminals of their illicit proceeds and terrorists of the resources needed to finance their activities. For the purposes of this guidance note – which seeks to clarify the role of law enforcement in conducting financial investigations – the following FATF Recommendations are relevant:

5. **National cooperation and coordination:** According to the new standards, each country should have a national policy on anti-money laundering and counter terrorist financing, (Recommendation 2). This policy should be informed by the risks identified, and such policy should be regularly reviewed in order to ensure that it stays accurate and contemporary. Knowledge acquired through financial investigations can be used for risk assessment and monitoring purposes. Countries need a national policy to drive the national agenda for combating money laundering, associated predicate offences, terrorist financing and proliferation. Countries should have formalised co-ordination mechanisms which enable authorities to develop and implement these policies. This should facilitate co-operation, informal and formal, between authorities in general and within law enforcement in particular.

6. **Statistics:** FATF places emphasis on effectiveness, and the collection of data is a necessary element to understand how countries determine the effectiveness of financial investigations. For example, money laundering offences and activities should be pursued criminally using financial investigations, and offenders should be prosecuted and appropriately sanctioned. Recommendation 33 is designed to ensure that effective record-keeping systems are in place for reporting statistically what has been accomplished through ML/TF investigations, prosecutions, convictions, property freezing, seizures and confiscation, along with other relevant data.

7. **ML and TF offences:** Recommendations 3 and 5 are the core Recommendations requiring that money laundering and terrorist financing activities be criminalised as independent criminal offences. To successfully prosecute these offences without a prior financial investigation is extremely difficult. This guidance note is to assist countries to better develop their capacity to conduct a proper financial investigation.

8. **Confiscation and provisional measures:** Recommendations 4 and 38<sup>5</sup> address measures to identify, trace and evaluate property which is subject to confiscation. The Recommendations call for

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<sup>4</sup> United Nations (2000).

<sup>5</sup> FATF (2010): A list of selected sources for financial investigation with complete bibliographic information is included at the end of this report.

the use of provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property. The standards recommend that countries initiate appropriate investigative measures.

9. **Responsibilities of law enforcement and investigative authorities:** Recommendation 30 calls on countries to designate criminal investigators to pursue ML and TF offences. New requirements include the need to pursue parallel financial investigations as well as to make use of domestic and international investigative task forces or multidisciplinary teams. Therefore, countries should ensure that their legal framework does not impede the usage of such multi-disciplinary groups. The Interpretative Note to Recommendation 30 applies *to criminal investigators* who are responsible for pursuing the criminal violations involving the ML and TF offences. The note also clarifies that law enforcement investigators of designated offences<sup>6</sup> should either be authorised to pursue the investigation of any related ML/TF offences during a parallel investigation or be able to refer the case to another designated agency to follow up with such an investigation. Further, this guidance note also applies not only to those *competent authorities* which are not law enforcement authorities per se but also to those authorities which have the responsibility for pursuing financial investigations of predicate offences to the extent that they are exercising functions covered under Recommendation 30. For example, anti-corruption enforcement authorities and tax authorities with enforcement powers may be designated to investigate ML and TF offences arising from or related to corruption or serious tax offences under Recommendation 30, and these authorities should also have sufficient powers to identify, trace, and initiate freezing and seizing of assets in accordance with the laws of the jurisdiction. This guidance is also relevant to *public prosecutors*, especially when their role is to co-ordinate the necessary investigative resources in the field which are required to pursue complex financial investigations and organised crime cases. Prosecutors are often responsible for a variety of tasks associated with the financial investigation and in preparing evidence to support formal charges. While the focus is on creating specialised “financial investigators”, all criminal investigators should be trained on the value of financial evidence to support all criminal investigations. Raising awareness should also apply to street level crimes, in addition to long-term investigations, thus requiring changing the dynamics and attitudes of investigators and prosecutors regarding the utility of financial investigations. This guidance should also be useful to *policy makers* and those who deliver technical assistance.

10. **Powers of law enforcement and investigative authorities:** Recommendation 31 stresses the need for investigators to have access to all necessary documents. This includes having powers to compel the production of financial records and obtain evidence. The Recommendation is designed to enable the use of a wide range of investigative techniques which include undercover operations, intercepting communications, accessing computer systems and controlled delivery. Section VI of this report addresses these techniques. Specific requirements also include establishment of mechanisms to identify the owner/controller of accounts, including the ability to identify assets without tipping off the owner and to seek and utilise information from the FIU.

11. **International co-operation:** Recommendation 40 calls on countries to establish mechanisms allowing financial investigators to obtain and share information on each other’s behalf. Countries are expected to establish mechanisms for investigators to use their powers to assist

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<sup>6</sup> See FATF (2012), Glossary.

foreign financial investigations. Recommendation 40 states that law enforcement should be allowed to establish and utilise joint investigative teams with law enforcement in other countries and promotes the posting of liaison officers. Some co-operation can be accomplished through bilateral and multilateral arrangements, including memoranda of understanding (MoUs), when needed. Financial investigators are encouraged to strategically include co-operation with non-counterparts as part of financial investigations, indirectly or directly. Recommendation 40 is designed to ensure that information received from other countries is used for investigative and law enforcement purposes and that information received is protected from unauthorised disclosure. Further, the Recommendation advocates that countries establish procedures to allow informal exchanges of information to take place (prior to the submission of a formal request); in essence, advocating the exhausting of all forms of informal co-operation prior to the submission of a mutual legal assistance (MLA) request.

12. **Cash couriers:** The requirements to collect, record and share information related to Recommendation 32 are invaluable when pursuing a financial investigation. In particular, on-going criminal investigations can benefit greatly when it is known that targets or associates have previously filed cross-border cash declarations. These declarations often help investigators establish knowledge and intent in on-going money laundering or criminal investigations. While the main objective of Recommendation 32<sup>7</sup> is to put measures in place to detect the physical cross-border movement of currency and negotiable instruments, a financial investigation is an important follow up component of any Recommendation 32 regime.

## OBJECTIVES AND BENEFITS OF FINANCIAL INVESTIGATION

13. Countries should ensure that financial investigations become the cornerstone of **ALL** major proceeds-generating cases and terrorist financing cases and that their key objectives include:

- Identifying proceeds of crime, tracing assets and initiating asset confiscation measures, using temporary measures such as freezing/seizing when appropriate.
- Initiating money laundering investigations when appropriate.
- Uncovering financial and economic structures, disrupting transnational networks and gathering knowledge on crime patterns.

14. A financial investigation involves the collection, collation and analysis of all available information with a view towards assisting in the prosecution of crime and in the deprivation of the proceeds and instrumentalities of crime. Criminals usually like to maintain some degree of control over their assets, and as a result there is usually a “paper trail” that will lead back to the offender. That paper trail can also be followed to identify additional offenders and potentially the location of evidence and instrumentalities used to commit the crimes. The ability of law enforcement agencies to conduct financial investigations and have access to financial and other information is essential to effectively combating ML, associated predicate offences and TF offences. Such investigations will

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<sup>7</sup> FATF (2005).



often establish the existence of otherwise unknown crimes and assets that have been purchased with proceeds of criminal activity, thus allowing these assets to become subject to confiscation.

15. A financial investigation can be used as an instrument to reveal undiscovered predicate offences and to identify other people or companies. Thus, it is imperative for countries to use financial intelligence upstream and downstream within their value chain. This means that the flow of financial intelligence between regulators, supervisors, FIUs, law enforcement and other competent authorities (the value chain) should be free-flowing to and from all entities in accordance with existing domestic laws, policies and procedures and should be results-driven, not process-driven. If such a fluid system of sharing financial information and intelligence is established, the country will make more effective use of financial data, thus becoming more effective in combating money laundering, terrorist financing and major proceeds-generating offences.

16. Countries should take appropriate measures to protect the human rights of the targets of their investigations. Financial enquiries are often intrusive and result in obtaining private information on an individual. Competent authorities involved in financial investigations must be aware of their country's human rights legislation protecting the right to privacy, along with associated considerations. Investigators should be able to justify such enquiries as proportionate, non-discriminatory, legitimate, accountable and necessary to the investigation being undertaken. As a rule, such measures ensure that the targets of investigation have the right to a fair trial, the presumption of innocence and the protection of property.

## II. OPERATIONAL FRAMEWORK

### INVESTIGATIVE STRATEGY

17. Financial investigation should be an integral part of an overall crime strategy. Countries should establish a comprehensive policy that sufficiently emphasises financial investigation as an integral part of law enforcement efforts. Clear objectives, dedicated action, sufficient resources, training for investigators and use of the legal tools available in a comprehensive, creative, consistent, and committed manner are all important elements of an effective financial investigation strategy in any country. Countries should take active measures to ensure that financial investigations become a routine part of all law enforcement inquiries related to crime with financial gain.

18. Countries should be proactive in developing effective and efficient strategies to make financial investigations an operational part of their law enforcement efforts. The following are some of the key elements that should be contained in these strategic plans:

- Ensuring support from high-level officials within the country who publicly promote and adopt a national AML/CFT strategy.
- Releasing public statements by high-ranking officials supporting and demonstrating commitment to the national strategy and recognising their accountability.
- Establishing strategic planning working groups to develop an effective policy that incorporates the skills of all relevant agencies into an action plan; these groups include representatives from all relevant agencies and components participating in financial investigations.
- Conducting needs assessments and advocacy in promoting proper allocation of resources.
- Creating specialised investigative units that focus on financial investigations.
- Developing operational initiatives that promote the proactive use of powers to freeze assets.
- Articulating clear objectives for relevant departments and agencies that include effective coordinating structures and accountability.

19. Countries should make it a policy priority to ensure that there are an adequate number of properly trained financial investigators. These financial investigators should be experienced in financial investigation matters involving both domestic laws and international conventions and standards. Countries should create institutional conditions that provide the appropriate environment to carry out financial investigations and to facilitate cooperation by providing the proper legal authority for any involved competent authorities as indicated in Recommendation 31. Financial investigations should be worked in close association with or fully integrated within “normal” or other predicate offence investigations. Ensuring that financial investigative specialised

units can work closely with different competent authorities where specialised knowledge and expertise is required should be part of “standard operating procedures.”

20. Countries should establish a strategic approach to financial investigations and consider implementing programmes whereby agencies, such as confiscation agencies, certain law enforcement agencies or financial intelligence units (FIUs), are reimbursed costs incurred on financial investigations with asset recovery actions such as the hiring of experts, translation costs, international travel, etc.

## PARALLEL INVESTIGATIONS

21. Parallel investigations represent, in relation to financial investigations, focusing on the predicate offence and the money laundering offence simultaneously. In relation to terrorism investigations, parallel investigations focus on the terrorism offences and terrorist financing offence at the same time.<sup>8</sup> Recommendation 30 states that, for all money laundering, associated predicate offences and terrorist financing, law enforcement authorities should develop a proactive parallel investigation. The concept of having parallel investigations brings together expertise from both investigative backgrounds which is complementary and ensures offences are fully investigated.

22. Conducting a parallel financial investigation of the predicate offence is being proactive, as it identifies the proceeds of the crimes currently under investigation for seizure/restraint. It therefore ensures that the assets will not dissipate/disappear and prevents the infiltration of illegal profits into the legal economy, thereby removing the instrument for committing future crimes. The practice thus contributes to upholding the principle in both law and society that no person should benefit from crime.

23. Financial investigations are data intensive. Specifically, they involve records, such as bank account information, which point to the movement of money. Any record that pertains to or shows the paper trail of events involving money is important. The major goal in a financial investigation is to identify and document the movement of money during the course of the commission of an offence. The link between where the money comes from, who receives it, when it is received, and where it is stored or deposited can provide proof of criminal activity. Financial information can also assist the parallel investigation into the predicate offences by:

- Identifying motives, associations and links to people and places.
- Identifying the use of other services such as phones, transport and amenities relevant to the case.
- Locating or identifying suspects, witnesses or victims.
- Providing information on a suspect’s movements (proactive, covert use of financial information).
- Providing information to address the issue of prolific and priority offenders where no previous method has been successful.
- Tracing persons.

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<sup>8</sup> See Section III on terrorist financing.

24. For many major proceeds-generating offences, money laundering is simply the by-product of criminal activity. After the criminal receives the proceeds of the crime, he/she usually wants to do something with these proceeds. The ability to follow the paper trail allows the full development of the facts and circumstances involved in the case to be shown in a logical and sequential pattern, and simplifies the understanding of how the financial pieces fits together. Parallel investigations ensure competent authorities uncover and identify all of the participants in a criminal enterprise. A parallel financial investigation provides insight into the hierarchy of criminal organisations, exposing them to possible prosecution.

25. Information, intelligence<sup>9</sup> and evidence obtained during parallel investigations can be shared and resources can be effectively used to avoid duplication of services. For example, a predicate offence investigation may be utilising the interception of communication to collect information/evidence not only of a predicate offence but also of the associated money laundering offence; this information could then be used in seizure/restraint and forfeiture orders. A financial investigation enhances and corroborates a predicate offence investigation, as it shows lifestyle, unexplained wealth and, depending on the country, can be used as indirect proof (inferred by the courts) as the only explanation that the wealth is from illegal activity, thereby helping to establish sufficient evidence to prosecute a person on criminal charges for both predicate and related money laundering offence. This will form the basis for seizure and forfeiture and can be accomplished through the collation and presentation of either direct or circumstantial evidence. Thus, financial investigations help to target the top echelon of a criminal organisation.

26. Countries should consider including in their standard operating procedures for investigative agencies some form of checklist or outline of the essential elements for conducting financial investigations. This can help structure each financial investigation and be used as a guideline for investigators.

### MULTI-DISCIPLINARY GROUPS OR TASK FORCES

27. Particularly in large, complex financial investigations, it is important to assemble a multi-disciplinary group or task force to ensure the effective handling of the investigation, prosecution and eventual confiscation. There should be a strategic approach to intra-agency and inter-agency co-operation in an effort to support information/intelligence sharing within and between agencies and with foreign counterparts.

28. Multi-disciplinary groups may comprise a range of individuals, including specialised financial investigators, experts in financial analysis, forensic accountants, forensic computer specialists, prosecutors, and asset managers. Experts may be appointed or seconded from other agencies, such as a regulatory authority, the FIU, a tax authority, an auditing agency, the office of an inspector general, or even drawn from the private sector on an as-needed basis. The multi-disciplinary groups should include individuals with the expertise necessary to analyse significant volumes of financial, banking, business and accounting documents, including wire transfers, financial statements and tax or customs records. They should also include investigators with experience in gathering business

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<sup>9</sup> The term *intelligence* in this context includes and focuses on intelligence agencies working on national security matters.

and financial intelligence, identifying complex illegal schemes, following the money trail and using such investigative techniques as undercover operations, intercepting communications, accessing computer systems, and controlled delivery. Multi-disciplinary groups should also consist of criminal investigators who have the necessary knowledge and experience in effectively using traditional investigative techniques. Prosecutors also require similar expertise and experience to effectively present the case in court.

29. After assembling multi-disciplinary a group, it is imperative to have efficient and effective co-ordination between members of the team as well as all agencies involved. The failure of agencies or departments to link information/intelligence often plagues complex financial investigations. Some mechanisms that promote intra-agency and inter-agency co-operation are:

- Establishing information sharing systems whereby all investigative services would be aware of previous or on-going investigations made on the same persons and/or legal entities so as to avoid replication; conducting conflict resolution discussions and promoting cross-fertilisation.
- Establishing policies and procedures that promote the sharing of information/intelligence within intra-agency and inter-agency co-operative frameworks; such policies and procedures should promote the strategic sharing of the necessary information.
- Establishing a process whereby intra-agency or inter-agency disputes are resolved in the best interest of the investigation.
- Competent authorities should consider establishing written agreements such as MoUs or similar agreements to formalise these processes.

30. To enhance the level of expertise in relation to financial investigation within competent authorities, it should be possible to engage experts. In some cases, it may be useful or necessary to appoint experts or consultants who bring technical expertise in financial analysis, forensic accounting and computer forensics. Adequate safeguards should be in place when engaging private entities which minimise the risks of compromising the integrity of investigations.

31. Countries should develop a strategy to enhance co-operation between the public and private sectors beyond their reporting obligations (see Annex). As a source of financial information, the private sector is the owner of its data, has a vested interest in protecting its standing, has the ability and the expertise to process its data and often may be in a better position than law enforcement agencies. Adequate protection of information and right to privacy should also be part of the information exchange done within legal parameters. Thus, information exchange within legal parameters should be enhanced between the sectors to better and more effectively identify activity that may assist law enforcement in conducting financial investigations.

## ASSET RECOVERY

32. Successful asset recovery requires a comprehensive plan of action that incorporates a number of important steps and considerations. Competent authorities will need to gather and assess the facts to understand the case, assemble a team, identify key allies, communicate with foreign practitioners (if a foreign nexus is established), grapple with the legal, practical, and

operational challenges and ensure effective case management. Countries should also strategically look at options other than criminal confiscation, such as *non-conviction based* (NCB) or even administrative proceedings.

33. One of the biggest challenges in asset recovery investigations is producing the evidence that links the assets to the criminal activities (*property-based* confiscation) or proving that assets are a benefit derived from an offence committed by the target (*value-based* confiscation). To establish this link investigators must identify and trace assets up to the point where the link with the offence or location of the assets can be determined. To achieve this, countries should consider creating specialised confiscation units, made up of financial investigators and prosecutors to identify and trace assets for the purpose of confiscation. If such an approach is taken, financial investigators dedicated to tracing and confiscating assets must then work closely with their counterparts in pursuing the criminal prosecution. Failure to do so can have negative consequences for the criminal case, and that in turn is likely to affect confiscation efforts.

34. As discussed in the Interpretative Notes to Recommendations 4 and 38, countries should establish mechanisms that will enable their competent authorities to effectively manage and, when necessary, dispose of, property that is frozen or seized or has been confiscated.<sup>10</sup> These mechanisms should be applicable both in the context of domestic proceedings and pursuant to requests from foreign countries.<sup>11</sup> Asset management units should work closely with financial investigators and prosecutors to prevent the confiscation of assets that could be too cost-prohibitive or cumbersome to maintain.

35. Another challenge in asset recovery investigations is the lack of central oversight as each asset recovery case passes through the various stages of the judicial system. A lack of central oversight of the process can result in blockages within the criminal justice pipeline. This can result in each stage of the process becoming fragmented; dealt only in isolation, making it difficult to co-ordinate financial investigation, seizure and confiscation from start to finish. To overcome this, countries should consider the creation and use of a national asset recovery database which records information on each asset recovery case as it passes through the criminal justice system. This allows information to be considered and analysed centrally with all stakeholders uniformly applying a statistical methodology. This should enable the identification of blockages in the process which in turn allows the swift resolution of such issues.

36. Such a database provides a single source of historic information about asset recovery actions for the use of on-going investigations and also facilitates greater understanding and co-operation among competent authorities. Such a system often contributes to better co-ordination, allowing for more assets to be identified, seized and successfully confiscated. A national database is also an important tool because it helps to improve the effectiveness of the asset recovery regime and support a “joined-up” approach to legal and operational processes. Statistics for the purposes of Recommendation 33 may also be retrieved from the database.

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<sup>10</sup> FATF (2010).

<sup>11</sup> See Brun, J.P., *et al* (2011).

## REGISTRIES

37. As mentioned in Recommendation 24, countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. Moreover, as mentioned in Recommendation 25, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries that can be obtained or accessed in a timely fashion by the competent authorities. Such accurate and timely information is vital to a financial investigation. Complex financial investigations involving the use of corporate vehicles require imaginative, tenacious and expert investigators. Hence, in order to properly investigate complex cases involving corporate vehicles, countries should provide financial investigators more education, development and training regarding:

- The nature of corporate vehicles around the world and their potential for misuse.
- The most effective investigative skills and techniques for “piercing the corporate veil”.

38. In order to facilitate financial investigations, countries could develop and maintain publicly available registries, such as company registries, land registries, and registries of non-profit organisations. If possible, such registries should be centralised and maintained in electronic and real-time format, so that they are searchable and updated at all times. Such a system will speed up the access of financial investigators to necessary information related to identifying, tracing, freezing and subsequently confiscating assets.

39. In order to assist competent authorities in obtaining access to relevant information in financial investigations, certain basic information on legal entities should be maintained in corporate registries.<sup>12</sup> Such basic information must be easily verifiable and unequivocal.<sup>13</sup> Where feasible, the transition of company registry systems from passive recipients of data to more active components in a country’s AML/CFT regime is encouraged. Countries are also encouraged to direct more resources to their company registries to ensure that the basic information supplied is compliant with the Recommendations. Registries would benefit from implementing a robust *on-going* fact-checking component (even if based solely on statistically significant random sampling). Those that demonstrate an effective capacity to enforce financial penalties or other punitive measures against noncompliant registered legal entities will contribute to improving the accuracy of data. As a result, financial investigators would have immediate access to high-quality data rather than the outdated often inaccurate information.

40. Countries should make technological investments in their corporate registry systems. If a registry is to become an efficient AML/CFT tool, this development, including the upgrading of resources specifically for this purpose, needs to be planned carefully. A computerised registry is preferable to a paper-based one, and an online registry is preferable to a closed-network.

<sup>12</sup> See FATF (2012), Interpretative Note to Recommendation 24 - Transparency and Beneficial Ownership of Legal Persons.

<sup>13</sup> See US Department of Justice (n.d.)a, for a list of the information that should be maintained.

41. Countries could assign unique identifiers to legal entities incorporated within their jurisdiction. This enables financial investigators to collect evidence from different domestic agencies within the jurisdiction (for example, tax, licensing, or municipal authorities) most efficiently. This is especially pertinent to operational entities, and if the process of receiving a unique identifier is sufficiently streamlined, it may be further applicable to all legal entities in the jurisdiction (including foreign legal entities, which may have only an operational connection or only be administered from that jurisdiction).

42. Documented particulars of a legal entity's organisation, including those details that indicate beneficial ownership and control, copies of all banking documents, as well as all powers granted to non-officers, should be kept at the registered domestic address of the legal entities. This allows law enforcement authorities to find all necessary information in one location. Moreover, such information should be held physically or electronically within the jurisdiction under whose laws it has been created.



### III. TERRORIST FINANCING

43. Money laundering and terrorist financing activity appear as interrelated topics; however, nuanced differences exist between these two distinct criminal offences. These differences need to be understood by law enforcement and those who conduct financial investigations. While terrorist organisations may utilise money laundering techniques when raising funds from criminal proceeds, there are certainly many sources and techniques that these groups use in order to raise funds “legitimately” without engaging in illegal activity<sup>14</sup>. Put another way, money laundering is the process of making dirty money appear clean whereas terrorist financing most often involves clean money being utilised for nefarious purposes.

44. Terrorist financiers want to mask their activities from law enforcement authorities. The motivation of the perpetrators is ideology based with the primary goal of advancing the organisations goals or agenda. This includes having access to funds to meet broad organisational requirements including, but not limited to, propaganda, recruitment, travel and acquiring weapons.

45. In the case of a terrorism investigation, a terrorist financing investigation is crucial, as it can identify targets early in a terrorism plot, such as when they set up a safe-house, and it allows more time for investigation and disruption. Terrorist financing should be viewed not only from an evidentiary perspective but, arguably more importantly, from an intelligence standpoint. Terrorist financing investigations can greatly benefit from focusing on the relationships financial information reveals and the intelligence value that can be derived from the associated “non-financial” information such as phone numbers, email addresses, passport numbers, etc. contained in financial documents. Detecting and investigating terrorist activity is significantly enhanced when national security intelligence and financial information are used together. Exploiting this additional intelligence can identify those leads that may otherwise go undetected and help prevent future attacks.

46. In order for a terrorist operation to be conducted there must be a source of funding no matter how big or small. While the sources of funding are only limited by imagination, individuals engaged in terrorist financing can be viewed with more specificity. Financial supporters of terrorist operations may be involved in four distinct but interrelated roles: *donor*, *fundraiser*, *facilitator*, and *operative*. More specific examples of these different interrelated roles will help explain how terrorist financing in practice can occur, but are not to be considered as legal definitions. *Donors* are individuals who, wittingly or unwittingly, support the terrorist organisation’s goals through financial contributions and usually exhibit limited interaction with the group beyond monetary support. *Fundraisers* are individuals who actively solicit funds on behalf of the terrorist organisation and are often more engaged in the movement and concealment of money. *Facilitators* are directly associated with terrorist organisation leadership and operatives, often directly involved in promoting the terrorist agenda and knowledgeable of operational plans. Finally, the *operative* is an individual committed to conducting a terrorist attack and, through either funding provided by the terrorist organisation or via self funding, procures the necessary resources to this end.

47. While it is certainly possible for one individual to fulfil all four financial roles (the “lone wolf” example), most often the previously mentioned financial hierarchy is the norm within organised

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<sup>14</sup> See FATF (2008), for descriptions and examples of how terrorists raise money and use funds.

terrorist's infrastructures. Identifying the financial role that an individual plays within the organisation is the key to focusing investigative strategies in an effort to disrupt terrorist financing activity. In order to be effective, countries should develop legal mechanisms that enable their law enforcement and other competent authorities tasked with investigating terrorist financing to collaborate with their counterparts in the intelligence community. Countries should create an environment whereby these typically two distinct cultures work toward the common goal of disrupting terrorist financing.

48. In the case of terrorist activity (such as a bombing where there will be serious injury and loss of life), investigation of the financing of the operation should be integrated with investigation of the terrorist activity since the financing of an operation is an integral element in the overall activity cycle of a terrorist group. Parallel investigations not only foster relationships between different competent authorities but also encourage working relationships among competent authorities, the financial sector, and financial regulators. These relationships promote a more comprehensive approach in developing capability and financial intelligence that can be useful in tracing terrorist financial trails – not only in post-attack investigations but also during the planning and preparation stage – so as to be able to prevent attacks and work towards a common goal of preserving life. Community, financial sector and competent authorities have knowledge or information that could lead to useful pieces of intelligence. At the same time, the regulatory and competent authorities have the capability to provide the policies and the tools necessary to build that intelligence.

## IV. SOURCES OF INFORMATION

49. Financial investigators develop hypotheses and draw conclusions based on available information. A financial investigation combines tried and tested investigative techniques and traditional accounting and auditing practices to investigate the financial affairs of targets of investigations. Facts that are relevant to a financial investigation may be found from a variety of sources. Traditional “fact-finding” is, of course, highly relevant in financial investigations and includes interviews with suspects, searches of residences and/or offices, forensic examination of computer(s), collection and analysis of financial and business records to include bank statements, tax returns, etc.

50. The nature of the hypothesis determines to a large extent the type of information required to prove the merits of the hypothesis. Identifying the type of information needed allows financial investigators to determine where such information is held. Once financial investigators have determined where the required information is held, they should determine the methods and challenges in obtaining the information. Thus, they should develop and implement an action plan that leads to the successful acquisition of the required information and such an action plan could include many of the investigative techniques discussed in this guidance note.

51. After identifying a potential evidence source, the evidence needs to be collected. Regardless of the source, all evidence should be legally obtained; otherwise, unlawfully obtained evidence could jeopardise the success of the prosecution or confiscation. Investigators should be aware of any legal privilege issues while searching for evidence and seek advice from prosecutors or other relevant competent authorities. Moreover, some information may be considered potential *evidence* from a prosecutorial stand-point however be considered sensitive *intelligence* by intelligence agencies. Thus, co-ordination between prosecution and intelligence authorities is required.

### DATA SOURCES AND TYPES OF INFORMATION

52. Within each country there will be differences in the way that various types of information can be made available to investigative authorities and this may be influenced by legal requirements including human rights considerations (such as freedom of information and privacy legislation). The producers and owners of the different information and intelligence products will differ between countries. Additionally, access to that information or intelligence and under what circumstances presents a challenge to countries when designing an effective AML/CFT legal and operational framework. Access to and management of sensitive personal data by the competent authorities requires adequate training of staff in order to ensure adherence to data protection laws and laws that protect the right to privacy.

53. This guidance is primarily concerned with examining how information and intelligence are made available in support of financial investigations, prosecutions and the identification of assets for confiscation efforts. In order to conduct financial investigations, law enforcement should have access to the widest possible range of financial, administrative and law enforcement information. This should include information from open or public sources, as well as relevant information collected and/or maintained by, or on behalf of, other authorities and, where appropriate, commercially held data.

54. The form of the data will vary considerably and will range from papers/documents to electronic data to physical items. The ownership and control of these data types varies. On the one hand, much of the data law enforcement can access is of a public nature and is freely available to the general population. On the other hand, data related to personal, financial or law enforcement records are protected and are often considered highly sensitive and confidential. Safeguards need to be put in place to ensure that this data is protected from misuse and is being accessed and utilised for legitimate purposes.

55. The sources of information that law enforcement and competent authorities can use in furtherance of financial investigations varies but typically can be found in six different categories:

- **Criminal records and intelligence:** This is law enforcement information related to the subject and/or criminal activity. Information such as previous arrests, indictments, convictions, but also reports of links with known criminals. Criminal information is typically gathered from surveillance, informants, interviews/interrogation and data research, or may be just picked up “on the street” by individual police officers.
- **AML/CFT Disclosures:** In addition to suspicious transaction reports (STRs), this includes other information as required by national legislation such as cash transaction reports, wire transfer reports and other threshold-based declarations or disclosures.
- **Financial Information:** This is information about the financial affairs of entities of interest that helps to understand their nature, resources, structure and capabilities, and it also helps predict future activity and locate assets. This goes beyond the information contained in AML/CFT disclosures and is normally maintained by private third parties. This includes bank accounts, financial accounts, other records of personal or business financial transactions and information collected in the context of meeting customer due diligence (CDD) obligations.
- **Classified information:** Information that is gathered and maintained for national security purposes to include terrorism financing information. Access is typically restricted by law or regulation to particular groups of persons.
- **Open source:** All information that is available through open sources such as the internet, social media, print and electronic media, as well as via registries operated publicly or privately.
- **Regulatory information:** Information that is maintained by regulatory agencies; access is typically restricted to official use only. This category of information could be held by central banks, tax authorities, other revenue collecting agencies, etc.

56. Multi-disciplinary groups or task forces (described in Section II) serve to integrate information from different law enforcement and intelligence sources which had previously been separated by organisational and technical boundaries. In some jurisdictions this requires changes

in laws and regulations or may require formalised agreements such as MoUs. These task forces leverage existing technologies and develop new technologies in order to provide cross-agency integration and analysis of various forms of data. Furthermore, this information is stored in centralised databases so that any future investigation of any new target of a participating task-force agency can be cross-referenced against that historical data.

## V. LAW ENFORCEMENT COLLABORATION WITH FINANCIAL INTELLIGENCE UNITS (FIU)

57. Along with intelligence divisions of law enforcement or other competent authorities, FIUs are one of the competent authorities that can initiate or enhance financial investigations. Financial intelligence collected by law enforcement, FIUs, and other competent authorities should be thoroughly manipulated and result in the proactive initiation of financial investigations. A core function of FIUs is to analyse the information it collects and to disseminate the results of this analysis. An FIU's analytical capabilities allow it to develop different intelligence products that can be useful to investigative authorities. As a routine task, FIUs spontaneously (*i.e.*, without being solicited) disseminate intelligence to investigative authorities relating to suspected ML and TF offences. Disseminated information could relate to an existing entity of interest, support an existing investigation, or prompt a proactive investigation based on new information made available to investigative authorities.

### FIU AND AML/CFT DISCLOSURES IN FINANCIAL INVESTIGATIONS

58. Effective financial investigations are characterised by extensive law enforcement use of FIU information and exchanges of information and personnel. Investigative authorities should be able to ask the FIU for relevant information they may hold when conducting lawful investigations. FIUs should be able to respond to information requests from competent authorities pursuant to Recommendation 31. Under Interpretative Note to Recommendation 29 the decision on what information an FIU can provide in response to a request from a competent authority should always remain with the FIU.

59. The overarching aim of both the FIU and investigative authorities should seek to work as a *virtual team*, sharing information in appropriate circumstances to support financial investigations. Successful and effective financial investigations can be achieved through obtaining and using the outcomes of FIU financial analysis, as well as proactive sharing of information between the FIU and investigating authorities. Providing an FIU with an information requirement – (such as) detailing information priorities – can assist the FIU in identifying useful information for spontaneous dissemination. Many investigative authorities have seconded personnel working in the FIU, or FIU personnel seconded to investigative authorities, to facilitate co-operation between the FIU and to assist the effective exchange of information. Single points of contact in investigative authorities and FIU can also assist consistent, efficient information exchange.

60. Formal arrangements between investigative authorities and the FIU can be documented in MoUs, memorandum of agreements (MoAs) and standard operating procedures (SOPs). Documenting how competent authorities and FIUs interact and establishing communication channels can provide clarity on the procedures and processes that are required in order to exchange information appropriately. Agreeing on the use of standard electronic reports and request forms that can be securely exchanged between the FIU and investigative authorities can also facilitate efficient exchange of information. When exchanging bulk or structured data in relation to financial investigations (such as computer files with the results of analysis) consideration should also be given on compatibility of software used by competent authorities and the FIU. Some jurisdictions provide their investigative authorities with restricted access to the FIU database. Investigators are able to directly query the FIU database in certain agreed circumstances. Arrangements for

investigator access to the FIU database should take into consideration information handling issues such as confidentiality, human rights, privacy and data protection.

## **LAW ENFORCEMENT UTILISATION OF AML/CFT DISCLOSURES AND FIU ANALYSIS IN FINANCIAL INVESTIGATIONS**

61. While this guidance is not focused on the analysis function of the FIU, FIUs can provide high-quality, useful and timely analysis to law enforcement and other competent authorities. This can only be accomplished through a two-way mechanism between the FIU and recipients of their information which will require feedback from all parties involved.

62. AML/CFT financial disclosures and FIU analysis are considered a particular category and source of information collected as part of a national AML/CFT regime. This information is intended to be available to law enforcement, and in particular, to financial investigators. Reporting entities are required to file AML/CFT disclosures. These disclosures will include suspicious transaction reports (STRs) and other information required by AML/CFT legislation such as cash transaction reports, wire transfers reports and other threshold-based declaration/disclosures and reports made in relation to the physical cross border transportation of currency and bearer negotiable instruments.

63. AML/CFT disclosures constitute a particularly valuable source of information for financial investigations. Given that the main focus is on the use of STRs, the unique nature of this data should be highlighted. In most countries, STR information is used for intelligence purposes and is not used as evidence in court proceedings. In some countries, STR information is directly admissible in court and when such instances occur between these different systems, countries should coordinate and promote the effective use of the information. There are also strict confidentiality issues associated with access to and use of this information. It is essential that only appropriately trained and authorised law enforcement officers have access to this information.

64. The national and international frameworks for providing access to FIU/STR information are important in determining how intelligence can be made available to operational authorities and developed into investigative leads or evidence. In order to promote the timely sharing of information, law enforcement authorities can expect to see clear and precise handling instructions from the FIU upon initial dissemination and where possible prior consent to share this information.. Such arrangements could be discussed bilaterally between FIUs in order to address any privacy concerns and to ensure that such information is shared lawfully and appropriately with the competent authorities conducting a lawful financial investigation. However, if such prior consent (also known as third party rule) is required, FIUs should establish mechanisms whereby such consent is obtained in a timely manner. Because of the practical differences among countries, there is no exact model for STR utilisation that would necessarily fit every country. Regardless, countries should consider putting into place mechanisms that allow their investigative authorities prompt delivery of FIU information and analysis in furtherance of their investigations. The procedures for delivery should be clearly delineated and subject to strict safeguards to ensure proper security and use of the information. Any model should have in place monitoring systems while ensuring that the process is free of unnecessary hurdles. In all cases, investigators should handle information in accordance with confidentiality, human rights, privacy and data protection requirements.

## ACCESSIBILITY OF FIUS TO ENHANCE FINANCIAL INVESTIGATIONS

65. The objective of this section is to ensure FIUs work with law enforcement agencies and that financial intelligence is promptly available to enhance investigations. Requesting all relevant FIU information should be a basic step in the investigation of any predicate offence and any crimes, which are financially motivated. This should be included in an investigators “checklist.” This is one of the reasons why it is essential that law enforcement has timely access to AML/CFT disclosures filed in their country. As stated earlier, this access does not have to be direct but should be prompt so as to facilitate the incorporation of significant and relevant findings and to further active investigations.

66. Information contained in STRs, when checked against operational or historical intelligence databases, can complement existing ML/TF investigations by helping to identify laundered money and money intended for terrorist use. STRs can help investigators connect other pieces of information, provide information on where the proceeds of criminal activity or funds intended for terrorist use are located and when and where these funds are moved, or even what methods are being utilised. STRs are not to be considered as criminal charges and should not be viewed as “criminal activity reports”. However, in many cases, the financial activities reported in the STRs are themselves illegal, such as check, credit card or loan fraud, check kiting, counterfeiting, embezzlement and the structuring of transactions to avoid the filing requirement of threshold based reporting.

67. FIUs can enhance investigations by responding to requests by investigative authorities. This information can support existing activity by identifying and locating proceeds of crime and also supply information which can assist in securing convictions and confiscations. The FIU will hold, or have access to its own information and information gathered from 3rd parties (domestic and foreign) that can enhance investigations. Some of this information will be confidential or sensitive and may be restricted in the manner in which it can be shared. These restrictions may be imposed by law or by the 3rd party originator of the information. When receiving information from the FIU, investigators should note the restrictions on the use of information, and, how it can be utilised or “handled”, in particular for investigative purposes. It is important that law enforcement personnel handling this information be trained and knowledgeable on the applicable disclosure rules.

## REVIEW OF STR INFORMATION AND OTHER AML/CFT DISCLOSURES

68. A financial investigator’s understanding is often greatly increased when STR- or disclosure-related information is compared with information from other sources. The real added value of STR information lies in the analysis/assessment (usually in the first instance by the receiving FIU), when STR information is combined with information from other sources, other STR information, other types of transaction reports and open and closed sources of intelligence. The cross reference of STR information with other information available to law enforcement is therefore fundamental for the successful utilisation of STR information in financial investigations. It is essential that law enforcement and the FIU work together to ensure that both parties understand what checks have been conducted and which aspects of the disclosure are the most useful to pursue.

69. A cursory review of the STR information generally includes a selected approach for those STRs that will be assessed and researched on other databases including existing intelligence on



illegal activities, criminal records, on-going investigations, historical investigative reports, and in some cases income tax records. These preliminary investigative steps are part of the process to identify those STRs that merit further investigation and de-confliction of STRs with on-going criminal investigations.

70. The need for efficient utilisation of limited resources is a challenge faced by most investigators. When necessary, STRs should be prioritised based on relative significance and general investigative priorities and strategies for the country. In some countries, where a large number of STRs are generated each month, experienced and sufficiently trained support personnel can be designated to conduct initial reviews. These reviews would identify those STRs of particular interest to law enforcement based on pre-established criteria, e.g., STRs that reflect structuring or illegal money transmitting activity. Such an approach narrows the field of STRs to be reviewed and eliminates from consideration those that investigators may have decided not to pursue. Providing an FIU with an information requirement – (such as) detailing information priorities – can assist the FIU in identifying useful information for spontaneous dissemination. This demonstrates the need for law enforcement and FIUs to share information upstream and downstream allowing for more effective allocation of resources.

71. Concerning other AML/CFT disclosures, such as those described above in the section on data sources and types of information, countries should ensure that such information is readily available to FIUs and the competent authorities conducting lawful financial investigations in accordance with confidentiality, human rights, privacy and data protection requirements.

## REVIEW OF CROSS – BORDER CASH DECLARATIONS FOR FINANCIAL INVESTIGATIONS

72. Recommendation 32 calls on jurisdictions to implement measures to detect and prevent the physical cross-border transportation of currency and bearer negotiable instruments, which are one of the main methods used to move illicit funds, launder money and finance terrorism.<sup>15</sup> This collected information can be useful to financial investigations. As a result, such information should be accessed, verified and analysed by competent authorities in furtherance of financial investigations. This analysis can result in the identification of frequent travellers, links between travellers, and the discovery of other evidence or leads. Recommendation 32 requires jurisdictions to ensure that persons who make a false declaration/disclosure and persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments (BNI) related to ML/TF are subject to effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative. In practice, this means that jurisdictions need to be able to investigate and/or prosecute and sanction such conduct.<sup>16</sup>

73. Recommendation 32 calls for sharing of information with the FIU, other domestic partners and international counterparts, subject to strict safeguards to ensure proper use of the data. It is best practice to set out such safeguards in law and co-operation agreements such as MoUs. It should be noted that information sharing and feedback among the FIU, other domestic partners and international counterparts can considerably improve the targeting of illicit cash couriers. It is best

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<sup>15</sup> See FATF (2005).

<sup>16</sup> *Ibid.*

practice to ensure that the information being shared is comprehensive, tailored to the needs of the FIU and law enforcement authorities and includes all recorded data. It is also best practice to ensure that the sharing is takes place in a timely fashion (preferably in real time). Recommendation 32 calls on countries to implement a system that informs the FIU of suspicious cross border transportations incidents or ensures that the FIU has access to information on all cross-border transportations of currency and BNI. The competent authorities conducting financial investigations should routinely access this information in furtherance of their investigations.

74. As mentioned in the FATF Best Practices Paper on detecting and preventing illicit cross-border transportation of cash<sup>17</sup>, investigating the reasons why a false or no declaration/disclosure was made may uncover information that may be useful for intelligence purposes, or to support an investigation, prosecution and/or sanction against the traveller.<sup>18</sup> This information could be important for an on-going financial investigation, thus access to such information by the competent authorities should be timely and efficient. Moreover, ML/TF cases can result equally from truthful declarations/disclosures or false declarations/disclosures, and such information can be useful to financial investigators by providing new investigative leads and perhaps evidence.

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<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

## VI. INVESTIGATIVE TECHNIQUES

75. This section describes various investigative techniques that can be used in financial investigations. It is not exhaustive in covering all techniques but only highlights techniques that have specific relevance in relation to financial investigations. Recommendation 31 states that countries should use a wide range of investigative techniques which include undercover operations, intercepting communications, accessing computer systems, and controlled delivery. Countries can implement these requirements within their legal systems. This guidance note recognises that countries may have differing mechanisms available to investigators for compelling records that are relevant to financial investigations. For example, some countries use production orders, subpoenas, orders issued by prosecutors, orders issued by investigative magistrates, etc. Regardless of the instrument or process used, it is important that the financial investigator has access to and effectively uses such powers so as to obtain necessary information.

76. **Physical Surveillance:** This is a useful technique to gain general background and intelligence and information on individuals/businesses, habits and relationships of suspects. Surveillance can be especially useful in financial investigations in cases involving the movement of bulk currency and by identifying “gatekeepers” involved in the development and implementation of ML or TF schemes. Surveillance of targets can often identify where financial and related records might be stored and lead to the discovery of assets. In addition, surveillance can help corroborate financial data and identify other targets and associates.

77. **Trash runs:** (*i.e.*, searching the suspect’s discarded trash for evidence): This technique can be an effective way of obtaining leads where assets are maintained, as well as help develop probable cause for more coercive measures and evidence for use at trial. Suspects frequently discard evidence, including financial records and correspondence that may be valuable to a financial investigation.

78. **Compulsory measures to obtain evidence:** These measures, including the use of search warrants and other instruments, should be used to gather evidence of criminal activity that cannot be obtained by other means. The timely use of these powers to obtain evidence minimises the opportunity for suspects to purge records and/or destroy evidence. In addition to seizing paper documentation, investigators should seize and examine computer systems and other electronic data. The execution of these powers should be properly planned and be lawfully conducted in accordance with existing policies and procedures. Moreover, to protect the integrity of evidence, investigators should adhere to the established policies and procedures related to the handling of evidence to include chain-of-custody documentation. If such policies and procedures are not present, countries should develop appropriate policy and procedures that ensure the proper handling of evidence. Adherence to such policies and procedures protects the integrity of evidence as it is introduced into court proceedings. When financial investigators encounter computers or other digital media during the course of an investigation, they should consider the value of the evidence these may contain. In these instances, consulting with a trained computer evidence specialist or technical expert is appropriate. Attempts to access electronic data or transport and store electronic evidence by untrained investigative personnel, without the necessary equipment may result in unintentional tampering and/or permanent lost of valuable evidence. In all instances, original digital evidence should be deposited in an appropriate evidence container and a written chain of evidence should be

prepared at the same time. Analysis of this evidence should be conducted by a computer forensic specialist.

79. **Interviews<sup>19</sup>:** Investigators should use this technique to gather evidence and information in furtherance of their financial investigation. Investigators should first attempt to obtain voluntary statements from suspects and witnesses. However, if suspects or witnesses will not voluntarily submit to an interview, their *testimony* may be compelled in accordance with a country's existing laws, policies and procedures. Such interviews should not commence before careful consideration of the potential negative impact on the investigation by soliciting the suspect's/witness's co-operation. Detailed reports of investigation should be completed to document interview results. Investigators should consider all other legal means of obtaining evidence to corroborate testimony and statements. Interview reports may be invaluable in refreshing investigators and witnesses' recollections of events during criminal or civil proceedings.

80. **Controlled delivery:** This is an effective investigative technique involving the transportation of contraband, currency, or monetary instruments to suspected violator(s) while it is under the direction or surveillance of law enforcement officers. The contraband, currency or monetary instruments may be discovered subsequent to a seizure at the ports of entry or through other investigative means such as undercover operations. Controlled deliveries are conducted to:

- Identify, arrest, and convict violators.
- Disrupt and dismantle criminal organisations engaged in smuggling contraband, currency, or monetary instruments across borders.
- Broaden the scope of an investigation, identify additional and higher level violators, and obtain further evidence.
- Establish evidentiary proof that the suspects were knowingly in possession of contraband or currency.
- Identify the violator's assets for consideration in asset forfeiture.

81. Although controlled delivery can be a successful technique, there are serious risks that should be adequately addressed. For example, there is a risk of losing the evidence during the course of the controlled delivery. Countries should ensure that their competent authorities are properly trained in using this technique, that clear policy and procedural guidelines are established and followed and that proper operational oversight is conducted at the managerial level.

82. **Intercepting communications:** Electronic surveillance techniques, such as electronic intercepts of wire, oral communications, electronic media and the use of tracking devices can be very useful in financial investigations. This technique can help identify co-conspirators, provides insight into the operations of the criminal organisation, provides real time information/evidence that can be acted upon using other investigative techniques and can lead to the discovery of assets, financial records and other evidence.

83. Countries should train their competent authorities to properly intercept communications in furtherance of financial investigations in accordance with the basic principles of their domestic

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<sup>19</sup> See US Department of Homeland Security (n.d.).

laws, policies and procedures. Countries should ensure that their competent authorities are properly resourced so that such operations are available to the competent authorities as a viable investigative technique. However, intercepting communications is intrusive, coercive and resource intensive measure, thus countries should put in place mechanisms that ensure the usage of this technique is used lawfully, effectively and efficiently.

84. **Undercover operation:** This is an investigative technique that can be effective regarding financial investigations but also has inherent risks. Undercover operations typically allow investigators access to key evidence that cannot be obtained through other means. An undercover operation is an investigative technique in which a law enforcement officer or operative of a law enforcement authority, under the direction of a law enforcement authority, takes action to gain evidence or information. Properly conducting undercover operations often requires substantial resources, extensive training and significant preparatory work. The resources, the unique and diverse required skill sets and the inherent risks typically make utilising this technique a last resort – normally after more traditional investigative techniques have been unsuccessful. The actions performed by law enforcement during undercover operations should be in accordance with the basic principles of existing laws, policies and procedures, and all undercover officers should be highly trained before engaging in such operations.

85. There are various significant factors that should be considered when contemplating the use of an undercover operation. The investigators should determine motive/reliability of informant(s) (if applicable), research applicable laws and policies, conduct background investigation(s) of the potential subjects and determine that an undercover operation will likely yield positive results. The investigators should continuously re-evaluate the need for an undercover operation and be prepared to terminate the operation when appropriate. Resources that are to be employed must also be considered such as the person(s) to be used in undercover capacity, other staff needed to support the operation, equipment needs and plans for locations and estimated expenses. Investigators should also establish termination criteria, secure advice from a prosecutor and obtain the necessary approvals required by the country's laws, regulations and policies.

86. Given the inherent risk with this technique, undercover operations proposals should be *reviewed and authorised* by designated officials from the competent law enforcement authorities. These officials should be knowledgeable on all aspects of undercover operations. Moreover, the proposal should indicate that traditional investigative techniques have been utilised and have been largely unsuccessful and that the undercover operation is likely the only technique available to gather evidence of the suspected criminal activity. Only highly trained undercover agents should be used in undercover operations<sup>20</sup>.

87. **Methods of Proving Income:** A key component of financial investigations is the determination of the financial gain or profit derived from the predicate offence. Establishing the amount of the illegal proceeds often supports the motive for the crime and provides circumstantial evidence of the predicate offence. For this reason, it is essential that financial investigators be proficient in the various methods of proving income and determining which method is applicable, based on the facts and circumstances of a particular investigation.

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<sup>20</sup> See US Department of Homeland Security (n.d.), for more information about undercover operations.

88. This guidance encompasses two general evidentiary ways of proving income. These include using direct evidence, as in the *specific items method*, or circumstantially, as in the three indirect methods of proof: (1) *net worth and expenditures*, (2) *sources and applications* and (3) *bank deposits*. These methods are discussed in more detail in the Annex to this report.

89. While financial investigators are conducting financial criminal analysis using the indirect method of proof, they should be cognizant that all *indirect method* investigations are subject to evidentiary difficulties, which can be addressed by properly completing the following investigative steps:

- Account for all sources of funds such as inheritances, loans and transfers between accounts. Non-income sources need to be identified in order to accurately compute unreported income for serious income tax evasion cases or illicit source income for other predicate offences.
- Address defences raised by the suspect. Indirect methods of proof are based on circumstantial evidence. Any reasonable defence raised by the suspect needs to be investigated in order to determine whether or not it has merit.
- Establish a likely source of income for the understated income in a tax evasion investigation or the predicate offence as a source of the unexplained income.
- The investigator must identify all cheques payable to cash and determine whether or not there are any missing checks, particularly when using the *bank deposit method* of proof. This is because cheques payable to cash and missing cheques should be considered a source of currency deposited, hoarded or spent, unless there is compelling evidence to refute it.

## VII. TRAINING

90. Training and education programmes should be standardised within the competent authorities, basic training should be envisaged at entry level, and specialised training on select officers should be conducted at both entry level and throughout the investigator's career. However, such specialisation would differ between the tasks of a financial investigator and those of a financial analyst. Officers on such specialised career paths should be provided career and pay incentives. Basic financial investigative skills should be routinely included in training for entry level police officers and other competent investigators.

91. The training structure should follow operational needs. Formal selection of staff should be followed by formal instruction in the three primary disciplines: financial intelligence, evidence gathering, and asset tracing/freezing. Further training should be given on money laundering investigation, enhanced financial intelligence, criminal confiscation and non-conviction based confiscation. Where possible, the training should be aligned with training for line managers and specialist prosecutors. Moreover, the judiciary should be trained on appropriate laws and how to properly adjudicate on financial investigative matters.

92. Training should not be exclusive to law enforcement but should include those sectors that are required to report suspicious activity and others that may pose a risk. The FATF and FATF-style regional bodies have developed typologies reports describing various ML/TF methods and techniques. This material may also be a useful to include in training on financial investigation.

93. Training may also include multiple jurisdictions in order to share best practices, learn differences in legal procedures and enhance co-operation. Moreover, staff should be vigilant in staying current to new trends and typologies. Countries should encourage their financial investigators to attend regional and international training workshops with their foreign counterparts.

94. Reports are an integral part of financial investigations, thus report writing should be part of the training curriculum for financial investigators and intelligence analysts. The ability to convey concepts, findings and conclusions in a clear, concise and informative manner is essential to the success of complex financial investigations. Countries should dedicate the necessary resources to train their competent authorities properly in the skill of report writing. In financial investigations, report writing takes on an even greater importance because the investigations can be lengthy, complex and multi-jurisdictional. Accurate, timely and concise reports will assist, for example, in drafting the necessary background information to meet evidentiary requirements in domestic court proceedings as well as MLA requests for evidence. It is imperative that practitioners document their findings periodically throughout the entire investigation, as well as after significant events. Reports should be written in a clear and concise manner, preferably on the same day as the event being described, and should include all relevant information and events. They should be reviewed and approved by a supervisor as soon as possible.

95. A sample curriculum of training courses for financial investigators is available<sup>21</sup>. This list and types are not exhaustive but cover many skills required to be a high-quality financial investigator.

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<sup>21</sup> See (NPIA (National Policing Improvement Agency), n.d. a-g; Golobinek, R., 2006).



## VIII. INTERNATIONAL CO-OPERATION

96. Recommendation 40 states that countries should ensure that their competent authorities can rapidly, constructively and effectively provide the widest range of international co-operation in relation to money laundering, associated predicate offences and terrorist financing. This guidance note recognises the importance of international co-operation for successful financial investigations. Financial investigations often reach beyond domestic borders; therefore, it is important that competent authorities immediately focus on both formal and informal international co-operation efforts and ensure they are maintained for the duration of the case. Establishing early contact aids practitioners in understanding the foreign legal system and potential challenges, in obtaining additional leads and in forming a common strategy. It also gives the foreign jurisdiction the opportunity to prepare for its role in providing co-operation.

97. There are particular channels for international co-operation which can be used by financial investigators:

- Contact existing liaison officers<sup>22</sup> in or of the foreign jurisdiction.
- Exchange information between national (or regional) police units using channels such as INTERPOL, Europol and other regional law enforcement bodies.
- Inform the national FIU which has a possibility to contact its foreign counterparts and collect further intelligence through the Egmont Secure Web or by other means.
- Through the central authority for transmitting MLA requests to foreign countries.

98. In order to legally obtain evidence that is admissible in court, investigators and/or prosecuting authorities must make use of the applicable international arrangements which may be based on reciprocity, MoUs, bilateral or multilateral arrangements. Once a decision has been taken as to which country has responsibility for prosecuting and/or investigating which part of the case, mechanisms should be agreed ensuring that all relevant evidence can be made available in the competent country in a form that will allow production in a criminal court and which respects due process of law.

99. Forming personal connections with foreign counterparts is also important to successful financial investigations. A telephone call, an e-mail, a videoconference or a face-to-face meeting with foreign counterparts will go a long way to moving the case towards a successful conclusion. Communication is important in all phases: obtaining information and intelligence, making strategic decisions, understanding the foreign jurisdiction's requirements for assistance, drafting MLA requests or following up requests for assistance. It helps reduce delays, particularly where differences in terminology and legal systems may lead to misunderstandings.

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<sup>22</sup> This should include multinational bodies such as EUROJUST (a European agency with some non EU liaison officers) or multinational judicial or police networks that may exist in some regions of the world (in the European Union for instance the European Judicial Network).

100. Some important information can be obtained more quickly and with fewer formalities through direct contact with counterpart law enforcement agencies and financial intelligence units or from liaison magistrates or law enforcement attachés posted locally or regionally (agency-to-agency assistance). Such assistance may lead to a more rapid identification of evidence and assets, confirm the assistance needed and even more importantly provide the proper foundation for a formal MLA request (government-to-government assistance). Such contacts also offer an opportunity to learn about the procedures and systems of the foreign jurisdiction and to assess various options for conducting investigations, prosecutions and proceeds of crime actions.

101. In order to constructively and effectively provide the widest range of international co-operation, it is essential for financial investigators to discuss issues and strategy with foreign counterparts. Such discussions should involve consideration of conducting a joint investigation or providing information to the foreign authorities so that they can conduct their own investigation. If the financial investigation is in the early stages and investigators are concerned about the integrity of the investigation, they can still engage with their foreign counterparts and discuss issues from a “hypothetical” perspective. Such discussions allow all involved parties to get a better understanding of the parameters and requirements of an investigation without having to discuss too many specific details. Such details can be shared at a later stage as necessary.

102. To address the transnational nature of MLAs requests, all countries should be able to investigate, prosecute and bring to judgment cases of ML, associated predicate offences and TF regardless of whether the predicate offence occurred within its jurisdiction or abroad. If the predicate offence was committed in a foreign country, the prosecution of the money laundering offence generally requires some knowledge of the associated predicate offence in the foreign jurisdiction, and such information should be made readily available.

103. In the FATF best practices paper on confiscation<sup>23</sup>, mention is made of best practices for countries to help strengthen legal frameworks and ensure that asset tracing and financial investigations can be conducted effectively. These best practices include having appropriate procedures and the legal framework to allow the informal exchange of information, the use of appropriate regional and international bodies to facilitate co-operation, the spontaneous sharing of information with proper safeguards and the entering into of asset sharing agreements.

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<sup>23</sup> FATF (2010).

## ANNEX

### *ADDITIONAL INFORMATION*

#### BASIC INFORMATION THAT SHOULD BE MAINTAINED IN A CORPORATE REGISTRY

- Entity name (including governmentally unique identifier and alternative names)
- Date of incorporation, formation, or registration
- Entity type (for example, LLC, sociedad anónima)
- Entity status (for example, active, inactive, dissolved—if inactive or dissolved, date of dissolution and historical records of the company)
- Address of the principal office or place of business
- Address of the registered office (if different from principal office) or the name and address of the registered agent
- Particulars of formal positions of control, that is, directors or managers and officers (for example, president, secretary)
  - — If a natural person—their full name, any former name, residential address, nationality, and birth date
  - — If a corporation—the entity name, address of the principal office, address of the registered office, and (if applicable) for foreign corporations, the registered office in its country of origin
- History of filings (for example, formation documents, annual returns, financial filings, change of registered office, change of registered agent, and so on)
- Required annual returns that verify the correctness of each particular required to be filed in the system, even if it has not changed since the last filing date
- To the extent feasible and appropriate, electronic copies of filings and documents associated with the legal entity (for example, formation documents, annual returns, financial filings, change of registered office, change of registered agent, and so on).

## ADDITIONAL INFORMATION ON UNDERCOVER OPERATIONS

### OPERATION STAFFING AND TRAINING

1. Article 29 (1)(g) of the Palermo convention calls on countries to initiate, develop or improve specific training programs for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel regarding the use of undercover operations. The number of employees involved with an undercover operation will naturally be dictated by the nature of the operation.

### INDIVIDUALS PROPERLY TRAINED IN VARIOUS ROLES ARE NORMALLY INVOLVED IN EVERY UNDERCOVER OPERATION.

2. For example: The *supervisor's* responsibilities include overall management control of the operation and will ensure that the daily activities of the other participants are directed towards the objectives of the operation. A *cover agent* should be assigned at location of the undercover operation to perform on-site liaison with the undercover agent and be primarily responsible for the safety and security of the undercover agent. The *undercover agent* must be trained and is generally brought from another location into the area where the undercover operation will be conducted. They may develop multiple cover identities so that at any given occasion they can work on undercover assignments under each identity. A *tech agent* is a trained technician who is knowledgeable in the installation and operation of audio and video monitoring equipment. The *tech agent* is a regular member of the undercover operation team and should participate in all the periodic review, pre-operational and post operational meetings. The *case agent* will manage the day to day activities of the undercover operation. Other duties of the case agent involve timely reviewing, analyzing, and determining the value of all information or evidence obtained. Typically, the *case agent* is responsible for report writing, documenting evidence, duplicating and storing recordings and other record keeping functions.

### CONFIDENTIAL INFORMANTS

3. Undercover operations may be supported by cooperating private individuals (confidential informants) who can play an effective role in the success of an undercover operation. A well-placed cooperating private individual can assist the undercover agent in making contacts with the subject(s) of the operation, and lend credibility to the undercover agent. While the confidential informant is not a member of the investigative team, he or she is often in a fiduciary/controlled status to the law enforcement agency conducting the undercover operation. The confidential informant role is often critical to the undercover operation. However, the appropriate law enforcement personnel should closely monitor all the confidential informant's activities in any undercover operation.

### DEVELOPING INFORMATION GATHERED BY AN UNDERCOVER OPERATION

4. In an undercover operation, evidence and information gathered is transmitted to the cover agent by reports of activity prepared by the undercover agent. These reports detail the undercover agent's activities as it relates to the operation. They should contain the names of all people with

whom the undercover agent had contact; and should include a comprehensive summary of the day's events.

5. Another source of information or evidence gathering may come from electronically monitored conversations between the undercover agent and the subject(s). The content of these monitored conversations will not be included in the undercover agent's daily activity reports except for a reference to with whom and at what time the conversation took place.

6. Additional information and evidence can also be obtained by other members of the investigative team and support personnel by such investigative activities as surveillance, public record checks, law enforcement contacts, financial information analyses, etc.

### REVIEW AND CONCLUDING THE UNDERCOVER OPERATION

7. It is a good practice to have periodic reviews (*i.e.*, 90 day intervals) of ongoing undercover operations. The participants in this review should include the supervisor, case agent, cover agent and if possible, the undercover agent. This review should address and memorialize the progress of the operation within the stated objectives and any changes in strategy and/or actions needed to realize the goals.

8. The termination of an undercover operation should generally be decided based on facts and circumstances. These include whether the stated objectives have been accomplished, cannot be accomplished or would require expending an unreasonable amount of resources. An undercover operation should also be terminated when the allegations are proven false.

### ADDITIONAL INFORMATION ON NET WORTH METHOD COMPUTATION

9. The purpose of a net worth computation is to arrive at taxable or illegal income. The basic computation of net worth is assets less liabilities. The change in net worth is the difference in net worth from period to period, for example one calendar year to the next. Changes in net worth can be the result of purchasing assets, selling assets, reducing liabilities or increasing liabilities. Expenditures are then added to any change in net worth to determine the total amount of funds used by the subject in any given period.

10. A net worth statement (Assets - Liabilities = Net Worth) is similar to a balance sheet in its presentation (Assets - Liabilities = Owner's Equity).

11. The net worth indirect method of proof is a very effective method of determining income amounts derived from illegal activities. There are three basic steps in calculating the illegal income as follows:

12. **Calculate the change in a subject's net worth (assets less liabilities).** Determine the net worth at the beginning and end of a period (a taxable year or years), subtract the beginning period's net worth from the ending period's net worth. This computation yields the change in net worth, either an increase or decrease in net worth.

13. **Make adjustments to the net worth computation.** These include personal living expenses (expenditures), certain losses and legal income sources.

14. Illegal or unexplained income is determined through the **comparison of total income to known sources**; any unexplained income is attributed to the illegal sources.

## SELECTED SOURCES OF INFORMATION FOR FINANCIAL INVESTIGATION

### FATF

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### COUNCIL OF EUROPE

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NPIA (National Policing Improvement Agency) (n.d.)e, *Internet Research Skills for Financial Investigators*, NPIA, London, United Kingdom

NPIA (National Policing Improvement Agency) (n.d.)f, *Proceeds of Crime Management Course*, NPIA, London, United Kingdom

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