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MEMORANDUM

TO : THE BOARDS OF DIRECTORS

**FROM : Donald KABERUKA
President**

**SUBJECT : BANK GROUP STRATEGY FOR THE PREVENTION OF MONEY
LAUNDERING AND TERRORIST FINANCING IN AFRICA ***

Please find attached the above-mentioned document.

Attach:

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**AFRICAN DEVELOPMENT BANK
AFRICAN DEVELOPMENT FUND**



**BANK GROUP STRATEGY FOR THE PREVENTION
OF MONEY LAUNDERING AND TERRORIST FINANCING
IN AFRICA**

MAY 2007

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ACRONYMS

ADB	African Development Bank
ADF	African Development Fund
AML/CFT	Anti Money Laundering/Combating the Financing of Terrorism
APRM	African Peer Review Mechanism
ARS	Alternative Remittance Systems
AsDB	Asian Development Bank
AU	African Union
BWI	Bretton Woods Institutions
CEMAC	Communauté Economique et Monétaire de l'Afrique Centrale
CGP	Country Governance Profile
CSP	Country Strategy Paper
EBRD	European Bank for Reconstruction and Development
ECOWAS	Economic Community of West African States
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FIU	Financial Intelligence Unit
FATF	Financial Action Task Force (on Money Laundering and Terrorist Financing)
FSRB	FATF-Style Regional Body
FT	Financing of Terrorism
GABAC	Groupe d'Action contre le Blanchiment d'Argent en Afrique Centrale
GIABA	Intergovernmental Group of Action against Money Laundering in West Africa
IADB	Inter-American Development Bank
IBRD	International Bank for Reconstruction and Development
IMF	International Monetary Fund
KYC	Know Your Customer
MDB	Multilateral Development Banks
MENAFATF	Middle East and North Africa Financial Action Task Force Against Money Laundering and Terrorism Financing
ML	Money Laundering
NCCT	Non-Cooperative Countries and Territories
NEPAD	New Partnership for Africa's Development
OAU	Organization of African Unity
OCCF	Oversight Committee on Corruption and Fraud
PBL	Policy Based Lending
PBLG	Policy Based Lending on Governance
PER	Public Expenditure Review
RMC	Regional Member Country
TA	Technical Assistance
UMAC	Union Monétaire de l'Afrique Centrale
UNODC	United Nations Office on Drugs and Crime
WB	The World Bank

Executive Summary

The international community is concerned with the growing incidence of organized crime, corruption, and terrorism and the debilitating effect these problems have on peace, security and development. A successful strategy to address these international threats necessarily involves measures to address money laundering and the financing of terrorism (ML/FT). Money laundering allows criminals and corrupt officials to enjoy the proceeds of their crime with impunity, while terrorist activities are enabled by those who finance them from the proceeds of crime or other sources. Money laundering can also be a problem in its own right, particularly for small or developing countries with weak or under-regulated financial sectors, because money laundering activities conducted on a large scale can jeopardize the integrity of a national financial system, weaken financial institutions and hinder economic development.

The Articles of Agreements establishing the ADB entrust it with fiduciary responsibility to ensure the proceeds of any loan it makes or guarantees are issued only for the purpose for which the loan was guaranteed. The agreements entrust the Bank with a responsibility to ensure probity in its business transactions, and therefore, call for the elimination of fraud and corruption from its lending operations and financial assistance. Preventing fraudulent transactions that may disguise the origins of proceeds of crime or profits from corruption and the use of Bank funds to commit terrorist activities or other forms of crime are part of that responsibility.

Like all financial institutions, the Bank Group is required to establish and maintain internal procedures to prevent its assets from being used for ML or FT purposes. Measures can be taken to tighten its fiduciary safeguards to ensure that its own lending is used for the intended purposes and is not subjected to financial abuse. These include AML/CFT internal procedures and policies, ongoing employee training, and an audit function to test the system and to ensure adequate compliance with these procedures and policies.

The ADB also recognizes the negative impact that ML/FT can have on development. It sees a need to enhance its role in combating ML/FT in Africa as part of its mandate to promote good governance and development. It acknowledges its responsibility to work closely with its development partners to support the initiatives already undertaken in this respect at the national, regional and international levels.

This Bank strategy has been prepared under close supervision of a Bank-wide Task Force that was set up in 2005. The draft strategy had been reviewed internally by the Bank-wide Task Force on AML/CFT and by the Senior Management Review meeting. Additionally, at a *Review Workshop on Bank Strategy on Preventing and Combating Money Laundering and Terrorist Financing in Africa* organized by the Bank on 21 September 2006 in Tanzania, external stakeholders, including other multilateral development Banks, reviewed the document and made further input to it.

The Bank Group's strategy to prevent ML and FT involves strategic actions in four key areas. The Bank will:

- Adopt measures to tighten the Bank Group's fiduciary safeguards, its internal procedures and policies, and its audit function to ensure that its own lending is used for its intended purposes and is not subjected to financial abuse, corruption or money laundering.

- Facilitate the implementation of international AML/CFT standards by RMCs and participate in regional and national AML/CFT capacity building initiatives in collaboration with other international organizations and development agencies.
- Assist RMCs, directly and through FSRBs, and support their efforts to develop AML/CFT laws and strategies in compliance with international standards and build an institutional capacity to implement these laws and strategies, including a capable financial investigation unit.
- Support and assist the establishment of effective and operational sub-regional FSRBs.

Some recommendations are also made for the immediate, but gradual implementation of the strategy.

I – INTRODUCTION

The international community is concerned with the growing incidence of organized crime, corruption, and terrorism and the debilitating effect these problems have on peace, security and development. A successful strategy to address these international threats necessarily involves measures to address money laundering and the financing of terrorism (ML/FT). Money laundering allows criminals and corrupt officials to enjoy the proceeds of their crime with impunity, while terrorist activities are enabled by those who finance them from the proceeds of crime or other sources. Money laundering can also be a problem in its own right, particularly for small or developing countries with weak or under-regulated financial sectors, because money laundering activities conducted on a large scale can jeopardize the integrity of a national financial system, weaken financial institutions and hinder economic development.

The ADB may itself be affected by ML/FT schemes through its lending activities. The Articles of Agreements establishing the ADB entrust it with fiduciary responsibility to ensure the proceeds of any loan it makes or guarantees are issued only for the purpose for which the loan was guaranteed. The agreements entrust the Bank with a responsibility to ensure probity in its business transactions, and therefore, call for the elimination of fraud and corruption from its lending operations and financial assistance. Preventing fraudulent transactions that may disguise the origins of proceeds of crime or profits from corruption and the use of Bank funds to commit terrorist activities or other forms of crime are part of that responsibility.

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Most African countries are grappling with the liberalization and expansion of their financial sector and are expected to undertake deep reforms of that sector. They need to strengthen the prudential supervision and regulation of their financial systems through effective AML/CFT measures. As RMCs are becoming more conscious of the urgent need for action on their part, they come to expect the support of the Bank Group. The Bank therefore needs to define its own strategy for providing such support within the broader context of its existing policies and strategies to reduce poverty, foster development, promote good governance, combat corruption, and strengthen financial institutions. The Bank Group policy on Good Governance and its implementation Guidelines, which were adopted in 1999 and 2001 respectively, emphasize accountability, transparency and combating corruption as key elements of promoting good governance in RMCs.

This paper defines the main elements of an AML/CFT strategy for the Bank Group. The main focus of the strategy is on money laundering, but it also covers measures against the financing of terrorism to the extent that the latter are related to the implementation of an international AML/CFT regime within financial institutions. The paper is organized in two main parts, one dealing with the broader context within which the strategy is being defined and identifying some of the specific challenges that must be faced by AML/CFT initiatives in Africa, the other with the strategy itself. The second part introduces and discusses the four main components of the overall strategy.

II – THE CONTEXT

A- Money Laundering and Terrorism Financing

- 2.1 As a clandestine operation, money laundering does not easily lend itself to empirical research. Criminals go to great lengths to hide the proceeds of their crimes and to dissimulate their money laundering activities; action that will intensify as detection and prosecution improves. The ML methods and techniques they use change frequently. Furthermore, many ML activities take place across borders. As a result, it is very difficult to produce accurate estimates of the amount of money laundering that takes place anywhere in the world. Reliable estimates of how much money is being laundered in Africa are even harder to obtain. By all accounts, these funds are substantial and, in the wrong hands, can indeed create significant problems in any country.
- 2.2 *ML is a process whereby the origin of funds generated by illegal means is concealed.* The process of ML usually involves three stages: (1) the introduction of the proceeds of crime into the financial system (placement); (2) transactions to convert or transfer the funds to other locations or financial institutions (layering); and, (3) reintegrating the funds into the legitimate economy as “clean” money and investing it in various assets or business ventures.
- 2.3 Different methods are used to launder money. These methods are very adaptable and tend to evolve constantly. They include the use of internet services, on-line banking and new electronic payment technologies, international companies and shell companies, trade and false invoicing for the supply of goods or services, real estates, art, diamonds, and gold and other precious metals.
- 2.4 ML activities can also take place through various abuses of informal banking and financing channels and alternative remittance systems. These informal systems generally operate outside of the regulatory system that applies to financial institution. Although these systems serve legitimate purposes, they provide a high level of anonymity and can be abused by money launderers and terrorist organizations to escape the scrutiny of financial regulators and law enforcement agencies.
- 2.5 ML activities can occur in any country, but they may have a more significant impact on developing countries with relatively small or fragile financial systems or weak economies that are particularly susceptible to disruption as a result of illicit activities. They damage critical financial sector institutions and they may scare away foreign investors and reduce a country’s access to both foreign investments and foreign markets.
- 2.6 Banking institutions and other financial institutions such as insurance companies, securities firms, or financial investment management firms are particularly vulnerable to the adverse consequences of ML. ML erodes these important financial institutions and impairs their development. Financial institutions in a developing country play an important role in investment decisions and capital flows. Confidence in them is therefore crucial for developing economies which rely on these decisions for future growth, as well as to attract a stable base of customer deposits to support credit growth for consumers and business, while increasing the potential size of the formal economy.

- 2.7 Laundered funds can also be used by criminals to acquire companies, to gain control over private financial institutions or infiltrate and dominate whole industries or sectors of the economy, to corrupt public officials or to thwart the objectives of a government's privatization initiatives. Laundered funds are often invested in ways which introduce artificial distortions in assets and commodity prices and create a risk of monetary and economic instability.
- 2.8 The prevention of terrorism also offers some very important challenges. Trying to cut off terrorist groups from their sources of financing is one of them. Since 1999, with the adoption of the International Convention for the Suppression of the Financing of Terrorism, there is broader-based consensus around the need to interfere with various activities related to the financing of terrorist acts.¹

B - International AML/CFT Regime and Global Initiatives

- 2.9 The international community has acted on many fronts to respond to the growing complexity and the international nature of rapidly evolving ML/FT methods. The emphasis is on promoting international cooperation and establishing a coordinated and effective international AML/CFT regime. Many international agencies have helped countries develop a capacity to prevent and counter ML. Since September 2001, they have extended their mandate to address the issue of FT. The following presents some of the main elements of the global and regional initiatives.
- 2.10 The Financial Action Task Force (FATF) was established in 1989 by the G-7 countries to respond more effectively to ML. The FATF Forty Recommendations require the criminalization of ML. In addition, the recommendations call on countries to adopt legislative and other measures in order to: freeze, seize and confiscate criminal proceeds; waive bank secrecy laws to permit financial institutions to monitor and report suspicious transactions; protect those reporting these transactions from civil and criminal liability; establish financial investigation units; and, cooperate fully in international law enforcement efforts to combat ML.
- 2.11 The FATF Special Recommendations require countries to criminalize the financing of terrorism, terrorist organizations and terrorist acts and to designate these new offences as ML predicate offences. The FATF is also involved in monitoring the progress of members in complying with its recommendations.
- 2.12 The United Nations Convention on Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (Vienna Convention), the UN Convention against Transnational Organized Crime (Palermo Convention), the UN Convention against Corruption and the International Convention for the Suppression of the Financing of Terrorism all contain provisions relating to the tracing, freezing, seizing and confiscation of instrumentalities and proceeds of crime.
- 2.13 Financial regulation standards are also set by the Basel Committee on Bank Supervision, for banks, the International Organisation of Securities Commissioners (IOSCO), for securities firms and markets, and the International Association of Insurance Supervisors (IAIS), for insurance companies. Other self-regulating bodies, such as the International Federation of Accountants or the Wolsberg Group of Banks, have also set standards for their own area.

¹ See Lyman, P.N. and J. Stephen (2004). "The Terrorist Threat in Africa", *Foreign Affairs, Volume 83 Issue 1*. Goredema, C. and A. Botha (2004). "African Commitments to Combating Terrorism: A review of eight NEPAD countries". *AHSI Paper 3, African Review*, July 2004.

- 2.14 In 1988, the Basel Committee put forward some basic principles as part of its Statement for the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering. In 1992, the IOSCO addressed the issue of ML from the point of view of securities regulation and the reduction of systematic risks for investors. Its resolution on ML introduces a number of standards with which it expects its members to comply.
- 2.15 Many countries have established financial intelligence units (FIUs) as a focal point for the AML efforts and a point at which information is exchanged between financial institutions and law enforcement. Since 1995, a number of these units have begun to work closely together, to exchange information and to coordinate their AML efforts. They formed the Egmont Group which facilitates international exchanges and cooperation among FIUs in relation to both ML and to FT.
- 2.16 Several multi-lateral organizations can provide assistance to countries wishing to implement the FATF 40+9 recommendations. Some of them are particularly active in Africa, including the World Bank and the IMF, the Commonwealth Secretariat which counts a number of Member States on the Continent, and the UNODC which has four regional offices in the region, in Dakar, Cairo, Nairobi, Pretoria and a country office in Nigeria. The World Bank and the IMF have accepted a responsibility to assist countries in implementing AML/CFT standards, particularly as they relate to banking supervision and financial institutions. They provide AML/CFT technical assistance to members and are funding projects to assess members' compliance with international AML/CFT standards.
- 2.17 Closely related to the work of these institutions is the work of the Financial Stability Forum on financial regulation and AML standards within offshore centres, and the work of the Bank for International Settlements on payment and settlement systems and their vulnerability to ML/FT.
- 2.18 As part of its work to promote good governance and to fight corruption, the Commonwealth has long been involved in international AML/CFT efforts. In 1993, it made available a Commonwealth Model Law. In 1996, it developed Guidance Notes for the Financial Sector which was revised in 2000 and in 2005 based on best practices.
- 2.19 For its part, the UNODC AML/CFT work in Africa is supported by its Global Programme against Money Laundering and the Terrorism Prevention Branch. The UNODC offices in Africa are currently managing several AML projects in various parts of the region. In September 2005, at the Round Table for Africa organized by UNODC in Nigeria, a program of action (2006-2010) to address crime, security and development on the continent was endorsed by representatives of 47 African Member States and by development partners and international organizations.

C - African Initiatives

- 2.20 In addition to the global initiatives mentioned above, many conventions were adopted and many cooperation initiatives were launched by African nations at the continental and sub-regional levels. The Organization of African Unity adopted a Convention on Preventing and Combating Terrorism (1999) (The Algiers Convention). In 2002, a Plan of Action of the African Union High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa was adopted which highlighted specific areas for action. These included ten specific measures to suppress the financing of terrorism, including national legislation to criminalize FT and ML, setting up FIUs, training personnel to combat and prevent ML, and cooperation with international financial institutions. The AU also adopted a Protocol to the

OAU Convention on Terrorism (2004). The latter captured the Parties' commitment to implement fully the provisions of the OAU Convention on Terrorism and, among other things, to identify, detect, confiscate and freeze or seize any funds and other assets used or destined to be used for committing a terrorist act and to establish a mechanism to use such funds to compensate victims of terrorist acts or their families.

- 2.21 The African Peer Review Mechanism (APRM), an initiative of NEPAD, includes a focus on assessing corruption control mechanisms. Fostering the implementation of banking and financial standards is a key focus area of NEPAD. In 2002, its Steering Committee proposed an action plan focussed on the adoption and strengthening of AML/CFT laws and promoting compliance with international AML/CFT standards.
- 2.22 The AU adopted a Convention on Corruption (2003) which, unfortunately, has yet to be ratified by enough Member States to come into force. The Convention calls for the criminalization of the use or concealment of proceeds from acts of corruption (article 4) and the laundering of the proceeds of corruption (article 6). It also establishes a regional cooperation framework for improved mutual law enforcement assistance, including extradition, investigations, as well as confiscations, seizure and repatriation of proceeds of corruption.
- 2.23 As mentioned previously, a program of action to address crime and security issues affecting development was adopted by African leaders from 47 States at the Round Table for Africa held in Abuja, Nigeria, in September 2005. One of the six clusters of activities included in the program of action for the period between 2006-2010 focuses on organized crime, money laundering, corruption, trafficking and terrorism. With respect to AML/CFT in particular, the program of action identifies three priorities for action and specifically identifies the ADB as a possible key partner for these activities. They are: (1) developing national laws and strategies in compliance with international standards and norms; (2) building institutional capacity, including setting up financial intelligence units to implement national laws and strategies; and, (3) supporting and assisting the establishment of effective and operational subregional organizations to combat money laundering.
- 2.24 There are three regional anti-money laundering groups, or FSRBs, that have been granted observer status to the FATF: the Middle East and North Africa Financial Action Task Force Against Money Laundering and Terrorist Financing (MENAFATF); the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG); and, the Intergovernmental Action Group against Money Laundering in West Africa (GIABA). A fourth group is being established in the context of the CEMAC and the UMAC, the Groupe d'Action contre le Blanchiment d'Argent en Afrique Centrale (GABAC). It has not yet been granted observer status with the FATF. Developing and strengthening such regional groupings can play a crucial role in the prevention of ML/FT. (See *Appendix 3*). The FSRBs not only have an advocacy and mobilization role to play, but they can also provide the mechanisms for monitoring developments in the AML/CFT field and for mutual evaluations.

D – Response of Multilateral Development Banks

- 2.25 All MDBs (AsDB, EBRD, IADB, WB, IMF) are becoming more active in supporting RMCs efforts to prevent ML/FT. They agree on the need for vigorous measures to prevent ML/FT. The ADB has and will continue to share information with other MDBs and exchange best practices on how to support AML/CFT strategies. All of them have come to the conclusion that long-term development requires financial sector reforms and that strengthened supervisory systems and robust legal and institutional framework for financial institutions can help prevent a broad range of financial sector abuses, including corruption, ML, and FT.
- 2.26 The World Bank, in particular, has substantially expanded its program in the areas of anti-corruption governance, and public financial management. The Bank Group's 2001 policy paper on Enhancing Contributions to Combating Money Laundering identified three main ways in which it would contribute to the global efforts to combat financial abuse and ML: (1) helping countries identify and address structural and institutional weaknesses that may contribute to the lack of market integrity and potential for financial abuses; (2) participating in targeted international efforts to combat ML based on its mandate and expertise; and, (3) ensuring that the Bank Group's own financial transactions do not inadvertently undermine international actions to curb illegal practices. The World Bank provides assistance to countries in carrying out financial sector reforms, through financial sector lending and TA activities. Its action plan for AML/CFT includes measures to upgrade and expand staff capacity to respond to client requests for assistance in meeting international AML/CFT standards. It is able to link AML/CFT assistance with country assistance strategies and to offer assistance in building capacity among financial supervisors and other government agencies involved in AML/CFT.
- 2.27 The AsDB has also been proactively implementing the four point AML/CFT strategy it adopted in March 2003. The strategy focuses primarily on assisting its developing country members to establish and implement effective legal and institutional systems for AML/CFT, increasing collaboration with other international organizations and aid agencies, strengthening internal controls to safeguard AsDB's funds, and upgrading AsDB staff capacity. It has incorporated AML/CFT into its policy dialogue with RMCs, particularly when the latter request assistance in that area.
- 2.28 The EBRD which is mostly active in the private sector and is present in potentially high-risk countries for ML/FT has had to strengthen its own due diligence practices to ensure that its assets were not used for ML/FT or other illegal or fraudulent purposes. The Office of the Chief Compliance Officer was created and new integrity and AML due diligence procedures were set in place. The IMF's reports on ROSCs also covers ML/FT issues.
- 2.29 The African Development Bank itself has taken some concrete measures in responding to the potential threats of money laundering. In the context of its institutional support projects, the Bank has strengthened Auditor General Offices in several African countries to deal with ML. Assistance in the form of lines of credit has also been provided to RMCs to develop national ML strategies; support has been rendered to FIUs; special language on ML is normal part of agreements on private sector interventions. Finally, the Bank engages in systematic review of payees during disbursement and other payments.

E - Challenges in Preventing and Combating ML/FT in the African Context

- 2.30 Implementing comprehensive AML/CFT policies in the context of developing countries offers some unique challenges. All countries face certain challenges in fully implementing the FATF 40+9 recommendations, but the capacity and resource constraints of low income countries make it particularly difficult for them to implement all the necessary measures simultaneously. For countries with severe resource constraints, further consideration need to be given to assessment mechanisms and technical assistance processes that allow for the identification of clear priorities and a roadmap towards full implementation of the 40+9 recommendations.
- 2.31 African countries must be encouraged to focus their efforts on the most fundamental requirements and largest threats first before proceeding with more comprehensive implementation efforts. In developing assessment and assistance strategies, international and regional organizations must take the particularities of the African context into consideration, in particular the capacity and resource constraints of African countries, and their need to establish clear priorities within their overall plans to promote development and good governance.
- 2.32 As compared to financial institutions in other parts of the world, financial institutions in most African countries offer relatively less access to international markets and are presumably less vulnerable to foreign attempts to launder money and move funds for terrorist organizations. On the other hand, because many of these institutions are relatively small and immature and are often struggling to maximize business opportunities within a competitive market, they may be less selective in their business and become more vulnerable to ML/FT. The frequent absence of the required legislative framework, the lack of effective criminalization of ML/FT, and the relative ineffectiveness of financial sector supervision are all factors which render financial sectors in Africa alarmingly vulnerable.
- 2.33 Another major source of complications for African countries attempting to reduce their vulnerability to ML/FT comes from the fact that, if they are at all successful in protecting their financial sector and reducing its vulnerability to ML/FT, they can expect some ML/FT to be displaced to the non-financial sector businesses and professionals, or even to parallel economies, underground banking and alternative remittance systems.
- 2.34 Throughout Africa, there is a significant cash-based and parallel economy in which money circulates outside of conventional financial systems. Alternative value transfer and remittance systems play an important, valuable and legitimate role in most African economies. In many instances, these systems are critical to the functioning of national economies. They are, however, vulnerable to misuses for money laundering or terrorist financing purposes. The FATF recommends that jurisdictions impose AML/CFT measures to cover all forms of money/value transfer systems. Money remittance and transfer services are financial services whereby funds are moved for individuals or entities through a dedicated network or through the regulated banking system. The informal money/value transfer system refers to a financial service whereby funds or value are transferred from one geographical area to another (usually outside the regulated financial sector). The nature of the system is such that the anonymity of its customers is assured and the transactions are almost impossible to monitor.
- 2.35 One of the FATF Special Recommendations on Terrorist Financing (Recommendation VI) requires that each country “take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or

registered and subject to all FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions”. For many African countries, however, it is doubtful that the vast efforts that would be required in order to identify informal value transfer services, register them and regulate and monitor them are likely to be an immediate priority. In fact, they could conceivably have an adverse effect on local economies which are very reliant on these systems.

- 2.36 An alternative approach to reduce the ML/FT vulnerabilities introduced by the informal sector would involve a longer term effort to help countries develop some flexible, accessible, relatively inexpensive, and well supervised value transfer systems that could compete with the less reliable and more costly informal ones. In the long term, the informal sector could thus lose some of its crucial importance to local economies and become more amenable to regulation and other forms of control. In the short term, it should be clear to all concerned that the informal systems that exist in Africa are not well known or understood. There is little systematic information on how these informal systems function in the African context, how crucial they are to the normal everyday transactions upon which the local economies depend, and the manner in which they are abused for criminal purposes. Better information and research on these systems is a priority for action which is frequently acknowledged by regional and subregional organizations involved in AML/CFT.
- 2.37 Another issue which presents complexities that are perhaps unique to the African continent and its predominantly cash-based economies is that of cash movement and cash transactions which are neither documented nor traceable. Cash transactions are the norm rather than the exception in most of Africa. Introducing a requirement to report to the authorities all cash transactions that exceed a certain threshold and subjecting them to the usual AML/CFT controls is often suggested. It is also suggested that the use of cash could be reduced as part of the “best way forward” in AML/CFT strategies. Finally, others have suggested outlawing cash payments for transactions above a certain threshold. Although such proposals may hold some appeal in the abstract and could perhaps be encouraged in certain instances, it is hard to conceive how they could form a realistic basis for action in most African countries. It is doubtful that any of these methods truly belong to an effective and sustainable short or medium-term AML/CFT strategy for African countries. The ADB can play a role in helping countries of the region develop alternatives to these obtrusive AML/CFT methods and, in the long term, promote comprehensive financial sector reform that will begin to address the issues.
- 2.38 In theory, it may be possible to reduce the use of cash by improving the efficiency, reliability and accessibility of the national banking systems. Promoting greater access for all to sound, well regulated and accessible financial services is a legitimate development objective, but it is one that will not necessarily be realized in the short term. However, given the current state of financial institutions in most African countries that approach would seem to provide a rather weak basis on which to build their own short or medium-term AML/CFT strategies.
- 2.39 A related issue is that of the cross-border transportation of cash by terrorists and other criminals. In Africa, it is relatively easy for criminals, money launderers and terrorist groups to move money and other valuable assets across borders without drawing the attention of authorities. Cash couriers are obviously also used by criminals and traffickers to move criminal proceeds and to engage in illicit trafficking transactions. The FATF issued special recommendation IX which creates new obligations for countries to take measures to prevent terrorists and criminals from using cash couriers to finance their activities and launder their funds. A best practice note issued by the FATF in 2005 proposes a number of methods that

may alleviate the problem. They consist for the most part in implementing a compulsory declaration system requiring everyone crossing a border and transporting currency, bearer negotiable instruments or a value in excess of a certain threshold to declare it to the authorities. Countries must also develop effective measures to detect, stop or restrain, and where appropriate, confiscate the currency or value.

- 2.40 The efforts and resources required to implement such official declaration and interdiction systems are far from negligible, particularly in a context such as the one which prevails in Africa where the physical movement of cash across borders is often necessary to complete vital international business transactions and where international trade and exchanges are often poorly supported by existing financial institutions. Implementing elaborate schemes to control and prevent the movement of cash across borders is not a strategy that should be adopted lightly by most African countries. The legitimate role that cash transactions across borders currently play in most of Africa, the weak and inaccessible services offered by existing financial institutions to support small scale international trade, the weak institutional capacity of most African countries to effectively interdict such movement of cash, and the potential for increased corruption created by such a system would all dictate great caution in implementing such a strategy in the African context. That particular AML/CFT strategy, for most countries of the continent, would seem to promise very low returns in exchange for a considerable investment and a risk of potentially negative economic and social impacts.
- 2.41 Current FATF recommendations and other international standards do not appear to advance practical and realistic methods of preventing and detecting ML/TF in predominantly cash-based economies, or in countries where reliance on a parallel banking system and informal value transfer methods is the norm. These are issues that are very relevant to most African countries and call for African solutions. African organizations and, in particular, FSRBs will need to confront these challenges. Specific regional measures may have to be devised and implemented to reflect the nature of the financial systems, the problems they face, and the specific ways in which they are vulnerable to ML/FT. The Bank may be able to play an active role in the development of such African solutions.
- 2.42 In any country, the law enforcement and financial sector supervision elements of the AML/CFT are complementary. Financial sector supervision measures are primarily designed to prevent and detect ML/FT, while law enforcement agencies must deal with them once they are detected and use that information as a basis for the investigation and prosecution of the crimes and corruption the funds are related to. The interdependence of these two components is not always fully recognized and reflected in national AML/CFT strategies. The question is particularly relevant to most African countries because they tend to have a very limited law enforcement capacity and are under pressure to address several other law enforcement priorities besides ML/FT. Other agencies, such as the UNODC, may be better equipped than the Bank to offer assistance in that area. However, all agencies involved in helping RMCs develop an AML/CFT capacity should be aware of the serious limitations involved in any initiative that does not simultaneously address the need for an adequate law enforcement capacity.
- 2.43 It is generally acknowledged that a properly regulated and mobilized financial sector can make a substantial contribution to the prevention of ML/FT. It is often suggested also that a specialized capacity to investigate ML/FT can be successfully developed within a FIU, more or less outside of regular law enforcement organizations. These views are conveniently advanced by those who would narrowly target AML/CFT technical assistance activities and primarily focus them on developing a capacity in each country to participate in the international AML/CFT regime and to cooperate and contribute information and

assistance at the international level. The extent to which this is possible or even desirable for a given country is something that remains to be considered carefully. National AML/CFT strategies that fail to address the need to develop a broader law enforcement and prosecution capacity, as well as the need to regulate the financial sector are most likely misguided. They ignore the fact that the primary reason for fighting ML/FT is to prevent the crimes, corruption and terrorist acts which these practices hide and support. Care must therefore be taken to ensure that AML/CFT strategies developed within the African context are integrated in rather than competing with broader justice, security and legal sector reforms at the national level.

III – THE STRATEGY

- 3.1 The Bank’s mission is to contribute to the economic development and social progress of its regional members – individually and jointly. As the leading development finance institution in Africa, the Bank is dedicated to providing quality assistance to African Regional Member Countries in their poverty alleviation efforts. The Bank’s AML/CFT initiatives must therefore be grounded in the Bank’s overall strategy to promote development, alleviate poverty, promote good governance, strengthen financial institutions and prevent corruption. The Bank has a role to play in facilitating needed reforms to the financial sector as a whole and in protecting that sector from the impact of crime, corruption and money laundering activities. This involves helping RMCs and their financial institutions, through financial sector reforms and other means, meet their international obligations and participate fully in the international AML/CFT regime. In areas where compliance with international standards is proving particularly difficult for African countries to achieve, the Bank can help develop solutions that are responsive to the unique challenges faced by African countries and adapted to their particular circumstances.
- 3.2 The Bank also has a fiduciary responsibility to protect its assets against potential misuse and ensuring that its own lending is not subjected to financial abuse or used to cover ML/FT.
- 3.3 The strategy adopted by the Bank involves taking action in four key areas. The Bank will:
 - Adopt measures to tighten the Bank Group’s fiduciary safeguards, its internal procedures and policies, and its audit function to ensure that its own lending is used for its intended purposes and is not subjected to financial abuse, corruption or money laundering.
 - Facilitate the implementation of international AML/CFT standards by RMCs and participate in regional and national AML/CFT capacity building initiatives in collaboration with other international organizations and development agencies.
 - Provide assistance to RMCs, directly and through FSRBs, in collaboration with other international organizations, in support of their efforts to develop AML/CFT laws and strategies in compliance with international standards and build an institutional capacity to implement these laws and strategies, including a capable financial investigation unit.
 - Support and assist the establishment of effective and operational sub-regional FSRBs.

A - Measures to Limit the Bank Group's Own Exposure to ML/FT

3.4 Because borrowing countries and institutions often lack the transparency and accountability needed to prevent and detect ML/TF or corruption activities, the Bank must take measures to guard against the risk of having its funds used for purposes other than those intended. The due diligence requirements of the Bank Group agreements provide a solid legal basis for incorporating some specific due diligence activities to prevent ML/FT. In order to identify and address specific vulnerabilities that the Bank may still have in that regard, it will:

- *conduct a focussed safeguards assessment in relation to lending and disbursement practices with a focus on the prevention of ML/FT activities and corruption;*
- *review the language currently used in loan and grant agreements and, if required, reformulate and strengthen the representations and covenants which the Bank typically includes in its legal documentation with a view to focussing more specifically on preventing fraudulent activities possibly related to ML/FT or corruption. (In the case of loans to private banks for on-lending, looking at contractual language that imposes a similar due diligence requirement on these private institutions);*
- *strengthen internal controls and due diligence practices to safeguard bank funds, including considering the possibility of introducing an enhanced – computerized - AML/CFT due-diligence system, based on checklists or a “red-flag” system;*
- *facilitate due diligence exercise in identifying transactions potentially involved in terrorist activities by ensuring broad access within the bank to an up-to-date CFT checklist (possibly by subscribing to the services of a provider such as World-Check, as business background and intelligence screening service);*
- *prepare appropriate reporting guidelines for staff members to identify suspicious circumstances that may involve ML/FT;*
- *define the roles of the Bank's Anti-Corruption and Fraud Investigation Division and the Oversight Committee on Corruption and Fraud (OCCF) in relation to ML/FT and define clear procedures for instigating and reporting on investigations;*
- *design information and training programs for Bank staff to increase its awareness of the prevalence and seriousness of ML/FT activities in RMCs, of the main ML/FT methods being used, and of the link between anti-money laundering measures and other efforts to prevent corruption;*
- *upgrade Bank staff's capacity to conduct various due diligence exercises and provide guidelines, as required, for the conduct of these exercises; and,*
- *define and strengthen the role of the Bank's AML/CFT Working Group in relation to Bank's internal AML/CFT measures.*

B – Measures to Facilitate the Implementation of AML/CFT Standards

- 3.5 The Bank endorses the FATF Forty Recommendations on ML and nine Special Recommendations on FT, as well as the relevant conventions of the UN. Together, these instruments establish an internationally agreed upon framework for AML/CFT initiatives and provide the context for the ADB's own AML/CFT strategy. The Bank recognizes that it must, as part of its role in promoting good governance, combating corruption and promoting necessary financial sector reforms, be guided by these standards.
- 3.6 The Bank needs to develop its own capacity to participate in the implementation of comprehensive AML/CFT strategies in Africa, incorporate AML/CFT issues in its policy dialogue with countries, provide effective support to RMCs through loan and TA activities, and coordinate its efforts with other relevant organizations. The Bank will increase its participation in regional AML/CFT initiatives and work more closely with FSRBs.
- 3.7 *Incorporating AML/CFT issues in policy dialogue with RMCs:* The Bank will incorporate issues of AML/CFT in its good governance and economic and sector work and address these issues, as appropriate, in its Country Strategy Papers (CSPs) and Public Expenditure Reviews (PERs). The Bank will incorporate AML/CFT issues in its policy dialogue with RMCs and include them in the Country Governance Profiles (CGP) that it develops. The Bank's general approach to these issues will be based on a combination of advocacy, dialogue, research and consultation with RMCs, BWIs, and national, regional and international stakeholders. This will be achieved through participation in and organization of conferences, seminars and senior level consultative meetings and workshops. To this end also, the Bank will collaborate with the IMF on ROSCs.
- 3.8 *Providing a focal point for AML/CFT activities:* Because the Bank is expected to take a more active role in facilitating the implementation by RMCs of AML/CFT measures, it will establish a focal point for these activities within OSGE and streamline staff attendance and participation in regional and international AML/CFT meetings and activities. The role of the Bank's Existing AML/CFT Working Group/Task Force will be reviewed and strengthened in order to facilitate the internal, institution-wide, coordination of AML/CFT activities.
- 3.9 *Providing support for research:* The Bank will also support research, in collaboration with FSRBs and other institutions, on the nature of ML/FT activities in Africa and on their impact on financial institutions and on governance. This may include studies on: the linkages between corruption and ML; the effectiveness of specific AML/CFT measures as applied in the African context; the particular ML/FT vulnerabilities associated with cash-based economies, alternative remittance systems, and informal value transfer systems as they exist in Africa; or, the means to address these vulnerabilities through suitable approaches adapted to particular circumstances of African countries.
- 3.10 *Electronic database:* To support the above activities and to provide a AML/CFT resource for RMCs, the Bank will develop and maintain an up-to-date, web-accessible, electronic database of conventions, treaties, regional plans of action and political declarations, technical assistance tools, national legislations and best practices related to AML/CFT that are relevant to Africa.

C – Measures to Assist RMCs

- 3.11 In the medium to long term, African countries without an operational AML/CFT capacity will suffer some serious consequences for not joining the international AML/CFT regime that is being consolidated in the rest of the world. Furthermore, their efforts to combat various forms of organized crime and corruption will remain unsuccessful unless they can take effective measure to prevent the laundering of the proceeds of these crimes. This can all have a very significant effect on the future development of countries that are left out of the international AML/CFT regime.
- 3.12 There is considerable variation among African countries in terms of their AML/CFT capacity although, at present and in most cases, that capacity is still very limited. There are also observable differences in the strength of the countries' respective commitment to implement effective AML/CFT mechanisms in compliance with international standards. Some countries have achieved noticeable progress in implementing the main elements of an AML/CFT regime, but most of these regimes remain undeveloped, under-resourced and inefficient, if not completely inoperative. There is room for regional initiatives, through FSRBs, to support and strengthen national efforts, where they are undertaken, and encourage other countries to follow suit. Countries in regions and sub-regions often share particular problems and can benefit from the development of cooperative solutions. By joining a sub-regional FSRB, they can also take part in mutual assessments as well as in joint training and capacity development activities. Helping countries participate in the activities of FSRBs and supporting these activities is therefore important.
- 3.13 In operationalizing its AML/CFT activities, the Bank is guided by its existing policies and strategies with respect to good governance and the fight against corruption. Capacity building activities are the logical focus of the Bank's AML/CFT activities. The Bank's AML/CFT activities in RMCs will continue to be developed with due regard to the country's circumstances and needs, the state of its financial, legal and law enforcement institutions, and the availability of budgetary and human resources. In cooperation with relevant multilateral, regional and specialized organizations, the Bank will engage itself in lending and non-leading activities, as well as in economic sector capacity development and policy dialogue activities to help RMCs develop their own AML/CFT capacity as well as their ability to participate more fully in the global AML/CFT regime.
- 3.14 The Bank has not yet been involved in major AML/CFT projects, but it will seek, through dialogue with RMCs and regional organizations, to identify measures it can take to complement the efforts of other agencies. In doing so, it will be guided by the AML/CFT priorities identified by the 2006-2010 program of action to address crime and security issues affecting development adopted at the Round Table for Africa held in Nigeria in September 2005. The Bank's principal methods of assistance will continue to be through loans, grants and technical assistance activities.
- 3.15 The RMCs expectations of AML/CFT assistance from the ADB are likely to grow and the Bank is preparing itself to soon deal with more requests for that kind of assistance. The Bank may have to set priorities for its own interventions. Requests for assistance are likely to focus on awareness raising and strategic planning measures, activities to establish or strengthen AML/CFT legal, regulatory, and institutional frameworks, capacity building initiatives to build capacity in responsible institutions (financial supervision and law enforcement), training and information exchange initiatives, and research. Other organizations are currently involved in all of these areas and the Bank will need to engage with them in discussions which will help the Bank set its priorities for action and avoid unnecessary duplication.

- 3.16 The Bank will determine and communicate what it will propose as the main focus of the assistance it is offering to provide to RMCs. It will do so progressively based on policy dialogues with RMCs and consultations with FSRBs and other relevant international organizations. The Bank will support, as necessary, FSRB-led regional exercises to identify the RMCs' technical assistance needs and rely on the results of these exercises to plan its own activities
- 3.17 Generally speaking, and in line with the priorities already identified by African leaders, that assistance will focus on measures to:
- *support the creation of, and enhancing capacity of, existing national multidisciplinary committees and the preparation of national comprehensive national AML/CFT strategies, setting key objectives for the RMC and the related institutional framework to be established;*
 - *help integrate the issue of money laundering into national development plans and national strategies to combat corruption through policy based loans and dialogue.*
 - *support training and capacity building activities in the areas of legal reform, financial sector reform and governance, and justice;*
 - *support the development of FIUs by RMCs;*
 - *help design and fund specific TA projects for financial and other institutions (regulatory authorities, bar and professional associations, FIUs, tax authorities, law enforcement, judiciary) at the national and regional levels;*
 - *support the implementation of regional and national measures, adapted to the African Context, to prevent abuses of informal remittance systems; and,*
 - *support training and capacity building to facilitate international AML/CFT Cooperation (freezing and seizure of assets, assets forfeiture, assets return, ongoing cooperation between FIUs, anti-corruption authorities, and law enforcement agencies, mutual legal assistance and extradition, witness protection, and exchange of information and intelligence).*
- 3.18 The Bank will upgrade its staff capacity to provide advice to and engage in dialogue with RMCs on AML/CFT initiatives. It will develop a Bank-wide capacity to develop, review and monitor specific AML/CFT initiatives and projects and develop guidelines to guide the work and decisions of its staff with respect to these initiatives.

D – Measures to Assist Effective Operation of Sub-regional FSRBs

- 3.19 Four FSRBs have been established by RMCs to support their AML/CFT initiatives (see *Appendix 3*). They vary in strength, resources and overall capacity. So far, their efforts have been limited to advocacy, awareness raising and a limited amount of training. Not all African countries have joined an FSRB. At present, some sub-Saharan African countries do not yet belong to any sub-regional group. They should be encouraged to do so and be provided assistance as required.
- 3.20 The FSRBs have begun the process of identifying the technical assistance needs of RMCs and have developed some survey instruments to facilitate that process (e.g. the needs

assessment exercise being developed by GIABA, or the TANA+ approach being suggested in Eastern and South Africa by ESAAMLG). The results of these efforts may also help the Bank understand these needs for assistance and plan its own initiatives. With proper funding the FSRBs can help develop and deliver programs that will address these needs.

3.21 The Bank will also support and assist the establishment of effective and operational FSRBs and foster coordination among them. This will include measures to:

- *offer financial, project-based, support to African FSRBs;*
- *encourage all countries that have not yet join a FSRB to do so; also support the EGMONT Group as well as encourage African FIUs to join the group;*
- *support, as necessary, the TA assessment exercises undertaken by FSRBs,*
- *promote and support the establishment of mutual evaluation processes within each of the FSRBs.*

E – Strategy Implementation and Monitoring

3.22 The Bank will take a number of short and medium-term actions to implement its AML/CFT strategy. It will:

- *develop a plan of action for the implementation of its AML/CFT strategy;*
- *designate the OSGE as the responsibility centre for the implementation of the strategy (in cooperation with the Bank’s AML/CFT Working Group and the Audit Department);*
- *identify, mobilize and allocate the resources required for implementing the strategy;*
- *define a mechanism for monitoring and reporting on the progress achieved in implementing the strategy, including developing appropriate monitoring indicators;*
- *develop an internal communication and training strategy to inform and train its staff about the strategy and the measures taken to implement it; and,*
- *enhance capacity of FSRBs and the Egmont Group to undertake mutual evaluation of countries under their jurisdictions.*

IV – CONCLUSION AND RECOMMENDATION

Following from the above, it is significant that the Bank’s activities against money laundering and the financing of terrorism be strengthened as a viable instrument for economic growth, poverty reduction and sustainable development in its RMCs. To this end, the Board is requested to approve the *Bank Strategy for Combating Money laundering and the Financing of Terrorism in Africa*.

FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING

THE FORTY RECOMMENDATIONS

A. GENERAL FRAMEWORK OF THE RECOMMENDATIONS

1. Each country should take immediate steps to ratify and to implement fully, the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention).
2. Financial institution secrecy laws should be conceived so as not to inhibit implementation of these recommendations.
3. An effective money laundering enforcement program should include increased multilateral cooperation and mutual legal assistance in money laundering investigations and prosecutions and extradition in money laundering cases, where possible.

B. ROLE OF NATIONAL LEGAL SYSTEMS IN COMBATING MONEY LAUNDERING

Scope of the Criminal Offence of Money Laundering

4. Each country should take such measures as may be necessary, including legislative ones, to enable it to criminalise money laundering as set forth in the Vienna Convention. Each country should extend the offence of drug money laundering to one based on serious offences. Each country would determine which serious crimes would be designated as money laundering predicate offences.
5. As provided in the Vienna Convention, the offence of money laundering should apply at least to knowing money laundering activity, including the concept that knowledge may be inferred from objective factual circumstances.
6. Where possible, corporations themselves - not only their employees - should be subject to criminal liability.

Provisional Measures and Confiscation

7. Countries should adopt measures similar to those set forth in the Vienna Convention, as may be necessary, including legislative ones, to enable their competent authorities to confiscate property laundered, proceeds from, instrumentalities used in or intended for use in the commission of any money laundering offence, or property of corresponding value, without prejudicing the rights of bona fide third parties.

Such measures should include the authority to : 1) identify, trace and evaluate property which is subject to confiscation; 2) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; and 3) take any appropriate investigative measures.

In addition to confiscation and criminal sanctions, countries also should consider monetary and civil penalties, and/or proceedings including civil proceedings, to void contracts entered into by parties, where parties knew or should have known that as a result of the contract, the State would be prejudiced in its ability to recover financial claims, e.g. through confiscation or collection of fines and penalties.

C. ROLE OF THE FINANCIAL SYSTEM IN COMBATING MONEY LAUNDERING

8. Recommendations 10 to 29 should apply not only to banks, but also to non-bank financial institutions. Even for those non-bank financial institutions which are not subject to a formal prudential supervisory regime in all countries, for example bureaux de change, governments should ensure that these institutions are subject to the same anti-money laundering laws or regulations as all other financial institutions and that these laws or regulations are implemented effectively.

9. The appropriate national authorities should consider applying Recommendations 10 to 21 and 23 to the conduct of financial activities as a commercial undertaking by businesses or professions which are not financial institutions, where such conduct is allowed or not prohibited. Financial activities include, but are not limited to, those listed in the attached annex. It is left to each country to decide whether special situations should be defined where the application of anti-money laundering measures is not necessary, for example, when a financial activity is carried out on an occasional or limited basis.

Customer Identification and Record-keeping Rules

10. Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names: they should be required (by law, by regulations, by agreements between supervisory authorities and financial institutions or by self-regulatory agreements among financial institutions) to identify, on the basis of an official or other reliable identifying document, and record the identity of their clients, either occasional or usual, when establishing business relations or conducting transactions (in particular opening of accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, performing large cash transactions).

In order to fulfill identification requirements concerning legal entities, financial institutions should, when necessary, take measures:

(i) to verify the legal existence and structure of the customer by obtaining either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity.

(ii) to verify that any person purporting to act on behalf of the customer is so authorised and identify that person.

11. Financial institutions should take reasonable measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction conducted if there are any doubts as to whether these clients or customers are acting on their own behalf, for example, in the case of domiciliary companies (i.e. institutions, corporations, foundations, trusts, etc. that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered office is located).

12. Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic or international, to enable them to comply swiftly with information

requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of criminal behaviour.

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

These documents should be available to domestic competent authorities in the context of relevant criminal prosecutions and investigations.

13. Countries should pay special attention to money laundering threats inherent in new or developing technologies that might favour anonymity, and take measures, if needed, to prevent their use in money laundering schemes.

Increased Diligence of Financial Institutions

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

15. If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

16. Financial institutions, their directors, officers and employees should be protected by legal provisions from criminal or civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the competent authorities, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

17. Financial institutions, their directors, officers and employees, should not, or, where appropriate, should not be allowed to, warn their customers when information relating to them is being reported to the competent authorities.

18. Financial institutions reporting their suspicions should comply with instructions from the competent authorities.

19. Financial institutions should develop programs against money laundering. These programs should include, as a minimum :

1. the development of internal policies, procedures and controls, including the designation of compliance officers at management level, and adequate screening procedures to ensure high standards when hiring employees;
2. an ongoing employee training programme;
3. an audit function to test the system.

Measures to Cope with the Problem of Countries with No or Insufficient Anti-Money Laundering Measures

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

21. Financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply these Recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.

Other Measures to Avoid Money Laundering

22. Countries should consider implementing feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

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

24. Countries should further encourage in general the development of modern and secure techniques of money management, including increased use of checks, payment cards, direct deposit of salary checks, and book entry recording of securities, as a means to encourage the replacement of cash transfers.

25. Countries should take notice of the potential for abuse of shell corporations by money launderers and should consider whether additional measures are required to prevent unlawful use of such entities.

Implementation and Role of Regulatory and other Administrative Authorities

26. The competent authorities supervising banks or other financial institutions or intermediaries, or other competent authorities, should ensure that the supervised institutions have adequate programs to guard against money laundering. These authorities should co-operate and lend expertise spontaneously or on request with other domestic judicial or law enforcement authorities in money laundering investigations and prosecutions.

27. Competent authorities should be designated to ensure an effective implementation of all these Recommendations, through administrative supervision and regulation, in other professions dealing with cash as defined by each country.

28. The competent authorities should establish guidelines which will assist financial institutions in detecting suspicious patterns of behaviour by their customers. It is understood that such guidelines must develop over time, and will never be exhaustive. It is further understood that such guidelines will primarily serve as an educational tool for financial institutions' personnel.

29. The competent authorities regulating or supervising financial institutions should take the necessary legal or regulatory measures to guard against control or acquisition of a significant participation in financial institutions by criminals or their confederates.

D. STRENGTHENING OF INTERNATIONAL CO-OPERATION

Administrative Co-operation

Exchange of general information

30. National administrations should consider recording, at least in the aggregate, international flows of cash in whatever currency, so that estimates can be made of cash flows and reflows from various sources abroad, when this is combined with central bank information. Such information should be made available to the International Monetary Fund and the Bank for International Settlements to facilitate international studies.

31. International competent authorities, perhaps Interpol and the World Customs Organisation, should be given responsibility for gathering and disseminating information to competent authorities about the latest developments in money laundering and money laundering techniques. Central banks and bank regulators could do the same on their network. National authorities in various spheres, in consultation with trade associations, could then disseminate this to financial institutions in individual countries.

Exchange of information relating to suspicious transactions

32. Each country should make efforts to improve a spontaneous or "upon request" international information exchange relating to suspicious transactions, persons and corporations involved in those transactions between competent authorities. Strict safeguards should be established to ensure that this exchange of information is consistent with national and international provisions on privacy and data protection.

Other forms of Co-operation

Basis and means for co-operation in confiscation, mutual assistance and extradition

33. Countries should try to ensure, on a bilateral or multilateral basis, that different knowledge standards in national definitions - i.e. different standards concerning the intentional element of the infraction - do not affect the ability or willingness of countries to provide each other with mutual legal assistance.

34. International co-operation should be supported by a network of bilateral and multilateral agreements and arrangements based on generally shared legal concepts with the aim of providing practical measures to affect the widest possible range of mutual assistance.

35. Countries should be encouraged to ratify and implement relevant international conventions on money laundering such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

Focus of improved mutual assistance on money laundering issues

36. Co-operative investigations among countries' appropriate competent authorities should be encouraged. One valid and effective investigative technique in this respect is controlled delivery related to assets known or suspected to be the proceeds of crime. Countries are encouraged to support this technique, where possible.

37. There should be procedures for mutual assistance in criminal matters regarding the use of compulsory measures including the production of records by financial institutions and other persons, the search of persons and premises, seizure and obtaining of evidence for use in money laundering investigations and prosecutions and in related actions in foreign jurisdictions.

38. There should be authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate proceeds or other property of corresponding value to such proceeds, based on money laundering or the crimes underlying the laundering activity. There should also be arrangements for coordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.

39. To avoid conflicts of jurisdiction, consideration should be given to devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country. Similarly, there should be arrangements for coordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.

40. Countries should have procedures in place to extradite, where possible, individuals charged with a money laundering offence or related offences. With respect to its national legal system, each country should recognise money laundering as an extraditable offence. Subject to their legal frameworks, countries may consider simplifying extradition by allowing direct transmission of extradition requests between appropriate ministries, extraditing persons based only on warrants of arrests or judgements, extraditing their nationals, and/or introducing a simplified extradition of consenting persons who waive formal extradition proceedings.

(Annex to Recommendation 9): List of Financial Activities undertaken by businesses or professions which are not financial institutions

1. Acceptance of deposits and other repayable funds from the public.
2. Lending.¹
3. Financial leasing.
4. Money transmission services.
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques and bankers' drafts...).
6. Financial guarantees and commitments.
7. Trading for account of customers (spot, forward, swaps, futures, options...) in:
 - (a) money market instruments (cheques, bills, CDs, etc.) ;

(b) foreign exchange;

(c) exchange, interest rate and index instruments;

(d) transferable securities;

(e) commodity futures trading.

8. Participation in securities issues and the provision of financial services related to such issues.

9. Individual and collective portfolio management.

10. Safekeeping and administration of cash or liquid securities on behalf of clients.

11. Life insurance and other investment related insurance.

12. Money changing.

Appendix 2**FINANCIAL ACTION TASK FORCE SPECIAL RECOMMENDATIONS
ON TERRORISM FINANCING**

Recognising the vital importance of taking action to combat the financing of terrorism, the FATF has agreed these Recommendations, which, when combined with the FATF Forty Recommendations on money laundering, set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts.

I. Ratification and implementation of UN instruments

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

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

II. Criminalising the financing of terrorism and associated money laundering

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

III. Freezing and confiscating terrorist assets

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

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

IV. Reporting suspicious transactions related to terrorism

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

V. International Cooperation

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

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

VI. Alternative Remittance

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

VII. Wire Transfers

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

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

VIII. Non-profit organizations

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- (i) by terrorist organisations posing as legitimate entities;
- (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

IX. Cash Couriers

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

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

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

Appendix 3

FSRBs in Africa

There are four sub-regional FSRBs in Africa. Three of them have been granted observer status to the FATF: the MENAFATF, the ESAAMLG, and the Intergovernmental Action Group against Money Laundering in West Africa (GIABA). The fourth group, the GABAC, is being established in the context of the CEMAC and the UMAC. It has not yet been granted observer status with the FATF.

MENAFATF: Middle East and North Africa Financial Action Task Force Against Money Laundering and Terrorist Financing

The Task Force was created in 2004. Its secretariat is located in Bahrain. The seventeen member countries include: Algeria, Bahrain, Egypt, Jordan, Kuwait, Lebanon, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, the United Arab Emirates, Yemen, Mauritania, Sudan and Iraq. The Plenary Meeting of Representatives of member states meets once a year to set policies, rules and procedures, to approve annual reports and work plans, to consider mutual evaluation reports of members' compliance with FATF standards, and identify technical assistance needs of member states and coordinate delivery of such assistance with countries and providers of assistances. The Task Force has developed a questionnaire to identify AML/CFT technical assistance needs and the survey is in progress. The Task Force also issues, from time to time, statements of best practices to assist member states in the development of effective AML/CFT measures that are in compliance with international standards and adapted to the circumstances of the region.

ESAAMLG: The Eastern and Southern Africa Anti-Money Laundering Group

This FSRB was established in 1999 at a meeting of Finance Ministers in Arusha. It is governed by a council of Ministers representing each of the member states. The group brings together representatives from the legal, financial and law enforcement fields to ensure that the development of comprehensive national AML/CFT strategies. It is involved in the identification of the technical assistance needs of member states. The Group meets regularly to review and develop work programs for the region and share information about patterns of money laundering in the region. The secretariat is located in Dar Es Salaam. ESAAMLG consists of 14 member states: the Republics of Botswana, Kenya, Malawi, Mozambique, Mauritius, Namibia, South Africa, Seychelles, Tanzania, Uganda, Zambia, and Zimbabwe, and the Kingdoms of Lesotho and Swaziland. With the exception of Kenya, Seychelles and Uganda, all the members countries are also members of the South African Development Community (SADAC).

The Group has developed a strategic plan for 2005-2008 which identifies seven key objectives to speed up the implementation of AML and CFT standards based on a detailed analysis of the main issues in the region including strengths, weaknesses and main challenges. At the heart of the initiative is the recognition of the need to identify regional priorities in implementing FATF recommendations and to assist countries in developing and implementing national AML/CFT strategies.

The Group has developed a proposed process for technical assistance needs analysis for the member states (TANA + process). The implementation of the needs analysis process should be completed within 18 to 24 months.

GIABA: Intergovernmental Action Group against Money Laundering in West Africa

In West Africa, the GIABA was formally launched by the Economic Community of West African States (ECOWAS) in 2004. In January 2006, the mandate of the Group was expanded to include responsibility for leading the regional efforts to combat terrorist financing. The GIABA has requested to be recognized as an FSRB by the FATF. It is governed by a Council of Ministers. Its secretariat, located in Dakar, coordinates regional cooperation activities across the membership, offers training seminars for FIU staff and other professionals and awareness raising events and is about to undertake an evaluation of the member's technical assistance requirements. The current membership includes Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Guinea Conakry, Gambia, Ghana, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. The Group has an approved program of work for 2005-06. In the not too distant future, the GIABA will facilitate, as required, self assessments by Member States and the eventual conduct of mutual evaluations on its members.

GABAC : Groupe d'Action contre le Blanchiment d'Argent en Afrique Centrale

In March 2002, in Central Africa, the Communauté Économique et Monétaire de l'Afrique Centrale (CEMAC) adopted a resolution establishing the GABAC. The group is not yet operational.

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