

ASIAN DEVELOPMENT BANK

ENHANCING THE ASIAN DEVELOPMENT BANK'S ROLE IN COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM

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ABBREVIATIONS

ADB	Asian Development Bank
AfDB	African Development Bank
AML	anti-money laundering
APEC	Asia-Pacific Economic Cooperation
APG	Asia/Pacific Group on Money Laundering
BPMSD	Budget, Personnel and Management Systems Department
CFT	combating the financing of terrorism
CICAD	Inter-American Drug Abuse Control Commission
COSO	Central Operations Services Office
CSP	country strategy and program
CSPU	country strategy and program update
DMC	developing member country
EBRD	European Bank for Reconstruction and Development
FATF	Financial Action Task Force on Money Laundering
FATF 40	Forty Recommendations of FATF
FIU	financial intelligence unit
FSAP	Financial Sector Assessment Program
FSRB	FATF-style regional body
FT	financing of terrorism
GAFISUD	Financial Action Task Force of South America
IADB	Inter-American Development Bank
IFI	international financial institution
IMF	International Monetary Fund
KYC	know-your-customer
ML	money laundering
NBFI	nonbank financial institution
NCCTs	non-cooperative countries and territories
OFC	offshore financial center
OGA	Office of the General Auditor
OGC	Office of the General Counsel
PSOD	Private Sector Operations Department
RETA	regional technical assistance
RSDD	Regional and Sustainable Development Department
SCSP	subregional cooperation strategy and program
SCSPU	subregional cooperation strategy and program update
STR	suspicious transaction reporting
TA	technical assistance
TD	Treasurer's Department
UN	United Nations

NOTE

In this report, "\$" refers to US dollars.

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EXECUTIVE SUMMARY

Over the past several years, the international community has become increasingly concerned about the growing problems of money laundering (ML) and the financing of terrorism (FT). ML and FT constitute global problems affecting both developed countries and the Asian Development Bank's (ADB) developing member countries (DMCs), and assistance in combating these financial crimes is urgently needed by many DMCs. The international community's concern with the growing incidence of ML and FT arises from the fear that such activities could seriously jeopardize the integrity of national financial systems and hamper economic development including strategies for poverty reduction.

In the context of its mandate to promote good governance, ADB was one of the first multilateral development banks to address the ML problem, directly and indirectly, through regional and country assistance programs. The Asian Development Fund Donors' meeting in September 2000 requested ADB to prepare a policy paper proposing an even larger role in anti-money laundering (AML) for ADB.

This paper proposes a policy for an enhanced role of ADB in combating ML and FT in the Asian and Pacific region to complement the international efforts already initiated. The Board of Directors discussed the Working Paper on 13 September 2002.

ADB's own recent activities in assisting its DMCs to combat ML have been undertaken within the broader context of its existing policies and strategies to facilitate poverty reduction, promote good governance and anticorruption, and strengthen national financial systems. Thus, these activities have been incorporated, as appropriate, as an integral part of ADB's operational programs and country strategies in a limited number of DMCs that have requested assistance in their efforts to combat ML.

Given that both ML and FT are typically committed through abuse of financial institutions, thereby undermining financial sector governance, and that there are some common approaches and measures to prevent, detect, and counter them, the fight against ML and FT calls for the adoption of a consolidated strategy and approach. Several international, regional, and specialized bodies, among others the Financial Action Task Force on Money Laundering (FATF), the United Nations, the International Monetary Fund (IMF), the World Bank, and FATF-style regional bodies, have in close collaboration developed a number of strategies and instruments depending on their respective mandates.

In line with these initiatives, it is timely for ADB to review and strengthen its own assistance to DMCs in response to ever-increasing requests for assistance, within its mandate as an international financial institution. However, it is likely that ADB's role will be more prominent in the AML area than in combating the financing of terrorism (CFT) for at least two reasons: First, the magnitude of the ML problem is believed to be much larger than the FT problem, at least in most of the Asian and Pacific region. Second, CFT involves more law enforcement issues that do not fall readily within the mandate or expertise of ADB.

In formulating its role, ADB should be guided by a number of principles: First, it should locate and implement its AML/CFT activities within the broader context of its existing goals, policies, and strategies for assisting DMCs such as poverty reduction, strengthening financial systems, and promoting good governance and anticorruption. This will ensure that ADB's work on AML/CFT does not compete with or override existing operational priorities or divert scarce financial and human resources. Second, ADB should not attempt to duplicate the ongoing efforts and programs of IMF, the World Bank, FATF, and the Asia/Pacific Group on Money Laundering. It should instead seek to identify additional measures that it might usefully take to complement the efforts of these other agencies, either through its lending operations or training of government officials and other forms of technical assistance. Finally, ADB's role should also be tailored to take account of the special problems and circumstances faced by the Asian and Pacific DMCs, as highlighted by the country studies under regional technical assistance no. 5967. Notable among these problems and circumstances are lack or weakness of AML/CFT laws, weak institutional capacity, and lack of specialized and sustainable training for government officials to effectively implement and enforce AML/CFT laws.

Guided by the above principles, this paper discusses the policy, which has four key elements: (i) assisting DMCs in establishing and implementing effective legal and institutional systems for AML/CFT, (ii) increasing collaboration with other international organizations and aid agencies, (iii) strengthening internal controls to safeguard ADB's funds, and (iv) upgrading ADB's staff capacity. This paper will also discuss the implementation of the policy and resource implications.

I. THE POLICY CONTEXT

A. The Impetus for an Anti-Money Laundering/Combating the Financing of Terrorism Policy

1. Over the past several years, the international community has become increasingly concerned about the growing problem of money laundering (ML) and the financing of terrorism (FT). The September 11, 2001 terrorist attacks in the United States revealed that a pervasive international financial network was engaged in the FT. ML and FT constitute global problems affecting both developed countries and developing member countries (DMCs), but assistance in combating these financial crimes is urgently needed by many DMCs. ML and FT have transnational elements, as they are frequently characterized by the movement of money or value between jurisdictions. The international community's concern with the growing incidence of ML and FT arises from the fear that they could seriously jeopardize the integrity of national financial systems and hamper economic development including strategies for poverty reduction.

2. The Asian Development Fund Donors' meeting in September 2000 requested the Asian Development Bank (ADB) to prepare a policy paper proposing an increased role for ADB in anti-money laundering (AML). In the context of its mandate to promote good governance, ADB was one of the first multilateral development banks to address the ML problem, directly and indirectly, through regional and country assistance programs.

3. Since the September 11 attacks, the international community, led by the United Nations (UN) and the Financial Action Task Force on Money Laundering (FATF),¹ has initiated a number of measures for combating the financing of terrorism (CFT), in addition to those already in place for AML. The International Monetary Fund (IMF) and the World Bank have also taken a number of steps towards supporting the work of the UN and FATF. For its part, ADB has strongly supported and joined the accelerated global efforts for CFT. In November 2001, President Tadao Chino sent a letter to all the Governors of ADB confirming ADB's support for the efforts against terrorism and its firm commitment to prevent financial and economic support to entities and persons involved in, or who facilitate the work of, terrorist groups. The letter emphasized that ADB's funds must not be used for or by any entity or individual involved in or supporting the work of terrorist groups. ADB staff have participated actively in several international meetings convened by FATF, the Asia/Pacific Group on Money Laundering (APG), the Association of Southeast Asian Nations, and the Asia-Pacific Economic Cooperation to consider accelerated and stronger measures for CFT.

4. This paper proposes a policy for an enhanced ADB role in combating ML and FT in the Asian and Pacific region to complement the international efforts already initiated. The proposed policy seeks to confirm and develop ADB's already established important role in combating ML as part of its overall policies and strategies to assist its DMCs to reduce poverty, strengthen their financial systems, and promote good governance and anticorruption. The Board of Directors discussed the Working-Paper on 13 September 2002.

¹ Paras. 29-32 discuss more details about FATF and its activities.

B. Money Laundering

5. ML is the processing of the proceeds of crime so as to disguise their illegal origin.² Criminals launder funds for two reasons: (i) to separate such funds from the crimes that generated them and thereby to avoid criminal prosecution, and (ii) to protect those funds from seizure and confiscation by law enforcement authorities. The process of ML normally involves three stages: (i) placement—the criminal introduces the proceeds of the crime into the financial system; (ii) layering—a series of transactions occur to convert or transfer the funds to other locations and financial institutions, including offshore financial centers (OFCs); and (iii) integration—the funds reenter the legitimate economy as “clean” money, and the criminal is then able to freely use this money to invest in real estate or luxury assets, or to enter into new business ventures.

6. International concern over ML originally grew out of efforts to eradicate trafficking in narcotic drugs under the auspices of the UN. Subsequently, this concern was broadened to cover all or most serious crimes. In the Asian region, drug trafficking has long been believed to be the main source of ML as well as other sources: organized crime, gambling, bribery, tax evasion, prostitution, and trafficking in women and children. In the Pacific islands, there is growing evidence that external organizations and individuals including foreign crime syndicates are the principal source of ML. Under national AML laws, the ML crime is usually formulated by reference to designated predicate offenses. Predicate offenses are usually defined by (i) the enumeration of a list of serious offenses such as drug trafficking, smuggling, prostitution, theft, fraud, embezzlement, bribery, tax evasion, terrorism, and gambling; or (ii) reference to all serious offences that carry a minimum penalty such as one-year’s imprisonment or a specified fine, or both. The objective of international efforts against ML is not simply to stop ML, but, more importantly, to prevent or eradicate the predicate offenses themselves and to deny criminals the opportunity to enjoy the fruits of their crimes.

7. The usual pattern of ML essentially consists of depositing funds into banks and then arranging wire transfers of those funds to other financial institutions, often in foreign jurisdictions. However, as law enforcement efforts tighten the noose, money launderers have shown determination and ingenuity in devising new techniques to launder their funds. Some techniques are more difficult to detect, and present law enforcement authorities with special problems and challenges in collecting and presenting evidence to prosecute ML crimes.

8. Law enforcement efforts to track down, freeze, and confiscate the proceeds of crime have been hampered by the movement of some funds through informal financing channels or alternative remittance systems that operate outside the formal banking system and are therefore free from regulatory oversight. Some of these systems allow their users to transfer money or value across borders with minimal or no physical movement of money or paper transactions. The transactions thereby escape the scrutiny of financial regulators and law enforcement authorities. While this informal system is widely used for transfers of legitimate funds, it is also believed to be one of the key channels for ML and FT because of the anonymity that it provides.

9. ML typology exercises carried out in recent years have also revealed the emergence of new ML techniques that have also effectively escaped regulatory

² This definition is used by FATF: See the FATF website at <http://www.fatf-gafi.org>.

oversight and law enforcement authorities. The techniques include the use of Internet gambling and other Internet “services”; on-line banking; trusts, international business companies, shell companies, and other noncorporate vehicles, using local proxies to shield the true beneficial owners; “gatekeepers” such as lawyers, accountants, financial consultants, and securities and insurance professionals; new payment technologies such as electronic purses and Smartcards; trade and false invoicing for the supply of goods and services; real estate; vehicles; and gold and other precious metals.³

C. Financing of Terrorism

10. In the aftermath of the September 11 attacks, the key issue for finance ministers and financial regulatory authorities worldwide is the criminal use of the banking system and informal financial networks to channel funds to finance terrorism.⁴ There has always been some suspicion that secret and fictitious bank accounts were being used to fund terrorist activities, but investigations since September 11 have revealed the existence of a pervasive financial foundation for terrorists that uses business enterprises, charities, religious groups, trusts, educational and research institutes, political groups, and individuals.

11. In examining FT, it is important to distinguish two types: FT through ML and FT through the use of legitimate funds. If the criminal proceeds of a predicate offense were used to finance FT, this would constitute both ML and FT, and would be caught by the provisions of most national AML laws.

12. The second type of FT involves the use or abuse of legitimate funds to finance terrorism. The ability to monitor and prevent such types of financial abuse has been hampered by lack of effective legal systems that impose strict rules of transparency, accounting, and auditing.

D. Negative Effects of Money Laundering⁵

13. The negative economic effects of ML on economic development are difficult to quantify, yet it is clear that such activity damages the financial sector institutions that are critical to economic growth; reduces productivity in the economy's real sector by diverting resources and encouraging crime and corruption, which slow economic growth; and can distort the economy's external sector—international trade and capital flows—to the detriment of long-term economic development. Developing countries' strategies for

³ A detailed discussion of ML trends and typologies is provided in FATF. 2002, *Report on Money Laundering Typologies, 2001-2002*; and FATF. 2001, *Report on Money Laundering Typologies, 2000-2001*.

⁴ There is more than one definition of the financing of terrorism. The United Nations International Convention for the Suppression of the Financing of Terrorism (1999) stipulates in its Article 2 as follows: "Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: (a) an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or (b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act."

⁵ This section is substantially identical to the summary taken from an economic research report of the same title prepared under Regional Technical Assistance No. 5967: Countering Money Laundering in the Asian and Pacific Region.

establishing OFCs as vehicles for economic development are also impaired by significant ML activity through OFC channels. On the other hand, effective AML policies reinforce a variety of other good-governance policies that help sustain economic development, particularly by strengthening the financial sector.

14. **The Financial Sector.** A broad range of recent economic analyses all point to the conclusion that strong developing country financial institutions—such as banks, nonbank financial institutions (NBFIs), and equity markets—are critical to economic growth. Such institutions allow for the concentration of capital resources from domestic savings—and perhaps even funds from abroad—and the efficient allocation of such resources to investment projects that generate sustained economic development.

15. ML impairs the development of these important financial institutions for two reasons. First, ML erodes financial institutions themselves. Within these institutions, there is often a correlation between ML and fraudulent activities undertaken by employees. At higher volumes of ML activity, entire financial institutions in developing countries are vulnerable to corruption by criminal elements seeking to gain further influence over their ML channels. Second, particularly in developing countries, customer trust is fundamental to the growth of sound financial institutions, and the perceived risk to depositors and investors from institutional fraud and corruption is an obstacle to such trust.

16. The adoption of AML policies by government financial supervisors and regulators, as well as by banks, NBFIs, and equity markets themselves, will not only protect such institutions from the negative effects of ML, but also reinforce the other good-governance practices that are important to the development of these economically critical institutions. Indeed, several of the basic AML policies, such as know-your-customer (KYC) rules and strong internal controls, are also fundamental, long-standing principles of prudential banking operation, supervision, and regulation.

17. **The Real Sector.** Aside from eroding developing countries' financial sectors, ML has a more direct negative effect on economic growth in the real sector by diverting resources to less productive activities and by facilitating domestic corruption and crime, which in turn depress economic growth.

18. As can be seen from the various ML typology reports, money laundered through channels other than financial institutions is often placed in what are known as "sterile" investments—real estate, art, antiques, jewelry, and luxury automobiles—or investments that generate little additional productivity for the broader economy. For developing countries, the diversion of such scarce resources to less productive domestic assets or luxury imports is a serious deterrent to economic growth. Moreover, criminal organizations can transform productive enterprises into sterile investments by operating them for the purposes of laundering illicit proceeds rather than as profit-maximizing enterprises responsive to consumer demand and worthy of legitimate investment capital.

19. Within developing economies, ML also facilitates crime and corruption, which are antithetical to sustainable economic growth. Just as an efficient financial sector is a key contributor to a country's economic development, an efficient AML regime should raise the transaction costs associated with ML and thus help deter crime by making it less profitable. As numerous studies and statistical and anecdotal evidence have demonstrated, substantial crime and corruption act as a brake on economic

development. Other studies have shown that AML policies can prevent this adverse situation.

20. **The External Sector.** Unabated ML can also impair a developing country's economy through the country's trade and international capital flows. The well-recognized problem of illicit capital flight from developing countries is typically facilitated by either domestic financial institutions or by foreign financial institutions ranging from OFCs to major money-center institutions such as those in New York, London, or Tokyo. Given that illicit capital flight drains scarce resources from developing economies, transnational ML activity impairs developing-country growth. On the other hand, there is little evidence that the imposition of AML policies in a given jurisdiction spurs a significant flight of capital to more lax jurisdictions. Moreover, just as the confidence that developing-country citizens have in their own domestic financial institutions is critical to economic growth, the confidence that foreign investors and foreign financial institutions have in a developing country's financial institutions is also important for developing economies because of the role such confidence plays in investment decisions and capital flows.

21. ML can also be associated with significant distortions to a country's imports and exports. On the import side, criminal elements often use illicit proceeds to purchase imported luxury goods, either with laundered funds or as part of the process of laundering such funds. Such imports do not generate domestic economic activity or employment, and in some cases can artificially depress domestic prices, thus reducing the profitability of domestic enterprises.

22. **Offshore Financial Centers as a Development Strategy.** Over the past decade, dozens of OFCs have been created as part of developing countries' (or territories') efforts to develop their domestic economies through the provision of international financial services. These OFCs can be classified along a spectrum from "notional" OFCs that provide minimal financial services and are simply a jurisdiction in which "nameplate" operations may be established to "functional" OFCs that provide a wide range of value-added financial services.

23. Studies of the effectiveness of establishing an OFC as an economic-development strategy have shown that notional OFCs contribute little to the surrounding economy and do not form the basis for sustained economic growth. First, notional OFCs are virtually costless to establish, and therefore competition among them for customers is severe. Second, because they provide little value-added services, notional OFCs generate almost no economic demand for the surrounding "real" economy in terms of employment, goods, or services.

24. On the other hand, truly functional OFCs require significant investments in infrastructure—communication facilities and even a skilled labor force. Thus, their number is small and the commercial returns to the ones that emerge as strong competitors are high. Moreover, functional OFCs benefit their surrounding "real" economies through their demand for goods, services, and an educated workforce to support the OFCs' value-added activities.

25. This distinction between notional and functional OFCs becomes critical in assessing the economic effect of ML on OFCs as an economic development tool. ML per se does not require the more costly value-added services of a functional OFC, and therefore may gravitate to merely notional OFCs—the very type of OFC least able to

contribute to the country's real economy. In contrast, legitimate international capital is more likely to require the services of a functional OFC and will be deterred from making extensive use of an OFC tainted by widespread allegations of ML and the associated activities of fraud and corruption. Thus, for a country to implement a successful economic-development strategy based on the establishment of an OFC, the strategy must adopt measures to control ML activity through the OFC.

26. IMF studies suggest that large-scale money launderers can favor smaller countries for short periods of time, causing a sharp surge in financial activity. However, an equally sharp decline follows, resulting in severe macroeconomic instability, as local authorities are unable to take offsetting monetary or exchange-rate measures.

II. INTERNATIONAL EFFORTS TO COMBAT MONEY LAUNDERING AND THE FINANCING OF TERRORISM

27. For several years, a number of international agencies (with different mandates), and certain regional and specialized bodies have been assisting countries in their efforts to counter ML. Since September 11, 2001, some of these bodies have broadened their mandate to also assist in efforts to counter FT.

28. The following sections provide an overview of the main international efforts of the key standard-setting agencies and the Bretton Woods institutions, while the efforts of some other international, regional, and specialized bodies are described in Appendix 1.

A. Financial Action Task Force on Money Laundering and Affiliated Bodies

1. Financial Action Task Force on Money Laundering

29. The main international agency responsible for setting AML/CFT standards is FATF, an intergovernmental task force established by the Group of Seven (G-7) in 1989. FATF now comprises 29 member jurisdictions, 2 regional organizations, and 2 observer countries. ADB is one of the 15 observer international/regional organizations to the FATF. In 1990, FATF first published its Forty Recommendations (FATF 40) to give member and nonmember countries and financial institutions detailed guidelines and recommendations on how to deter ML. Appendix 2 has the full text of FATF 40. Notable among these recommendations are those calling on countries to criminalize ML; to punish both individuals and corporate entities; to waive bank secrecy laws to permit financial institutions to undertake suspicious transaction reporting (STR) and to protect those reporting from civil or criminal liability; to freeze, seize, and confiscate criminal proceeds; to exercise stronger prudential supervision; and to cooperate fully in international law enforcement efforts to combat ML; and those calling on financial institutions to strictly enforce customer identification KYC rules; to pay special attention to large, complex, or unusual transactions; to submit STRs; and to maintain transaction records. FATF 40 was revised in 1996 and is currently undergoing a major review.

30. FATF also carries out an annual review of ML trends and techniques. Another important activity of FATF is monitoring the implementation of AML measures in member countries. Based on FATF 40, FATF requested countries to carry out annual self-assessments and periodically conducted their own mutual evaluations to determine the

extent to which such countries are observing FATF 40. FATF has also established 25 Criteria for Defining Non-Cooperative Countries and Territories (NCCTs), which seek to identify detrimental rules and practices that impede international cooperation in the fight against ML. It is noted that, of the 11 countries or territories currently classified as NCCTs worldwide, the following 5 NCCTs are ADB's DMCs: Cook Islands, Indonesia, Myanmar, Nauru, and Philippines. In December 2001, additional counter-measures were applied by FATF members to Nauru.

31. At an extraordinary plenary meeting in Washington, DC, on 29-30 October 2001, FATF adopted eight Special Recommendations to counter FT (FATF 8). The full text is in Appendix 3. FATF 8 called on all countries to ratify the 1999 UN Convention for the Suppression of the Financing of Terrorism; to implement relevant UN resolutions, especially Security Council Resolution 1373 to criminalize the financing of terrorism, terrorist acts, and terrorist organizations; to freeze and confiscate the assets of terrorists and terrorist organizations; to require financial institutions to submit STRs related to terrorism and to closely monitor wire transfers by obtaining more detailed originator information and scrutinize them for suspicious activity; to regulate alternative remittance systems; to review the adequacy of their countries' laws to prevent abuse by nonprofit organizations such as charities; and, finally, to cooperate fully in international law enforcement efforts to combat FT. The two sets of Recommendations (FATF 40 and 8) form a comprehensive basis for effective AML/CFT action.

32. In October 2002, FATF decided to suspend the NCCT review process for any new countries (although it will continue monitoring for the countries currently classified as NCCTs) in light of the adoption of a new AML/CFT methodology for future assessments and the launch of a 12-month pilot program by IMF and the World Bank. After having endorsed the FATF 40 and 8, IMF and the World Bank have worked with FATF to develop a common methodology to assess the countries in the world in compliance with the FATF Recommendations. The adoption of the new comprehensive AML/CFT assessment methodology by the October 2002 Plenary Meeting will form the basis for increased collaboration among IMF, the World Bank, and FATF. These bodies and FATF-style regional bodies (FSRBs) which will adopt the common methodology, will use it to assess countries' compliance with the FATF 40 and 8.

2. FATF-Style Regional Bodies

33. The work of FATF has been supported by a number of FSRBs in Africa, Asia, the Caribbean, Europe, and South America. The relevant body for the region covered by ADB is APG, which was established in 1997.⁶ APG is the only Asia/Pacific regional group solely devoted to AML and CFT. The purpose of APG is to facilitate the adoption, implementation, and enforcement of internationally accepted standards for combating ML and FT. The work includes assisting jurisdictions in the region to enact laws criminalizing the laundering of the proceeds of crime and FT, mutual legal assistance, confiscation, forfeiture, and extradition. It also includes guidance in setting up systems for reporting and investigating suspicious transactions and help in establishing financial intelligence units. ADB closely cooperates with and supports the work of APG, and has participated as observer in its meetings.

⁶ See the APG website at <<http://www.apgml.org>>. This comprehensive new website was established under ADB's Regional Technical Assistance No. 5967: Countering Money Laundering in the Asian and Pacific Region.

B. The United Nations

34. The UN was the first international organization to initiate global action to combat ML. Concerned by the increased drug trafficking that resulted in the laundering of vast sums of criminal proceeds through the banking system, the UN adopted the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) in 1988. The convention included a provision calling for the criminalization of ML. In June 1998, the UN adopted the Political Declaration and Action Plan Against Money Laundering, seeking acceleration of international efforts for AML. In December 2000, the United Nations Convention Against Transnational Organized Crime was adopted in Palermo, Italy. This convention also called on states to outlaw the most common offenses, including ML, and for closer international cooperation in extradition, mutual legal assistance, transfer of proceedings, and joint investigations. The United Nations Office on Drugs and Crime's Global Programme Against Money Laundering has developed model laws and delivers technical assistance (TA) to UN member states to assist them in the implementation of the UN conventions relevant to AML and CFT.⁷

35. The UN has also been in the forefront of efforts over many years to combat terrorism and FT. There is already a substantial body of international treaty law, consisting primarily of 12 multilateral conventions aimed at criminalizing and thereby suppressing terrorist activities. The most relevant is the International Convention for the Suppression of the Financing of Terrorism, 1999 (FT Convention), which requires states to take steps to criminalize the financing of terrorists and terrorist acts. The convention stipulates that it is an offense if any person, by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used to carry out acts of terrorism within the scope of and as defined in nine specified conventions on terrorism.

36. On 28 September 2001, the UN Security Council adopted Resolution 1373, reaffirming its call to all states to sign, ratify, and implement the relevant international conventions criminalizing terrorism and FT. It also stipulated various other legal and financial measures for urgent implementation by states. As the FT Convention has still not been ratified by the majority of the signatory states,⁸ Resolution 1373 provides the primary legal basis for requiring all UN member countries to take action because, pursuant to Chapter VII of the UN Charter, a Security Council resolution taken in response to a threat to international peace and security is a decision that is legally binding on all members. Under Resolution 1373, the Security Council also established the Counter Terrorism Committee to closely monitor the compliance by member states with the Resolution.

C. The Bretton Woods Institutions

37. IMF and the World Bank have assumed a major role in supporting the efforts of FATF and the UN to combat ML and FT, and have intensified their efforts in recent years.

⁷ The United Nations Office for Drug Control and Crime Prevention was renamed the United Nations Office on Drugs and Crime (UNODC) on 1 October 2002.

⁸ The Convention came into force on 10 April 2002.

1. International Monetary Fund

38. In recent years IMF has intensified its efforts to assess and strengthen international financial systems. This has been facilitated in part by the development of the Financial Sector Assessment Program (FSAP) and its Offshore Centre Assessment Program. The latter is a voluntary program that assesses the adherence of OFCs to international financial standards.

39. In April 2001, the Board of IMF discussed the issue of money laundering and ways in which IMF can contribute to related international efforts. It was considered that IMF is well positioned to play an important role in protecting the integrity of the international financial system. Providing support to international efforts to combat money laundering was considered to be one way in which this objective could be achieved. It was decided that IMF should intensify its focus on relevant AML issues, establish a closer working relationship with the major international AML organizations and groups, and include AML concerns in some of its operational activities.

2. World Bank

40. The World Bank has substantially expanded its programs in the areas of anti-corruption, governance, and public financial management; and assisted countries in carrying out financial sector reforms focusing on legal, regulatory, and supervisory issues—particularly in the aftermath of the Asian financial crisis. Its financial sector lending and TA activities rapidly increased, through programs to strengthen legal, regulatory, supervisory, and judicial reforms and institutions, corporate governance, accounting and auditing, and market transparency.⁹ It has also focused on financial abuse in its economic and sector work and policy dialogue, and extended TA to member countries to strengthen their AML programs. Finally, it has initiated various measures to tighten its fiduciary safeguards to ensure that its own lending is used for the intended purposes and is not subjected to financial abuse. Under an action plan for AML and CFT approved by its Board in January 2002, the World Bank initiated a number of additional measures including upgrading and expanding staff capacity to respond to client requests for assistance in meeting international AML and CFT standards, linking AML/CFT assistance with country assistance strategies, and building technical capacity among national financial supervisors and other government officials involved in AML/CFT. Among these are knowledge sharing, awareness raising, and information exchange initiatives such as the Global Dialogue Series and AML/CFT conferences held in Moscow and Montevideo.

3. Joint International Monetary Fund and World Bank Initiatives

41. In May 1999, IMF, along with the World Bank, introduced the FSAP providing for joint IMF-World Bank assessments of the financial sectors of their common member countries. This voluntary program was designed to identify strengths, risks, and vulnerabilities in national financial systems and help promote the soundness of such systems. The FSAP assesses, among other things, members' adherence to internationally accepted financial standards, codes, and best practices. Work undertaken

⁹ For example, the World Bank established the Global Corporate Governance Forum with the Organization for Economic Cooperation and Development and participates in the International Forum on Accounting Developments, a broad-based public-private partnership.

in this regard has led to the development of a number of reports on observance of standards and codes focusing on financial sector standards, including those for the banking, insurance, and securities sectors.

42. In 2001, IMF and World Bank staff began working closely in consultation with FATF and other international standard-setting agencies to develop a methodology document that would provide a framework for AML/CFT assessments. The methodology is based largely on the FATF 40 and 8 but also draws on relevant UN Conventions and Security Council Resolutions and international standards established for the banking, insurance, and securities sectors. The text of the methodology document had been discussed for several months and was finally cleared by FATF at its Plenary Meeting in Paris in October 2002. It was subsequently formally endorsed by the Boards of IMF and the World Bank. Consistent with the instructions of these boards that their staff should not become involved in assessing the implementation of the criminal justice system and sectors that are not macroeconomically relevant, these aspects of the assessment are undertaken by independent AML/CFT experts that are not paid for or supervised by IMF/World Bank.

43. By November 2002, IMF and the World Bank launched a 12-month pilot program of AML/CFT assessments of the FATF 40 and 8 and accompanying reports on observance of standards and codes to be undertaken in the context of FSAPs and IMF's OFC assessments. The IMF and World Bank boards also decided to add the FATF 40 and 8 to the list of areas and associated standards and codes that are incorporated into their operational work. The assessments using the new methodology are being coordinated with FATF and FSRBs to reduce duplication of effort.

44. The World Bank and IMF also undertook an initiative to strengthen the coordination of TA for AML and CFT. During April 2002, they hosted a meeting of major contributors and providers of global AML/CFT TA to discuss coordination. The meeting discussed the development of mechanisms to enhance the effectiveness of AML/CFT TA through closer coordination and information exchanges. The two institutions are continuing their efforts in this area with a focus on regional approaches.¹⁰

D. ADB's Activities in AML

45. ADB's own recent activities in assisting DMCs to combat ML have been undertaken within the broader context of its existing policies and strategies to facilitate poverty reduction, promote good governance and anticorruption, and strengthen national financial systems. Thus, these activities have been incorporated, as appropriate, as an integral part of ADB's operational programs and country strategies in a limited number of DMCs that have requested assistance in their efforts to combat ML.

¹⁰ Participants at the first meeting held in Washington D.C. in April 2002 included most of major international and regional organizations and bilateral aid agencies involved in AML/CFT, including ADB. The meeting agreed that the coordination of TA and training needs should be organized on a regional basis through FSRBs. The World Bank and IMF have recently developed an online database to track AML/CFT TA requests and responses.

1. Overall Policy Setting

46. Poverty reduction is ADB's overarching goal. Thus, ADB's other strategic objectives will be pursued in ways that contribute most effectively to poverty reduction. Good governance has been identified as one of the three pillars of ADB's poverty reduction strategy. Without good governance, efforts at reducing poverty will not be effective. These principles have been clearly articulated in *Fighting Poverty in Asia and the Pacific: The Poverty Reduction Strategy of the Asian Development Bank*.¹¹

47. In October 1995, ADB became the first multilateral development bank to adopt a policy on governance.¹² The policy identified four elements of good governance—accountability, participation, predictability, and transparency—and allowed ADB to integrate governance dimensions more fully into its operations. In addition to supporting poverty reduction efforts, the governance policy became the basic building block for a cluster of good governance approaches, which subsequently included those on procurement, law and policy reform, participation of civil society, anticorruption, and public expenditures.

48. The implementation of ADB's governance policy was reviewed in October 2000.¹³ The review, which included a detailed analysis of ADB's projects with a major governance focus since 1995,¹⁴ concluded that ADB had laid the groundwork and had achieved some success. However, the review noted that the more difficult process of changing attitudes and behavior had also begun, and that progress would be slow and difficult. The success of ADB's efforts would depend largely on appreciation by DMC leadership of the benefits of better governance and their support for the incentives needed to bring about the necessary changes.

2. Loan and Technical Assistance Operations

49. Since the adoption of the governance policy, ADB has become involved, through both its loans and TA, in a fairly wide range of activities in governance. Examples of activities that have a bearing on ADB's current activities in AML and CFT are those dealing with public financial management; legal system reforms, enhancing capacity to implement laws and supporting private sector development; public accountability through strong anticorruption measures; improvement in accounting and auditing standards; and improving disclosure and transparency. A key element of good governance is strengthening governance in the financial sectors of DMCs. In the aftermath of the Asian financial crisis, ADB's activities have focused particularly on developing the soundness, safety, and integrity of financial institutions whose vulnerabilities had contributed in no small measure to that crisis.¹⁵ Sound and healthy financial institutions are key to promoting poverty reduction and economic growth.

¹¹ ADB. 1999. *Fighting Poverty in Asia and the Pacific: The Poverty Reduction Strategy of the Asian Development Bank*. Manila.

¹² ADB. 1995. *Governance: Sound Development Management*. Manila.

¹³ ADB. 2000. *Promoting Good Governance; ADB's Medium-Term Agenda and Action Plan*. Manila.

¹⁴ *Ibid.* Appendix I: Selected ADB Projects with a Major Governance Focus.

¹⁵ In relation to private sector operations, ADB, through the Private Sector Operations Department, follows best practices in the introduction of governance standards, among others (i) at the time of due diligence, (ii) enhancing compliance by borrowers, and (iii) supporting adequate disclosure practices and adoption of international accounting standards.

50. Initially, ADB's efforts in assisting DMCs to combat ML have been implemented primarily through its financial sector loan operations in a number of countries. To cite a few examples, under the financial governance reform program loan to Indonesia in 1998,¹⁶ the enactment of legislation to prevent ML was a prerequisite to disbursement of the third tranche. Likewise, the preparation of AML legislation was covenanted under the financial sector program loan to Samoa in 1998.¹⁷ In reviewing amendments to the Offshore Finance Center Act under the comprehensive reform program loan to Vanuatu, ADB's advice sought to strike a balance between the country's needs to attract genuine investment and the need to avoid a greater risk of ML.¹⁸ For the governance reform program loan to Nepal,¹⁹ the Government is expected to submit to the Parliament legislation on AML by the third tranche.

51. ADB's efforts in assisting DMCs to combat ML have also been channeled through three TAs, approved between 2000-2002, that seek to directly assist DMCs in identifying needed institutional and regulatory reforms and strengthening their AML regimes. The following paragraphs give a summary description of these projects.

a. TA 5967-REG: Countering Money Laundering in the Asian and Pacific Region

52. In December 2000, ADB approved regional technical assistance (RETA) to facilitate the adoption and implementation of AML measures based on internationally accepted standards in nine selected DMCs: Cook Islands, Fiji Islands, Indonesia, Marshall Islands, Nauru, Philippines, Samoa, Thailand, and Vanuatu. The RETA identified institutional and regulatory reforms needed in each of the nine countries, taking into account country assessments and evaluations conducted by FATF and APG. It established a comprehensive new web site for APG, and co-organized the 2002 annual meeting of APG in Brisbane, where ADB presented the findings of the RETA. A one-day training program on AML/CFT was conducted for about 30 officials from the nine countries and a few additional DMCs on this same occasion.

b. TA 3847-PHI: Strengthening the Anti-Money Laundering Regime

53. In March 2002, ADB approved TA to the Government of the Philippines for strengthening its AML regime. Building on the work of the RETA, the TA will prepare a time-based plan with milestones for implementing an effective AML regime, prepare a blueprint detailing the design and requirements for a STR system, provide for specialized training for a wide range of key institutions, and undertake and disseminate a background study that clearly and concretely identifies the costs to key constituencies of not establishing an effective AML regime. This project is currently under implementation.

¹⁶ ADB. 1998. *Report and Recommendation of the President to the Board of Directors on a Proposed Loan to Indonesia for the Financial Governance Reforms: Sector Development Program*. Manila.

¹⁷ ADB. 1998. *Report and Recommendation of the President to the Board of Directors on a Proposed Loan to Samoa for the Financial Sector Program*. Manila.

¹⁸ ADB. 1998. *Report and Recommendation of the President to the Board of Directors on a Proposed Loan to Vanuatu for the Comprehensive Reform Program*. Manila.

¹⁹ ADB. 2001. *Report and Recommendation of the President to the Board of Directors on a Proposed Loan to Nepal for the Governance Reform Program Loan*. Manila.

c. TA 3849-INO: Development of an Anti-Money Laundering Regime

54. In March 2002, ADB also approved TA to the Government of Indonesia for the development of an AML regime. It will build on the country-specific legal analysis from the RETA and support Indonesia's integration into a regional plan for AML. As Indonesia has now adopted a new AML law, the TA will support the next phase of implementing the new law, covering the issuance of implementing regulations, establishment of new institutions mandated by the law, and development of monitoring and database systems, especially for STRs; increase the skills base and institutional capacity necessary for an effective AML regime; and promote public awareness and understanding of ML and of the impact of the new law. This TA is currently under implementation.

d. Other Technical Assistance

55. Another example is TA 3890-PRC: Banking Laws and Regulations, which has a component dealing with laws against financial crimes such as ML. A number of requests for TA from other DMCs are being considered.

III. THE POLICY

A. Regional Context and Challenges

56. In assuming any role in the overall international efforts to combat ML and FT, it is important for ADB to identify and then address the unique challenges, needs, and circumstances faced by its DMCs in the Asian and Pacific region. By viewing the ML/FT problem in its regional context, ADB will be better able to determine what appropriate complementary measures it might usefully take in addition to those adopted at the global level, to address the specific needs of its DMCs.

57. The typology exercises carried out by FATF and APG have highlighted a number of the prominent features of the ML problem in the Asian and Pacific region. First, among the Asian DMCs, the primary source of ML is domestic criminal activity, while in the Pacific DMCs, ML appears to derive largely from external criminal activity. Second, informal financing mechanisms are quite prevalent in Asia. Third, the use of cash figures prominently in business and financial transactions; and cash smuggling across borders is believed to be significant.

58. In addition, the findings of RETA 5967 provide a useful perspective on the critical needs and problems faced by DMCs in combating ML. The nine countries presented a very interesting regional sample or cross-section of DMCs for analysis and, as such, enabled ADB to better understand the ML problem in its regional context and also to identify its own future role in assisting DMCs in this area.

59. The key findings of the RETA include the following:

- (i) There is considerable variance among the AML regimes in these countries. Major differences include limitations in the number of predicate

offenses, threshold amounts for STR, bank secrecy laws, little or no regulatory oversight over offshore entities, and insufficiency of sanctions. The main risk flowing from these wide variances in AML laws is that they enable criminals to engage in regulatory arbitrage (i.e., to choose to launder their funds through more lax jurisdictions) and also hinder international cooperation and mutual assistance efforts.

- (ii) Most AML laws focus on financial institutions, thereby leaving a major loophole that would effectively permit several other types of entities or persons (e.g., alternative remittance systems; international business corporations, shell companies, and trusts; real estate agencies; automobile dealers; jewelers; casinos; and “gatekeepers” such as accountants, financial advisers, and lawyers) to continue ML activities.
- (iii) AML laws are a necessary but not a sufficient condition for the establishment of a truly effective AML regime. Institutional capability in AML agencies to effectively implement AML laws is equally important, but in most of the countries surveyed this was still inadequate. In the small Pacific DMCs, the problem is particularly acute, and cries out for innovative solutions. In all countries, the need for additional TA to beef up organizational arrangements and develop systems and procedures is critical.
- (iv) Many of the AML agencies are “operating in the dark” in this relatively new and highly sophisticated area of AML, with little or no technical expertise at this time, particularly in the Pacific DMCs. To fill this skills gap, it is essential that TA be directed towards providing hands-on training in financial analysis, financial intelligence, and investigation techniques. The conduct of in-country training programs and secondment of local staff to established foreign AML agencies or FIUs would be highly desirable.
- (v) International cooperation and mutual assistance arrangements in the region are generally very weak. Given the transnational characteristics of ML, international cooperation and mutual assistance should be substantially strengthened to facilitate the investigation and prosecution of ML.
- (vi) Between the two groups of countries, priority should be given to addressing the critical needs of the Pacific countries, which, by dint of their small size, location, relatively weaker legal frameworks and institutional capacity, and larger offshore financial sector, have the most urgent need for TA.
- (vii) Social and cultural factors and business traditions in Asian and Pacific societies have also posed obstacles to enforcing customer identification requirements and STR. This is a problem that is best addressed through the holding of public workshops and public awareness programs to highlight the dangers posed by ML to the economy in general and to financial institutions in particular.

B. Operational Content of the Policy

60. ADB has been one of the international financial institutions (IFIs) that embarked at an early stage on efforts to combat ML in its DMCs. With the events of September 11, the international community has signified a new sense of urgency to address ML and FT. In particular, the UN Security Council and FATF have called on all states to implement a series of strengthened measures to combat FT. Given that both ML and FT are typically committed through abuse of financial institutions, thereby undermining financial sector governance, and that there are some common approaches and measures to prevent, detect, and counter them, the fight against ML and FT calls for the adoption of a consolidated strategy and approach.²⁰ As noted earlier, several international, regional, and specialized bodies—among others FATF, the UN, IMF, the World Bank, and FSRBs—have in close collaboration developed a number of strategies and instruments depending on their respective mandates.

61. In line with these initiatives, it is timely for ADB to review and strengthen its own assistance to DMCs in response to ever increasing requests for assistance, within its mandate as an IFI. However, it is likely that ADB's role will be more prominent in the AML area than in CFT for at least two reasons: First, the magnitude of the ML problem is believed to be much larger than the FT problem, at least in most of the Asian and Pacific region. Second, CFT involves more law enforcement issues that do not fall readily within the mandate or expertise of ADB. For this reason, IMF and the World Bank will also be less involved with the law enforcement aspects of AML/CFT.

62. ADB will now need to formulate a role for itself in the international AML/CFT efforts, building on the work it has already begun in the region. In formulating this role, ADB should be guided by a number of principles: First, it should locate and implement its AML/CFT activities within the broader context of its existing goals, policies, and strategies for assisting DMCs such as poverty reduction, strengthening financial systems, and promoting good governance and anticorruption. This will ensure that ADB's work on AML/CFT does not compete with or override existing operational priorities or divert scarce financial and human resources. Second, ADB should not attempt to duplicate the ongoing efforts and programs of IMF, the World Bank, FATF, and APG (such as assessments based on the new AML/CFT methodology). It should instead seek to identify additional measures that it might usefully take to complement the efforts of these other agencies, either through its lending operations or training of government officials and other forms of TA. Finally, ADB's role should also be tailored to take account of the special problems and circumstances faced by the Asian and Pacific DMCs, as highlighted by the country studies under RETA No. 5967. Notable among these problems and circumstances are lack of or weakness in AML/CFT laws, weak institutional capacity, and lack of specialized and sustainable training for government officials to effectively implement and enforce AML/CFT laws.

63. Guided by the above principles, Board approval is sought for the following policy, which has four key elements: (i) assisting DMCs in establishing and implementing effective legal and institutional systems for AML/CFT, (ii) increasing collaboration with other international organizations and aid agencies, (iii) strengthening internal controls to safeguard ADB's funds, and (iv) upgrading ADB's staff capacity.

²⁰ Examples of approaches common to AML/CFT include the KYC rule, STR, establishment of a financial intelligence unit, and international cooperation in information sharing.

1. Assisting DMCs in Establishing and Implementing Effective Legal and Institutional Systems for AML/CFT

a. Incorporating AML/CFT into Policy Dialogue

64. The first priority is to encourage the inclusion of AML and CFT issues in the policy dialogue with DMCs, where necessary and appropriate, particularly when DMCs request ADB's assistance in this area. In these cases, these issues should be explicitly incorporated into the country strategy and program and its update (CSP/CSPU), subregional cooperation strategy and program and its update (SCSP/SCSPU), and relevant sector and aid agency consultations.

65. The starting point for some DMCs where AML/CFT efforts are substantially delayed would be for their policy makers to seriously recognize the dangers and risks that ML/FT pose to their financial sector governance and integrity. Such recognition needs to be placed on a sound and comprehensive basis to achieve both poverty reduction and sustainable economic development. In DMCs where AML/CFT efforts have made certain progress, ADB's assistance will be required to further strengthen the AML/CFT regime and ensure the effective implementation in close coordination with other aid agencies concerned. In any event, in identifying the appropriate scope and methods of the assistance, ADB should take into account, as feasible, assessments carried out by international and regional organizations including FATF, APG, IMF, and the World Bank; and self-assessments by DMCs. Such an approach will provide for consistency among the concerned organizations and ADB in addressing AML/CFT matters, and will also facilitate cooperation by DMCs. In the course of the country dialogue, ADB should encourage all DMCs to actively participate in international and regional forums and activities on AML/CFT, starting with regional forums such as APG. This will enable DMCs to receive technical advice and guidance from such forums.

b. Providing Assistance

66. With regard to provision of assistance, the work of the principal standard-setting agencies assumes that international AML and CFT efforts need to be supported by TA from aid agencies to developing countries or countries in transition. Initially, FATF member countries have provided much of the TA on a bilateral grant basis. More recently, however, the needs for TA have become greater and more urgent, thus requiring more active interventions by international organizations. In the Asian and Pacific region, such a trend has naturally increased DMCs' expectations of ADB to play a greater role in provision of necessary assistance to them. ADB's assistance could be funded by TA grants; project, program, and TA loans; and/or funds provided by other sources under trust fund agreements administered by ADB. The assistance could be directed, for instance, to raise awareness of the risks that the issues pose; to establish or strengthen AML/CFT legal, regulatory, and institutional frameworks; to build institutional capacity in responsible institutions; to provide for the sustainable training programs for officials dealing with AML/CFT matters; and to conduct research studies and regional conferences, workshops, and seminars.

67. In the case of assistance through loans, the principal vehicle to be used will be financial sector loans. Despite a tendency for some DMCs to prefer TA grants to loans when requesting ADB's assistance for AML/CFT, the feasibility of the assistance through

loans should be studied because of the following merits: First, loans support the provision of the AML/CFT assistance in the broader context of financial sector governance and integrity, and ensure that the assistance will be in line with ADB's existing operational priorities. Second, the implementation period of loans is usually longer than that of TAs, which facilitates the reform efforts in the longer term. Third, loans are more feasible under the ADB's current financial situation than TA grant funds, which are extremely tight, unless additional TA resources specifically directed toward AML/CFT activities can be secured. To accelerate DMCs' concentrated efforts supported by political commitment, moderate use of loan covenants or tranche conditions (in the case of program loans) may be appropriate and useful, if carefully examined on a country-by-country basis.

68. The assistance through TA grants will need to be considered depending on the nature, urgency, and the priority of the request. Combinations of assistance through loans and TAs should be explored. Where common needs for assistance exist for a region or a subregion, a regional or subregional TA can be developed to provide the appropriate assistance. Which method of assistance to choose should be carefully considered, taking into account all the relevant factors, and should be discussed with the DMCs concerned.

2. Increasing Collaboration with Other International Organizations

69. As various international organizations and aid agencies work in the Asian and Pacific region, it is essential that ADB increase and strengthen its collaboration and cooperation with these organizations for at least three reasons: First, it will ensure greater consistency in strategy and approach to each DMC among all organizations. Second, it will ensure better coordination of respective assistance projects to the same DMCs, thereby avoiding duplication or conflict with other organizations. Third, it will enable ADB staff to keep fully up to date with the latest developments and strategies of these organizations and to share or exchange information on AML/CFT issues with them. To this end, it is believed that increased collaboration could best be achieved through the following measures:

a. Adopting AML/CFT Standards of FATF and the UN

70. As noted from the earlier discussion, different organizations have adopted a range of international standards and a variety of instruments—including international conventions, recommendations, guidelines, and best practices—for AML and CFT. To facilitate and guide ADB's future operational work on AML and CFT, it would be appropriate and desirable for ADB to adopt FATF 40 and 8 and the relevant UN conventions²¹ and Security Council resolutions²² as the primary international AML/CFT standards to guide ADB's operations, given the central standards-setting role of these organizations. Doing so will be in line with the decisions taken recently by IMF and the World Bank, and will ensure consistency among IFIs in their approaches and assistance to their common DMCs in this area. Similarly, it would be appropriate and desirable for ADB to adopt the comprehensive methodology for AML/CFT compliance assessment that has recently been developed by IMF, the World Bank, and FATF as a uniform tool to be used globally for this purpose.

²¹ Notably, the International Convention for Suppression of the Financing of Terrorism.

²² Notably, UN Security Council Resolution 1373.

b. Strengthening Collaboration with APG

71. APG is the FSRB for the Asian and Pacific region. It also acts as a regional coordinator of TA and training needs, and as a regional center for knowledge, information, and networking activities. As the only regional group solely devoted to AML/CFT, the role of APG is growing in significance. Though ADB has supported and collaborated with APG since its inception, it is important for ADB to strengthen this cooperation and collaboration more fully with APG in its operational work. A good start has already been made in this direction under RETA No. 5967, where the APG Secretariat served as the implementing agency. Among measures that can be considered for future effective cooperation is an increase in RETAs for DMCs with the involvement of the APG Secretariat. This will indirectly strengthen APG's institutional and operational capacity in conducting its major programs including workshops, best practice guides, training, and research activities. It will also be useful for ADB to encourage more of its DMCs to become members of APG or strengthen their support to APG.

c. Enhancing ADB Staff Attendance at International and Regional Meetings

72. In practical terms, the most useful way to facilitate and enhance cooperation and collaboration with other relevant international organizations and multilateral/bilateral aid agencies is to attend the meetings and workshops of those organizations and agencies on a more regular basis. This would include, for example, the FATF plenary meetings and typology workshops. This will enable ADB staff to keep up with the latest developments as well as maintain working contacts with other multilateral and bilateral agencies. ADB staff's participation in FATF's technical working groups, such as those on the review of FATF 40 or terrorist financing, would be similarly productive to help ensure that ADB's views and concerns relating to its own DMCs and the region are properly taken into account in FATF's discussions, in addition to the views of APG.²³ ADB should also remain active in the recently established international and regional frameworks for aid coordination for TA and training needs, initiated by the World Bank and IMF.

3. Strengthening Internal Controls to Safeguard ADB Funds

73. Though ADB is not a deposit-taking institution and its treasury operations are consequently less directly exposed to ML/FT activity than those of commercial financial institutions, the potential for indirect exposure may exist. For this reason, ADB should continue to strive toward international best practice standards in its treasury operations. These standards are driven by the objectives of transparency, control, and oversight.

74. At the same time, it is important that ADB continue to monitor and strengthen each procurement and consultant selection as well as rules, procedures, and systems for borrowers and other external parties concerned in ADB's projects to ensure that ADB funds from loans and TAs are not misused for the purposes of ML/FT through fraudulent procurement, contracting, and accounting. Through project management and audit, ADB should also continue to strengthen borrowers' financial accounting and auditing arrangements in relation to ADB's project procurement and administration to prevent

²³ Only about half of ADB's DMCs are APG members.

misuse of ADB funds. It is also important that ADB continue to strengthen the system to screen sources of commercial cofinancing operations.

4. Upgrading ADB's Staff Capacity

75. ML and FT issues are somewhat specialized and distinct from the other professional disciplines that ADB staff normally handle. It is clear that an enhanced ADB role in AML/CFT will call for some upgrading and strengthening of ADB staff's capacity and expertise to handle issues and respond swiftly and effectively to DMCs' requests for assistance.²⁴ In addition to staff who have already been involved in AML/CFT work,²⁵ a greater number of staff, especially those of regional departments who will actually deal with the policy dialogue with DMCs and processing of projects for assistance, need to be more familiar with the subject. It is, therefore, essential that the staff (particularly those dedicated to handling financial sector work and ML/FT matters) receive adequate training to enable them to address the issues effectively. A manual will be prepared and seminars will be conducted for the purposes of the staff training. The staff training will be developed and conducted by the Office of the General Counsel (OGC), Regional and Sustainable Development Department (RSDD), and Budget, Personnel and Management Systems Department (BPMSD), with assistance of external experts as staff consultants. It is also necessary for relevant staff to participate in appropriate external training programs.

IV. IMPLEMENTING THE POLICY

A. Implementation and Monitoring

76. In view of the fact that AML and CFT issues include aspects requiring different types of skills and expertise, the implementation of the policy will involve several departments and offices of ADB. The principal challenge facing ADB staff initially will be to gradually and systematically incorporate AML issues (and CFT issues to a more limited extent) into all relevant aspects of policy dialogue with DMCs and into loan and TA operations for which the regional departments will be primarily responsible; and also into ADB's own administration of its financial operations and procurement-related activities for which the Office of the General Auditor (OGA), Central Operations Services Office (COSO), Controller's Department (CTL), Treasurer's Department (TD), and Private Sector Operations Department (PSOD) will share responsibilities. RSDD and OGC will support the work of departments/offices in the ways elaborated below so that the regional departments can provide appropriate assistance to the DMCs, being fully aware of ADB-wide activities and efforts by other institutions. Given the importance and need for close consultation and collaboration among departments and offices, the existing informal network of staff for AML/CFT matters will need to be developed into a formal network to act as a forum for regular interdepartmental discussions and coordination to implement the policy. The network will discuss and establish as early as possible a specific and preferably time-bound action plan and scope of work for the

²⁴ An internal seminar on Basic Knowledge of ML and FT was held by the Office of the General Counsel in February 2002.

²⁵ Include staff of the Office of the General Counsel, the Office of the General Auditor, and some regional departments. The total amount of relevant staff's involvement in AML/CFT matters in 2002 is estimated at around 1 person-year.

policy implementation. RSDD should be responsible for the formation and the operation of this network.

77. The regional departments will assist the DMCs in establishing and implementing effective AML/CFT systems through enhanced policy dialogue and provision of loans (or inclusion of loan components) and TA, as appropriate. They will also explore ways of enhancing regional and subregional cooperation among DMCs as well as enhancing public-private partnerships in DMCs in consultation with RSDD and OGC as appropriate. As for DMCs where no concrete project is being implemented, processed, or planned, the regional departments will first identify whether it is appropriate for each DMC to include AML/CFT issues in the policy dialogue and then in the CSP/CSPU and SCSP/SCSPU. Where inclusion in the CSP/CSPU and SCSP/SCSPU is deemed appropriate, best efforts should be made to do so in those for 2004. The regional departments will take into account the latest developments of international and regional efforts concerning AML/CFT when forming their assistance to DMCs. The regional departments will also attend, when appropriate, selected regional forums and country-specific aid coordination meetings to ensure good coordination with other TA providers.

78. RSDD will monitor the implementation of the policy through operation of the staff network and periodic reviews. It will also provide technical advice to the regional departments as appropriate. RSDD will also be responsible for preparing and conducting staff training programs in coordination with OGC, BPMSD, and external experts. RSDD will attend, when appropriate, selected international and regional forums in coordination with OGC, the regional departments, and others.

79. OGC will continue to provide legal advice and other information on the latest developments in the global and regional efforts for AML/CFT. OGC, in coordination with relevant departments/offices, will continue to attend selected international and regional meetings and workshops as appropriate. OGC will further develop the current close working relationship with other international organizations active in AML/CFT in line with this policy. OGC will assist RSDD in the formation of the staff network to discuss an action plan and scope of work for the policy implementation. OGC will also prepare and conduct staff training programs in coordination with RSDD, BMPSD, and external experts.

80. OGA, COSO, CTL, TD, and PSOD will continue to seek and incorporate international best practices to safeguard ADB's funds against misuse, within its mandate and responsibilities and in close coordination with other concerned departments and offices.

B. Review of the Policy

81. The policy will be reviewed after 4 years. A Board paper will be prepared with a comprehensive review of all aspects of the policy implementation. The review will be conducted by RSDD in association with the staff network and with the assistance of external experts in AML/CFT.

C. Resource Implications

82. Implementation of the policy will require staff resources. Though ADB has managed to address the AML/CFT matter without additional staff resources, the amount

of work has continued to increase during the past few years, and it is now imperative to formally allocate resources to ensure smooth and undisrupted policy implementation. It is deemed appropriate to allocate the additional staff resources in RSDD and OGC, which will together centrally coordinate and support the regional departments' assistance to DMCs, rather than to allocate additional resources to each of the five regional departments. For this reason, two additional staff positions (one in RSDD and one in OGC) will be required to carry out each department's responsibilities mentioned above. To secure a smooth start of the policy implementation, these additional positions should be initially accommodated through redeployment of existing staff where possible. In addition, it is envisaged that a total of 10 person-months of staff consultants will be required for the first year (2003) to help the staff address some initial tasks to start implementation of the policy, including training of relevant staff.²⁶ The estimate of the administrative cost deemed necessary is attached as Appendix 4. At the same time, under the current budgetary constraint, ADB should make best efforts to produce maximum outputs from the limited number of resources by enhanced policy dialogue with DMCs and strategic cooperation with other aid agencies.

83. Where assistance through TA is appropriate, TA resources are also required. As discussed earlier, whether assistance should be provided through loans, TA loans, or TA grants will be judged, taking into account the overall context of the DMC.

V. RECOMMENDATION

84. It is recommended that the Board approve the policy as contained in paragraphs 60-75 and the implementation arrangements as summarized in paragraphs 76-83.

²⁶ Considering the ongoing preparatory work for the development of the manual and seminars for the staff training, the consultant(s) will be located in OGC.

ANTI-MONEY LAUNDERING/COMBATING THE FINANCING OF TERRORISM EFFORTS OF OTHER INTERNATIONAL, REGIONAL, AND SPECIALIZED BODIES

A. Regional and Specialized Organizations

1. The Council of Europe adopted the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime in 1990 in Strasbourg. An interesting feature of this convention is that the Council may invite any nonmember state to also accede to the convention.
2. The Council of the European Communities in 1991 issued Council Directive 91/308/EEC on "Prevention of the Use of the Financial System for the Purpose of Money Laundering." This directive is legally binding on member states.
3. The Organization of American States, through its Inter-American Drug Abuse Control Commission (CICAD), adopted the Model Regulations Concerning Laundering Offences Connected to Illicit Drug Trafficking and Related Offences in 1999. The model regulations serve as a guide to member countries for adopting national laws.
4. The Commonwealth Secretariat has prepared the Model Law on the Prohibition of Money Laundering and also published *A Model of Best Practice for Combating Money Laundering in the Financial Sector*.
5. The International Criminal Police Organization (INTERPOL) cooperates with national police departments and other agencies in gathering and sharing information on the movement and laundering of the proceeds of crime. It has also worked to develop model legislation to facilitate obtaining evidence needed in criminal investigations and proceedings to confiscate illegal proceeds.

B. International and Supervisory Bodies

6. In 1988, the Basel Committee on Banking Supervision (formerly known as the Basel Committee on Banking Regulations and Supervisory Practices), established by the central bank governors of the G-10 countries in 1974, issued the Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering. The statement sets out guidelines for bank managements in implementing measures to suppress ML through the banking system. In 1997, the Basel Committee issued the Core Principles of Banking Supervision. Core Principle 15 requires banking supervisors to ensure that banks have strict internal controls, including customer identification, to protect the banks from abuse by criminal elements. While the Basel Committee's recommendations are advisory in character, national bank supervisory bodies throughout the world give them much weight.
7. The International Organization of Securities Commissions, whose members are national securities commissions, stock exchanges, and regional and international organizations, adopted the Resolution on Money Laundering in 1992, setting out anti-money laundering (AML) guidelines for its members. In 1998, it issued its Objectives and Principles, which outlines key measures for securities supervisors to counter fraud and money laundering (ML).

8. Similarly, the International Association of Insurance Supervisors, an association of national insurance supervisors established in 1994, issued Insurance Core Principles in 2000 to guide insurance supervisors in countering fraud and ML. In 2002, it issued the comprehensive Anti-Money Laundering Guidance Note for Insurance Supervisors and Insurance Entities.

C. The Egmont Group

9. The Egmont Group of Financial Intelligence Units of the World, established in 1995 under the sponsorship of the Financial Action Task Force on Money Laundering (FATF), serves as a forum to promote exchange of financial intelligence on ML among financial intelligence units (FIUs) in its member jurisdictions, including assisting countries in establishing or strengthening FIUs.

D. Self-Regulating Bodies

10. The International Federation of Accountants, established in 1977, has issued guidance on the role of auditors in detecting fraud and errors in financial statements, in particular International Standards on Auditing 240.

11. In addition, a group of nine leading international private banks, in cooperation with Transparency International, published the Global Anti-Money Laundering Guidelines for Private Banking (Wolfsberg AML Principles) in 2000, and issued Statement on the Suppression of the Financing of Terrorism in January 2002.

E. Regional Multilateral Development Banks

12. The European Bank for Reconstruction and Development (EBRD) has enhanced its AML measures by increasing staff awareness through training; appointing a money laundering reporting officer; designating an AML coordinator in its Financial Institutions Business Group; and strengthening the representations, warranties, and conditions in EBRD's standard legal documentation. It has also reviewed its internal AML policies and procedures so as to bring them into line with best banking industry practices, and its project integrity policy requires that it direct its principal AML efforts at achieving full compliance with EBRD standards of good business and corporate practice, which include adherence to know-your-customer principles, a due diligence check for each project, investigation of integrity issues, close review and justification for use of offshore financial centers (OFCs) as project investment vehicles, and close project monitoring of compliance with obligations and undertakings. EBRD also encourages governments and domestic institutions to adopt AML policies and procedures in line with international standards, and reviews a country's commitment to AML measures as part of the review of its legal and regulatory framework.

13. The Inter-American Development Bank (IADB) has, over the past years, supported AML efforts through a number of measures to increase awareness of the problem in the Latin America region and to support member countries' AML efforts. It has supported two regional programs of CICAD for AML, training of banking supervisors and employees of regulated financial institutions in seven countries, and training of prosecutors and judges in criminal law enforcement. It is currently considering support for other AML projects including a CICAD program for establishing or strengthening FIUs, and support for the newly established Financial Action Task Force of South America (GAFISUD) in a training program for experts conducting mutual evaluations in nine member countries. It is also looking into recent concerns with respect to financing of terrorism (FT) and taking measures to exercise closer internal controls (including

through its country offices) to ensure that its resources are not diverted. IADB participates as an observer in the regular meetings of FATF, the Caribbean Financial Action Task Force, CICAD, and GAFISUD.

14. The African Development Bank (AfDB) became an observer at FATF meetings in January 2002. Cooperation between AfDB and FATF focuses on (i) information exchange regarding ML and implementation of the Financial Action Task Force on Money Laundering 40 Recommendations by AfDB and its borrowers; and (ii) sensitization of African governments and regional organizations to the need to adopt and implement those recommendations. Additionally, AfDB has adopted measures to prevent it from being used, intentionally or otherwise, in ML or FT. In December 2001, the President wrote to all African finance ministers, governors of central banks, and other subregional financial institutions, emphasizing the importance of AML/combating the financing of terrorism measures; and urged them to take appropriate measures to strengthen existing regulatory and supervisory frameworks. A presidential instruction was also issued to impress on AfDB staff the need to carefully review all bank payments and disbursements to ensure that payments are not made to proscribed persons.

FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING: 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 co-operation 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 criminalize 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; and
- (ii) to verify that any person purporting to act on behalf of the customer is so authorized 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 behavior.

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 favor 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:
 - (i) 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;
 - (ii) an ongoing employee training program; and
 - (iii) 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 computerized 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 behavior 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 recognize 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 judgments, 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 business or professions, which are not financial institutions

1. Acceptance of deposits and other repayable funds from the public.
2. Lending.*
3. Financial leasing.
4. Money transmission services.
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveler'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.

* Including inter alia:
—consumer credit,
—mortgage credit,
—factoring, with or without recourse,
—finance of commercial transactions (including forfaiting).

**FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING:
Special Recommendations on Terrorist Financing**

Washington, 30 October 2001

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. Criminalizing the financing of terrorism and associated money laundering

Each country should criminalize 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 co-operation

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 organisations*

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.

ESTIMATE OF ADDITIONAL RESOURCES REQUIRED

1. Additional staff positions two (2)
(1 for RSDD and 1 for OGC)

RSDD

Initial work:

- (a) form and operate the staff network to discuss an action plan and scope of work for implementation of the policy (3 person-months); and
- (b) prepare and conduct staff training programs in coordination with OGC, BPMSD, and external experts (1 person-month).

Recurrent work (including the first year)¹:

- (a) monitor implementation of the policy through operating the staff network and periodic reviews (6 person-months);
- (b) provide technical advice to the regional departments as appropriate (5 person-months); and
- (c) prepare for and participate in selected international and regional meetings and workshops, in coordination with relevant departments/offices (1 person-month).

OGC

Initial work:

- (a) assist RSDD in forming the staff network to discuss an action plan and scope of work for the policy implementation (1 person-month); and
- (b) prepare and conduct staff training programs in coordination with RSDD, BPMSD, and external experts (3 person-months).

Recurrent work (including the first year)²:

- (a) provide legal advice and other information to concerned departments/offices (8 person-months);

¹ During the first year of the policy implementation, staff's person-months for the recurrent work will be adjusted considering the workload of the initial work.

² See footnote 1.

- (b) prepare for and participate in selected international and regional meetings and workshops, in coordination with relevant departments/offices (3 person-months); and
- (c) further develop the current close working relationship with other international organizations active in anti-money laundering and combating the financing of terrorism in line with the policy (1 person-month).

2. One-time cost for initial activities

(a)	Staff consultant (10 person-months, OGC)	\$220,000
(b)	Publication of the training manual	\$60,000

3. Recurrent costs

Staff travel for external meetings, seminars, and trainings	\$200,000 ³
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³ Including staff's participation at regular international and regional organizations' meetings and seminars, selected ad-hoc meetings and seminars, and selected training programs with fee. The regular international organizations' meetings and seminars include those of Financial Action Task Force on Money Laundering and Asia/Pacific Group on Money Laundering, and the Global Donor Coordination Meetings led by the International Monetary Fund/World Bank. Participants of training programs with fee will be selected from the regional departments and other relevant departments/offices. The estimate is on the high side and not all may be required or used.