AFRICAN DEVELOPMENT BANK GROUP



BANK GROUP POLICY ON THE PREVENTION OF ILLICIT FINANCIAL FLOWS

OSGE DEPARTMENT

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ACRONYMS

ADB	Asian Development Bank
AfDB	African Development Bank
AIE	Automatic Information Exchange
AML	Anti-Money Laundering
AMV	African Mining Vision
AQIM	Al Qaeda in the Islamic Maghreb
ATAF	African Tax Administration Forum
AUSTRAC	Australian Transaction Reports and Analysis Centre
AU	African Union
BEPS	Base Erosion and Profit Shifting
CSO	Civil Society Organization
CDD	Customer Due Diligence
CDS	Capacity Development Strategy
CFT	Combating the Financing of Terrorism
COMSEC	Commonwealth Secretariat
CSP	Country Strategy Paper
CTRs	Cash (Threshold) Transaction Reports
EFCC	Economic & Financial Crimes Commission (Nigeria)
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
ESW	Economic and Sector Work
EU	European Union
Eurodad	European Network on Debt and Development
FATF	Financial Action Task Force on Money Laundering
FinCEN	Financial Crimes Enforcement Network
FSRBs	FATF-Style Regional Bodies
FIU	Financial Intelligence Unit
TF	Terrorism Financing
GAP II	Governance Strategic Framework and Action Plan II
GFI	Global Financial Integrity
GIABA	Intergovernmental Action Group against Money Laundering in West Africa
GTF	Governance Trust Fund
IACD	Integrity and Anti-Corruption Department
IACF	Integrity and Anti-Corruption Fund
IFC	International Finance Corporation
IBA	International Bar Association
ICAR	International Centre on Asset Recovery
IDD	Integrity Due Diligence
IDS	Institute of Development Studies
IFFs	Illicit Financial Flows
IMF	International Monetary Fund
IT	Information Technology
KPMG	Klynveld Peat Marwick Goerdeler
KRAs	Key Result Areas
KYC	Know Your Customer
MDBs	Multilateral Development Banks
ML	Money Laundering
MNCs	Multi-national Corporations

MONEYVAL	Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures
NDLEA	National Drug Law Enforcement Agency (Nigeria)
NGO	Non-Governmental Organizations
NPA	National Prosecuting Authority (South Africa)
NPOs	Non Profit Organizations
NRA	National Risk Assessment
OECD	Organization for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
OSGE	Governance, Economic and Financial Management Department (AfDB)
PALU	Pan African Lawyers Union
PBOs	Program-Based Operations
PEPs	Politically Exposed Persons
RISPs	Regional Integration Strategy Papers
RMCs	Regional Member Countries
RMF	Results Measurement Framework
ROSC	Reports on the Observance of Standards and Codes (IMF)
STRs	Suspicious Transaction Reports
TBML	Trade Based Money Laundering
TJN	Tax Justice Network
TJN-A	Tax Justice Network – Africa
TRACFIN	Traitement du renseignement et action contre les circuits financiers clandestins (France)
TYS	Ten Year Strategy
UNCTED	United Nations Counter Terrorism Executive Directorate
UNECA Panel	United Nations Economic Commission for Africa High Level Panel on Illicit Financial Flows in Africa
UNODC	United Nations Office on Drugs and Crime
UNSCR	United Nations Security Council Resolution

Executive Summary

This paper proposes a policy for the African Development Bank Group (the Bank Group) on combatting illicit financial flows in Africa and the arrangements for its operationalization.

Background

Africa has lost an estimated one trillion US dollars over the past 50 years through illicit financial flows- a sum roughly equal to all of the Overseas Development Assistance (ODA) received by the continent over the same timeframe.[1] Illicit Financial Flows are of major concern, due to the scale and negative impact on Africa's development and governance agenda. Illicit financial flows in (their) developmental consequences, amongst others, stifle Africa's socio-economic progress through draining scare foreign exchange resources, reducing government tax revenues, deepening corruption, aggravating foreign debt problems and increasing Africa's economic dependency, with ultimately negative impact on the quality of life of Africans. When world leaders met in New York for the Post-2015 Summit at the end of September 2015, one of the major concerns was how to leverage existing and additional resources to finance the new ambitious goals articulated by the SDGs, beyond traditional approaches. Assisting governments of African countries to mobilize resource internally through combatting illicit financial flows is critical.

The Bank's involvement in combating Illicit Financial Flows (IFFs) is predicated on its overall mission to promote inclusive growth, alleviate poverty and foster governance and accountability, strengthen financial institutions, and prevent corruption, as articulated in various current strategic documents including the Ten Year Strategy (TYS), the Governance Strategic Framework and Action Plan (GAP II), and the Strategy on Addressing Fragility and Building Resilience in Africa, amongst others. By prioritizing measures to enhance revenue mobilization for investment in the key priority areas of the High-5 (agriculture, energy and industrialization), this policy, and its strategic framework and action plan, support the inclusive growth agenda of the TYS, which will ultimately lead to improvement in the quality of life of Africans. For all Banks activities in combating IFFs, conformity with the governance and accountability agenda, as well as the priority areas of emphasis of the High-5, within the TYS framework will therefore, be paramount.

The Bank's work on combatting Illicit Financial Flows has spanned both internal and external initiatives, from tightening fiduciary safeguards and internal controls to ensure that it's lending is used for its intended purposes, to building capacity of RMCs financial intelligence units and supporting regional bodies engaged in anti-money laundering efforts. This has served to uncover the immense demands for additional support, as well as the opportunity for the Bank to vastly expand its work in these areas. Accordingly the Bank committed to scaling up its work in area of IFFs during the African Development Fund (ADF) thirteenth replenishment negotiations. In order to deliver on this commitment, it was considered necessary to have an overarching policy and strategy to guide and prioritize the Bank's expanded interventions on anti-IFF, while also ensuring an appropriate monitoring and accountability framework.

The proposed Anti-Illicit Financial Flows Policy (the Anti-IFFs Policy) provides the policy framework to achieve this. It directs the Bank's work on strengthening its internal anti-IFFs practices, and sets out the capacity requirements to support its RMCs to combat IFFs. It also provides the basis for the Bank to enhance its collaboration with FATF[2]-Styled Regional Bodies (FSRBs) to combat money laundering and terrorism financing, in particular, and illicit financial flows, in general.

[1] The Mbeki-led report of the High Level Panel on Illicit Financial Flows

[2] Financial Action Task Force on Money Laundering

The proposed policy, not only expands the scope of the Bank's IFFs work, it sets a clear path for future Bank interventions in this field, including the recommendation of an organizational framework for the coordination of the implementation of the policy in the Bank.

The Policy Vision, Objective and Components

The vision of the Bank is for African countries and institutions to have a continent that is free of IFFs and other major financial crime by 2030.

The core objective of the Bank's Anti-IFFs work is to significantly contribute to the continent's response to the threat of IFFs. This Policy establishes the general framework for the Bank's work in the fight against illicit financial flows, outlining clear directions and principals across four main areas:

1. *Internal Control and Safeguards:* The policy sets out the minimum control and safeguard standards that must be complied with by the Bank Group and its entire staff. This includes clear guidelines and directives governing business relationships towards ensuring full transparency, and dissociation from any illegal organizations or groupings, as well as undertakings by staff to report any suspicious activities. An important number of measures are proposed to significantly strengthen the management and control of IFF risks within the Bank. Finally it includes directives on maintaining appropriate records on clients and conducting regular internal audits.

2. *Assistance to Regional Member Countries:* The policy expands on the issues to be tackled and type of institutional (infrastructure, and legal and regulatory framework) and human capacity building support that will be provided by the Bank to RMCs, support will be specifically provided to national bodies engaged in anti-IFF work, such as (i) Anti-Corruption Agencies; (ii) Financial Intelligence Units (FIUs); (iii) tax authorities; and (iv) national and international institutions that work to recover stolen assets.

3. *Increasing Collaboration with International Partners:* The policy outlines an enhanced role for the Bank in its collaboration and cooperation with the international organizations and agencies as well as civil society organizations that work on AML and anti-illicit financing issues in the African region. This includes cooperation and collaboration with other multilateral/bilateral organizations involved in the fight against IFFs such as the Financial Action Task Force on Money Laundering (FATF), the IMF, World Bank, United Nations Office on Drugs and Crime (UNODC), and Global Financial Integrity, African Tax Administration Forum, Tax Justice Network-Africa, amongst others. Areas of collaboration would include on AML national risk assessments, using the tools that have been developed by the IMF and World Bank. To facilitate such interactions and enhance collaboration, the Bank will improve on its attendance of and participation in international and regional organizations' meetings, such as FATF, Egmont Group, and United Nations Convention against Corruption (UNCAC) conferences and workshops.

4. *Capacity Building for Staff:* The policy gives priority to the training of staff, especially those dedicated to handling ML/FT/IFF matters, to enable them address the issues effectively and to effectively drive the policy dialogue with RMCs and FSRBs. A training manual for IFFs will be prepared and updated from time to time. The staff training will be developed and conducted with the dedicated unit responsible for IFFs, in collaboration with other relevant departments, including EADI, IACD, GECL, OSGE, FTRY, OFSD, amongst others, with the assistance of external consultants. In addition to the internal in-house training programs, there will be external training programs for relevant staff.

Operationalizing the Policy

The policy identifies the various instruments and approaches that are to be deployed by the Bank towards operationalizing the policy, it includes the establishment of an Anti-Illicit Finance program, and the acquisition of anti-illicit financing tools that will facilitate the identification of suspicious activity,

verification of the identity of clients and correspondence banks, and the application of enhanced due diligence, as well as information sharing within the Bank and with external stakeholders and law enforcement agencies. It also gives priority to encouraging the incorporation of AML and anti-illicit financing issues in the policy dialogue with RMCs, particularly when RMCs request the Banks assistance in this area and routinely as an integral part of reforms measures in a Program Based Operation (PBO) and Institutional Support Projects (ISP). In this regard, these issues should be explicitly mainstreamed into Country Strategy Papers (CSPs) and Regional Integration Strategy Papers (RISPs), as well as into PBO, ISP, and Non-Sovereign Operations appraisal reports, and relevant sector strategies, and country dialogue processes.

Implementation Arrangements: A IFFs Strategic Framework and Action Plan is being prepared to operationalize the commitments made by management in this policy. The Strategic Framework and Action Plan will include: a proposed institutional framework and financing mechanism for implementing the policy; an indicative five year work plan, including cost estimates; and IFFs pillars related implementation responsibilities; as well as an indication of capacity building requirements and priorities.

For an effective implementation of its IFFs programs under the policy, Management, proposes the creation of a IFFs Operations and Advisory Team (or Group) (Economic and Financial Integrity Team Or Group), as part of the Governance and Public Financial Management Coordination Office, under the Chief Economist and Vice President, for Economic Governance and Knowledge Management. The functions of the proposed Economic and Financial Integrity Team (EFIT) would be mostly focused on external IFFs activities and coordination. It would be responsible for handling all IFFs operations, dialogue with external stakeholders/partners and the coordination of all IFFs activities within the Bank. In addition, it is being proposed that all IFFs Compliance activities be consolidated under a IFFs Compliance Team within the IACD. The IFFs Compliance Team would be responsible for issues of ex-ante integrity due diligence, and anti-IFFs. The Strategic Framework and Action Plan would provide a draft terms of reference for the proposed unit, and details on how the proposed unit's activities would be financed.

Conclusion and Recommendation

This document presents the African Development Bank Group's policy outlining its general Anti-Illicit Financial Flows (Anti-IFFs) principles and standards. It recognizes the threat that IFFs continue to present to development in RMCs, and provides the Bank with an appropriate foundation, upon which further action can be taken. A Strategic Framework and Action Plan for the Prevention of Illicit Financial Flows in Africa (IFFs Strategic Framework and Action Plan), which will present a clear set of procedures and guidelines for the implementation of the policy in the day-to-day business of the Bank, is being developed. It is recommended to the Boards of Directors for consideration and approval.

A. POLICY BACKGROUND

1. INTRODUCTION

1.1 Illicit Financial Flows (IFFs) is a broad term that covers both money laundering and terrorism financing as well as other illegal movement of funds. The AU-UNECA High Level Panel on IFFs defines IFFs as money illegally earned, transferred or used. It has to do with the flow of money (mostly unrecorded) that are in violation of laws in their origin, or during their movement or use, and are therefore considered illicit. They derived mainly from (a) proceeds of theft, bribery and other forms of corruption by Government officials; (b) proceeds of criminal activities, including drug trading, racketeering, counterfeiting, contraband and terrorism financing; and (c) proceeds of tax evasion and laundered commercial transactions.

1.2 Illicit Financial Flows (IFFs) out of Africa have become a matter of major concern because of the scale and negative impact of such flows on Africa's development and governance agenda. In its report, the AU-UNECA High Level Panel on Illicit Financial Flows[3] noted that Africa has lost an estimated $1 trillion or more over the past 50 year in illicit financial flows. This sum is roughly equivalent to all of the official development assistance received by Africa during the same timeframe. The report also indicated that currently, Africa is estimated to be losing more than $50 billion annually in IFFs. Similarly, a joint study conducted by the Bank Group and the Global Financial Integrity (GFI) came up with estimates of the scale of IFFs from African countries during the period 1980-2009. It found that between 2000 and 2009, some US$30.4 billion per annum flowed out of Africa, mostly in the form of IFFs. Over the longer period of 30 years calculated from 1980, the resource drain was between US$1.2 - 1.3 trillion. The draining of the continent's resources, through IFFs, perpetuates aid-dependency and undermines the ability of governments to craft development agendas that reflect their respective realities and priorities. Addressing the problem of IFFs, as a matter of urgency, will help in no small way, in harnessing the resources needed for meeting the continent's SDGs.

1.3 Moreover, there is clear indication that IFFs can have a substantive toll on development with implication for the attainment of the inclusive growth objective enunciated in the Ten Year Strategy (TYS). Amongst others, IFFs is detrimental to socio-economic progress and employment because it drains scare foreign exchange resources, reduces government tax revenues, deepens corruption, aggravates foreign debt problems, increases Africa's economic dependency, and diverts resources away from priority sectors such as energy and power, agriculture, infrastructure, health, and education, which are key areas of priority of the High-5, to efforts to fight illegal activities. This ultimately has negative impact on the quality of life of Africans. According to estimates by GFI, commercial transactions (mainly in the form of tax evasion and trade mispricing) by multinational companies make up about 60% to 65% of illicit flows. IFFs in the form of tax evasion, trade mispricing, tax avoidance, and harmful tax holidays not only erode the tax base for domestic resource mobilization but also place a disproportionate burden on smaller domestic firms, with consequences for employment generation. While IFFs occur in all countries – and are damaging everywhere – IFFs have particularly significant economic and social consequences for African countries. In the extractive sector for example, the IFFs have impacted on the ability of African countries to mobilize resources generated from sectors such as minerals and oil to finance their development.

1.4 The Challenge posed by IFFs, especially through tax evasion and avoidance is huge but most tax authorities in Africa lack sufficient resources and staff to tackle it. In particular they lack the resources

[3] The 4th Joint AU/ECA Conference of African Ministers of Finance, Planning and Economic Development which held in 2011 mandated the ECA to establish the Thabo Mbeki High Level Panel (HLP) on IFFs from Africa. The members of the HLP are H. E. Mr. Thabo Mbeki, Mr. Carlos Lopes, Ambassador Olusegun Apata, Mr. Raymond Baker, Dr. Zeinab Bashir el Bakri, Mr. Abdoulaye Bio Tchané, Mr. Henrik Harboe, Prof. El Hadi Makboul, Barrister Akere Muna, Ms. Irene Ovonji-Odida.

to gather information on tax evasion. This is further complicated by the fact that sometimes there is complicity by politically exposed persons in both RMCs and in the recipient countries who are likely to be uninterested in frameworks to track IFFs or even work against their implementation.

1.5 The above notwithstanding, theft of public assets by corrupt officials is also a serious problem in Africa. In some countries, the value of assets stolen is of staggering proportion, but the impact of this far exceeds the value of the stolen assets. Addressing the problem of stolen assets is an immense challenge and the process can be time-consuming and costly. The experience of the few African countries that have experience some degree of success in this endeavor, show that African countries wishing to pursue the recovery of stolen assets hidden way in the financial centers of developed countries are likely to encounter serious obstacles. Limited legal, investigative, and judicial capacity and inadequate financial resources constitutes major obstacles to the process even where there is the political will to pursue stolen assets. Moreover, jurisdictions where stolen assets are hidden, may not be responsive to requests for legal assistance. The magnitude of the problem and the difficulties which African countries face when trying to address the problem individually, calls for a concerted action to address it.

1.6 This document presents the African Development Bank Group's policy outlining its general Anti-Illicit Financial Flows (Anti-IFFs) principles and standards. A Strategic Framework and Action Plan for the Prevention of Illicit Financial Flows in Africa (IFFs Strategic Framework and Action Plan), which will present a clear set of procedures and guidelines for the implementation of the policy in the day-to-day business of the Bank, is being developed. The Bank's involvement in combating Illicit Financial Flows (IFFs) is predicated on its overall mission to promote inclusive growth, alleviate poverty and foster governance and accountability, strengthen financial institutions, and prevent corruption, as articulated in various strategic documents including the Ten Year Strategy (TYS), the Governance Strategic Framework and Action Plan (GAP II), and the Strategy on Addressing Fragility and Building Resilience in Africa, amongst others.

1.7 In January 2002, the Bank became an observer member at the Financial Action Task Force on Money Laundering (FATF)[4] meetings and in October 2007, the Bank Group's Board of Directors approved the Bank's Strategy for the Prevention of Money Laundering and Terrorism Financing in Africa (2007 AML/CFT Strategy). Initially, the cooperation between the Bank and FATF focused on (i) information exchange regarding Money Laundering (ML) and implementation of the FATF Money Laundering 40 Recommendations[5] by the Bank and its borrowers; and (ii) sensitization of Regional Member Countries (RMCs) and regional organizations on the need to adopt and implement the FATF recommendations. However, in recent times, there has been greater interest on issues relating illicit financial flows, in general, on the continent. Specifically, there has been a gradual convergence of interest in Africa and beyond to combat corruption and tax evasion, especially the continuing use of tax havens to facilitate and conceal tax evasion.

1.8 The Bank Group's Policy on the Prevention of Illicit Financial Flows (the Anti-IFFs Policy) provides the policy framework for the Bank's IFFs work. It will enable the Bank to strengthen its internal anti-IFFs practices, and enhance its capacity to support its RMCs to combat IFFs. It will also enable the Bank to enhance its collaboration with FATF-Styled Regional Bodies (FSRBs) to combat money laundering and terrorism financing, in particular, and illicit financial flows, in general. The policy, not only expands the scope of the Bank's IFFs work, it sets a clear path for future Bank interventions in this field, including the recommendation of an organizational framework for the coordination of the implementation of the policy in the Bank. The detailed setting of the organizational framework, including

[4] The FATF was established in 1989 by the G-7 countries to respond more effectively to Money Laundering.

[5] The FATF Recommendations are the internationally endorsed global standards against money laundering and terrorism financing: they increase transparency and enable countries to successfully take action against illicit use of their financial system.

the roles to be played by the various actors and costing will be provided in the IFFs Strategic Framework and Action Plan.

1.9 The preparation of the IFFs Policy has benefited from an extensive consultation with a wide section of stakeholders within and outside the Bank. It draws on the experience of other MDBs and bilateral donors, including the World Bank and IMF, Asian Development Bank, United Nations Office on Drugs and Crime (UNODC), amongst others.

1.10 A cross-complex and multi-disciplinary IFFs Taskforce was established by the Bank in 2013 and mandated to update the 2007 AML/CFT Strategy, elaborate an Action Plan and oversee its implementation. The IFFs Policy was prepared in collaboration with the Bank-wide Task Force on IFF. It was also subjected to the Bank's internal review process, including, peer review, inter-departmental review, and the Bank's Senior Management review and clearance. After Board approval, the Bank's website will be used to disseminate the IFFs Policy. This is consistent with the commitment to take the discourse on money laundering, terrorism financing and IFFs outside the elite corridors.

2. RATIONALE OF THE POLICY AND VALUE-ADDED OF THE BANK GROUP

2.1 Rationale

2.1.1 The African Development Bank is an observer at the FATF meetings and is committed to the maintenance of the highest standards in the fight against money laundering, financial crimes, fraud and terrorism financing. Its staff members, including its management and all employees, are required to adhere to these standards to protect the Bank Group, its reputation and resources from being misused for money laundering, financial crimes, fraud and terrorism financing or other illegal purposes. The Bank Group will continue to examine its IFFs strategies, goals and objectives on an ongoing basis to ensure that it maintains an effective anti-money laundering/anti-illicit financing program that reflects the best practices for a multilateral development bank.

2.1.2 The escalation of money laundering, terrorism financing and other forms of IFFs and their adverse effects on peace, security and development on the continent continue to be matters of serious concern. The techniques and methods used by the perpetrators of these criminal activities have become sophisticated. In view of the growing concern with the detrimental impact of IFFs on developing economies, the Bank committed in GAP II to scale up the scope of its work in this area to cover all facets of IFFs including money laundering of the (i) proceeds from theft, bribery and other forms of corruption by Government officials; (ii) proceeds from criminal activities, including drug trafficking, racketeering, counterfeiting, dealing in contraband goods and financing of terrorism; and (iii) proceeds of tax evasion and laundered commercial transactions. It also commits to the following; emphasis on IFFs and money laundering issues in CSPs, RISPs and ESWs and to the building of internal capacity to effectively drive policy dialogue on these issues in the continent; support to RMCs and RECs in developing necessary policies, strategies and safeguards and in building capacities to address IFFs and recovery of stolen assets; and strengthening strategic partnerships with key partners in addressing IFFs. In addition, a commitment was made to the African Development Fund (ADF) Deputies during the replenishment negotiations for the thirteenth session of the ADF that the Bank will scale up its work in the area of IFFs. This IFFs Policy therefore, provides a policy framework for the expansion of the scope of the Banks intervention in this sphere to cover all areas of illicit financial flows.

2.1.3 The rationale for the new IFFs Policy is therefore, three-fold: (a) to provide a policy framework and strategic basis for the expansion of the scope of the Bank's IFFs work stream; (b) to strengthen the Bank's internal safeguard and capacity to assist its RMCs to combat IFFs; and (c) to provide for stronger ownership of RMCs in the design and implementation of IFFs related projects/programs and the basis for more awareness on the part of the general public of the risks and implications associated with IFFs.

Specifically this new Policy, and its strategic framework and action plan, will provide a comprehensive framework that will position the Bank Group to further strengthen its fiduciary safeguards, internal procedures and policies, and its audit function to ensure that its finance is used for its intended purposes and not subjected to financial abuse, corruption or money laundering; and to leverage the Bank's comparative advantage to add value and complementing support of the other donors by assisting in strengthening Anti-Money Laundering (AML) and Anti-Corruption institutions and building capacity, through Institutional Support Projects (ISPs) and Program-Based Operations (PBOs).

2.1.4 This Policy also provides a basis for the Bank to extend the scope of its work to include support to RMCs authorities and institutions in their efforts to recover stolen assets and their fight against proliferation financing and the financing of illicit small and light arms. This will create synergy of the Bank's activities in this area with the activities of other partners as well as coherence in the Bank's governance interventions.

2.2 Value Added of the Bank Group

2.2.1 Over the years, the Bank has developed close working relationships with officials and key stakeholders in its RMCs and has increasingly assumed leadership role in policy dialogue and thematic donor groupings. The Bank therefore has considerable leverage, as a preferred and trusted partner, in policy dialogue on IFFs issues with its client countries and development partners. This coupled with its African character, positions the Bank Group to act on issues affecting Africa and in engaging RMCs in sensitive governance policy dialogue (including IFFs). A program of action to address crime and security issues impacting on development, adopted by African leaders from 47 States at the Round Table for Africa held in Abuja, Nigeria, in September 2005, included a cluster focusing on organized crime, money laundering, corruption, trafficking and terrorism. With respect to anti-money laundering and combating the financing of terrorism in particular, the program of action identified three priorities for action and specifically identifies the African Development Bank as a key partner for these activities. They are: (1) developing national laws and strategies in compliance with international standards and norms; (2) building institutional capacity, including setting up Financial Intelligence Units (FIUs) to implement national laws and strategies; and, (3) supporting and assisting the establishment of effective and operational sub-regional organizations to combat money laundering. Moreover, the Bank is expected to play a key role in the implementation of the recommendations of the report of the High-Level Panel on IFFs of the African Union.

2.2.2 The Bank has considerable experience in designing and implementing institutional support projects (ISPs). This positions it to add value and complement the support of the other donors by assisting in strengthening anti-IFFs institutions and building capacity, through ISPs, to enable countries not only be compliant to FATF recommendations but also to be well equipped to tackle IFFs adequately. In view of current paucity of support in this area,[6] the Bank has an opportunity to create a niche for itself in the major areas of support for institutional capacity building which is key to the fight against IFFs in the region.

2.2.3 Also, the Bank has a wealth of experience in the design and implementation of Budget Support Operations and could leverage on this instrument to influence countries to take actions in the IFFs sphere by including in its policy reform measures, reforms in the area of anti-IFFs regimes, including the legislative framework and compliance with FATF recommendations; and requirement for strong national anti-IFFs institutions, such as FIUs, Trans-National Organized Crime Units, and Investigative Capacity

[6] The operational activities of the World Bank and IMF in Africa in the areas of AML and anti-illicit financing are focused on technical assistance to support the strengthening of legislative framework, national risk assessment and preparation of national AML strategies. They accomplish this mainly through workshops, mentorships, and advisory services and by engaging client countries and other relevant international organizations to influence policy changes.

and effective judicial systems that are well equipped to adjudicate IFFs cases. Moreover, within the context of Budget Support Operations, measures aimed at addressing deficiencies identified in the Country Fiduciary Risk Assessments (CFRAs), systematically conducted by the Bank with the context of the CSP and PBOs, contribute to supporting better management of resources by RMCs.

3. BANK GROUP's EXPERIENCE IN ANTI-ILLICT FINANCING WORK

3.1 Following its observer status at the FATF meeting in January 2002, and the approval by its Board of Director of the 2007 AML/CFT Strategy in October 2007, the Bank designated the Governance, Economic and Financial Reforms Department (OSGE) as the focal organizational unit for its Anti-Money Laundering and Combating of the Financing of Terrorism (AML/CFT) activities. In addition, the Integrity and Anti-Corruption Department (IACD) is charged with the responsibility of ensuring that operations financed by the Bank Group comply with Bank policies and applicable conventions regarding AML/CFT and the legitimate use of Off-Shore Financial Centers and Tax Havens.

3.2 The Bank endorses the FATF standards, including the FATF Forty Recommendations on Money Laundering and Nine Special Recommendations on Financing Terrorism, and incorporates AML/CFT issues in its operations as well as policy work with its RMCs. The Bank has also adopted a range of other international standards and a variety of instruments for AML/CFT including the relevant UN conventions[7] to provide the context of its own AML/CFT strategies and standards that guides its operations as part of Bank's role in promoting good governance and combating corruption.

3.3 In its operations, the Bank's stated commitment is to set high standards of governance and ensure that its funds are used only for their intended purposes and benefit of its intended beneficiaries. Several organizational units in the Bank work together to ensure that this goal is attained. These include:

(i) *Governance and Economic and Financial Reforms Department (OSGE),* in addition to coordinating the Bank's internal IFFs activities, leads the preparation of IFFs related operations for the provision of financial and technical assistance to RMCs in form of Institutional Support Projects, and Budget Support Operations (Program-based Operations). It also leads the preparation of IFFs related operations for the provision of supports to Anti-Corruption Agencies, Financial Intelligence Units (FIUs) and other related agencies in RMCs as well as to FSRBs and Non-governmental agencies in the continent. Within the context of the Bank's ISP operations, the OSGE has done remarkable work in supporting tax policies, reforms and administration in various RMCs with implications for tax evasion and avoidance. In a similar vein, OSGE works closely with the ANRC in designing effective lending operations that promote accountability and transparency and straighten taxation in the natural resource sector.

(ii) *Integrity and Anti-Corruption Department (IACD)* is the Bank's preventive and investigative arm which is responsible for promoting integrity within the Bank Group's operations and activities. The Integrity and Prevention division of IACD develops preventive measures to reduce the potential for misconduct in operations and transactions financed by the Bank Group. On the other hand, the Investigation division of IACD carries out investigations into allegations of fraud and corruption in the Bank's operations. Together, the two divisions prevent, detect, and deter fraud, corruption, collusion, coercion and obstruction (together "Sanctionable Practices") in operations financed by the Bank. The IACD, in collaboration with bank operational departments, has elaborated an Integrity Due Diligence (IDD) Policy and Guidelines for non-sovereign operations which addresses integrity concerns and enhances transparency in the Bank's non-sovereign operations. It has also prepared a training program on the prevention of fraud and corruption that is provided to Bank staff as part of the induction process and in the field offices.

[7] Notably, the International Convention for Suppression of the Financing of Terrorism.

(iii) *Procurement and Fiduciary Services Department (ORPF):* The primary role of the Procurement and Fiduciary Services Department is to advise on policies, rules and procedures for procurement and financial management in the Bank's lending activities. The Department serves as the guardian of the Bank's Fiduciary policies (Procurement and Financial Management), rules and procedures applicable to Bank's funded operations. The department also monitors the Bank's procurement and financial management activities under all Bank funded operations to ensure the achievement of economy, efficiency, transparency and equal opportunity. In this respect, a high priority is given to strengthening national institutions of RMCs in order to establish reliable and sound procurement and financial management systems, thereby contributing to the fight against corruption and illicit financing. Moreover, the Bank's FM framework developed by ORPF adopts a risk based approach. Its comprises, on the one hand, the assessment of the fiduciary risk at country level at the stage of preparation of Country Strategy Papers (CSP), and, on the other hand, at agencies level during project preparation. The assessment covers the major entry points of illicit financing namely: pillar I Financial Management (budget, accounting, internal control, treasury and flow of funds, financial reporting, and external audit); Pillar II Procurement; and Pillar III Corruption. Through project financial management and procurement, the Bank contributes to the strengthening of RMCs' financial accounting, auditing arrangements and Bank's project procurement administration to prevent misuse of its funds.

(iv) *Treasury Department (FTRY)* undertakes "Know Your Customer" (KYC) functions. In this regard, FTRY manages and, in collaboration with the Legal Department (GECL), coordinates responses to request in respect of KYC/AML by counterparties and correspondent banks. It also undertakes documentation and justification of payments and beneficiaries, screens outgoing payments to ensure compliance with correspondent banks KYC/AML policies and investigates incoming payments to ensure compliance with the Bank operations. However, the current KYC framework and practice in the Bank is not robust and comprehensive enough and there is the need to review the current KYC procedures in the Bank, and introduce a KYC manual, strengthen the monitoring process of correspondence banks and introduce the use of modern tools for KYC due diligence.

(v) *Development Research Department (EDRE)* carries out a broad range of research activities on development issues and provides economic intelligence. In this regard, it undertook a study, in partnership with Global Financial Integrity, titled "Illicit Financial Flows and the problem of Net Resource Transfers from Africa from 1980-2009" which was launched at the Bank Annual Meetings in May 2013. Accordingly, it continues to provide input to internal briefs and discussion on the issue of illicit financial flows from Africa.

3.4 *Support to RMCs and Regional Institutions:* The Bank has provided direct financial assistance to RMCs and FSRBs in Africa on a demand driven basis. For instance, in the past, has assisted the ESAAMLG to complete its training on the methodology to be used in evaluating the compliance of some of its member countries, and GIABA and ESAAMLG to conduct their respective technical assistance needs assessment of all their member countries. More recently, the assisted GIABA with Technical and Financial Assistance to Implement Capacity Building Programs on AML/CFT across West Africa, and The Gambia with resources from the GTF to build capacity in the area of AML/CFT and to establish an FIU. It also undertakes awareness raising, capacity building and training for its RMCs on a continuous basis.

3.5 *Partnership and Collaboration:* The Bank has observer status with ESAAMLG and the GIABA, and participates in their Plenary and technical meetings. The Bank has also committed itself to participate in the meetings of the Groupe d'Action contre le Blanchiment d'Argent en Afrique Centrale (GABAC), and the Middle East and North Africa Financial Action Task Force against Money Laundering and Terrorism Financing (MENAFATF). In 2008, the Bank and the OECD established the Joint Initiative to

Support Business Integrity and Anti-Bribery Efforts in Africa (Joint Initiative). The initiative supports African countries to fight bribery in domestic and international business transactions and the promotion of competitiveness in Africa. Recently, the Joint Initiative Partners have developed the Anti-Bribery Policy and Compliance Guideline for African Companies. The Bank has collaborated with a number of international organizations to organize a number of training, workshops and seminars for Civil Society Organizations, Parliamentarians, Government Agencies and Anti-Corruption Institutions in RMCs. It also collaborated with the United Nations Office on Drugs and Crime (UNODC) to organize a training for Multi-Stakeholder group of government, private and civil society organizations on the implementation of the United Nations Convention against Corruption and the African Union Convention on Corruption. Also, the Bank has, since 2013, been exchanging information on debarred and cross debarred companies with Southern African Forum against Corruption (SAFAC) and the East African Association of Anti-Corruption Authorities (EAAACA).

B. BANK GROUP'S POLICY ON PREVENTION OF IFFs

4. GENERAL POLICY DIRECTIVES

4.1 Vision

4.1.1 *The vision* of the Bank is to have a continent that is free of IFFs and other major financial crimes by 2030.

4.2 Core Objective

4.2.1 *The core objective* of the Bank's Anti-IFFs work is to significantly contribute to the continent's response to the threat of IFFs. This Policy establishes the general framework for the Bank's work in the fight against illicit financial flows. In the course of the implementation of this Policy, the Bank hopes to achieve its stated objective by: (i) enhancing the capacity of the Bank to combat IFFs; (ii) increasing its support to mandated institutions and non-state actors, in RMCs and the continent, in combating IFFs; and (iii) strengthening international co-operation in the fight against IFFs.

4.3 Key Guiding Principles

In implementing its policy on the prevention of IFFs, the Bank will be guided by the following principles:

4.3.1 *Conformity with the governance and accountability agenda, as well as the priority areas of emphasis of the High-5, within the TYS framework* will be key for all Bank Group's governance interventions, including its activities in combating IFFs. The policy, and its strategic framework and action plan, will complement the inclusive growth agenda of the TYS by prioritizing measures to enhance revenue mobilization for investment in the key priority areas of the High-5, including agriculture, energy and industrialization, and in suppressing economic crime in African countries, which will ultimately lead to improvement in the quality of life of Africans.

4.3.2 *Selectivity and Value addition:* The Policy prioritizes areas in which the Bank is well positioned to make a substantial contribution to the body of knowledge that should inform coherent responses and focuses the Bank's interventions in areas where it can add value without duplicating the ongoing efforts of the World Bank, IMF, and other partners in the region. It would instead seek to complement the efforts of these partners, through its lending operations and other forms of technical assistance. Central to value addition is the generation of knowledge on IFF risks pertinent to African economies, on types and trends of IFFs and on strategies to combat these activities, with a view to enriching the quality of the Bank's contribution to policy dialogue and the impact made by the supports extended.

4.3.3 *Synergy with the rest of the Bank's interventions:* The link between the Bank's operations to combat IFFs and the rest of the Bank's portfolio will be critical. The implementation of the Policy will

involve, and seek to benefit from, the accumulated expertise residing in the different relevant organizational units of the Bank. Compliance mechanisms will be based on the extent to which Anti-IFFs interventions support other strategies and operations being implemented by the Bank.

4.3.4 *Complementarity with partners:* The Bank cannot, in isolation, achieve its anti-IFFs vision or even the aspirations expressed in the Policy. The enormity of the demand, the range of activities involved, and the area that has to be covered, add to the complexity of the tasks. The Bank will therefore work with partners that have established a track record of engagement in IFFs to maximize the impact of its contribution, and minimize the wastage of resources. It will also identify new partners with potential to contribute. This collaborative approach should not constrain the Bank from adopting methodologies that differ from those used by partner organizations if justified by the subject matter of inquiry.

4.3.5 Guided by the above principles, and taking into account, in particular, the need to ensure complementarity with other partners and not to duplicate their ongoing efforts, the Bank Group's IFFs Policy, presented in the next section, has four key elements: (i) strengthening internal controls to safeguard the African Development Bank's funds; (ii) assisting RMCs, and regional institutions, in establishing and implementing effective legal and institutional framework for Anti-Illicit Financial Flows; (iii) increasing collaboration with other international organizations and agencies; and (iv) upgrading African Development Bank's staff capacity AML/IFFs.

5. THE BANK GROUP's POLICY

5.1 Internal Control and Safeguards

5.1.1 The African Development Bank is not a deposit-taking institution and its treasury operations are not as exposed to money laundering and illicit-financing activities as those of commercial financial institutions. However, because of the Banks' operational nature i.e. that of a lending/development bank, it is exposed to more sophisticated schemes of ML/TF activities than most commercial banks. This is because criminals that may want to launder funds through the Bank are only those who have the financial muscle to forgo the placement and layering stages of a money laundering scheme as they already have the ill-gotten funds from other illegal transactions. Their aim is to integrate the funds into the financial systems so they can invest and spend. As such, lending from a development bank like the Bank provides a safer way to legitimize such ill-gotten funds. In view of this, the Bank needs to strengthen its systems beyond those of commercial banks to make it more difficult for criminal activity to flourish. Hence, like all financial institutions, the Bank is required to put in place and maintain internal procedures to prevent its assets from being abused for the purpose of IFFs. As a result, the Bank strives towards international best practices in its treasury operations, driven by the objectives of transparency, control and oversight. The Bank also has in place fiduciary safeguards that ensures that its lending is used only for the intended purposes and not subjected to financial abuse. The Bank's internal control safeguard measures are designed to ensure that, in carrying out their duties, all Bank staff adhere to the highest standards that protect the Bank, its reputation and resources from being misused for illicit financial flows, including money laundering, financial crimes, fraud, terrorism financing, proliferation financing and financing of illicit small and light arms, or other illegal purposes. The measures entail having in place, amongst others, adequate systems and controls, including the establishment of clear "Know Your Customer" (KYC) practices and requirements, to mitigate the risk of the Bank, its reputation and resources being used to facilitate these criminal activities. In this section, the policy sets out the minimum control and safeguard standards that must be complied with by the Bank Group and all its staff.

5.1.2 *Prohibited Business Relationships:* In accordance with the Integrity Due Diligence Policy for Non-sovereign Operations[8] (the "IDD Policy"), in its dealings and transactions with non-sovereign entities, the Bank will not enter into a relationship with a client if the Bank cannot form a reasonable belief that it knows the true identity and nature of business of the client and/or Ultimate Beneficiary Ownerships (UBOs). In particular, the Bank will not enter into business relationships with: (i) individuals or entities known to be terrorists or a criminal organization or member of such; and (ii) clients operating in prohibited industries.

5.1.3 *Suspicious Activity Reports (SARs):* In the undertaking of their day-to-day business of the Bank, staff are required to watch out for suspicious activities/transactions in relation to IFFs. Such activities/transactions must be properly handled and escalated through the appropriate channels. A procedure manual for identifying and reporting suspicious activities/transactions internally will be developed and regular anti-money-laundering/anti-illicit financing training will ensure that staff are reminded of their duty to timely report any suspicious activity/transaction through the appropriate channels.

5.1.4 *Management and Controls of IFFs Risk:* The Bank will strengthen its existing measures to identify, manage and control its IFFs risk with a view to making them more comprehensive. Additional measures that would be developed and implemented will include:

(i) Establishing and maintaining a Risk Based Approach (RBA) towards assessing and managing the money laundering and illicit financing risk of the Bank Group by developing and implementing a Bank Group Anti-Money Laundering/Anti-Financial Crime Risk Analysis Tool. Since IFFs are facilitated by weak institutions and weak internal control systems either at macro level or at agencies level, the current Financial Management framework developed by ORPF would be fine-tuned and incorporated in the proposed Anti-Financial Crime Risk Analysis tool;

(ii) Based on the outcomes of the risk analysis, put in place more robust controls to ensure appropriate safeguards. In this regard, the responsible staff must ensure, by implementing adequate controls, that all applicable IFFs requirements are being adhered to and safeguard measures are properly functioning;

(iii) Enhancing current Know Your Customer (KYC) procedures by establishing and maintaining a risk-based clients due diligence, identification, verification and robust and strict KYC procedures to ensure that Bank group clients, in particular, non-sovereign clients and correspondent banks, are subject to adequate identification, risk rating and monitoring measures. This will involve not only knowing the entities the Bank deals with or renders services to, but also the UBOs, legal representatives and authorized signatories as appropriate. The program will include strict identification requirements, name screening procedures and the ongoing monitoring and regular review of all existing business relationships. To ensure that there are no duplications, the existing Integrity Due Diligence (IDD) and KYC functions will be harmonized as appropriate.

(iv) The Bank will strengthen its safeguards and monitoring process for its correspondent banking relationships. This would entail, amongst others, obtaining sufficient information on the correspondent to fully understand the nature of its business, its reputation, management and ownership structure and maturity of the bank's regulation and supervision in the respondent's

[8] See document ADB/BD/WP/2014/96/Rev.3 - ADF/BD/WP/2014/64/Rev.3

country; and assessment of the correspondent's anti-money laundering and terrorism financing controls. In addition, the Bank will not maintain correspondent banking accounts for banks offering services to shell banks. In this regard, the Bank would need to strengthen its due diligence mechanisms and emphasize on Enhanced Due Diligence programs as enunciated under the IDD Policy that will target both the source and destination of the money trail. This will cover aspects such as confirming the legitimacy of the bank receiving the funds, confirming the legitimacy of the jurisdictions in which the banks are operating from and thereby confirming that the funds are being used for the intended objectives.

(v) Undertaking more structured, comprehensive and frequent anti-money laundering/anti-illicit financing training and awareness programs for Bank staff. The trainings will be tailored in such a way to ensure that staff are aware of different possible patterns and techniques of money laundering/illicit financing which may occur in their everyday business. Training will also cover the general duties arising from applicable external (legal and regulatory), internal requirements and the resulting individual duties which must be adhered to in everyday business as well as typologies to recognize money laundering or illicit financing.

(vi) All Bank staff and third parties that act on behalf of the Bank are strictly prohibited from acts of bribery and corruption. The Bank's Integrity and Anti-Corruption Department conducts investigations into allegations of fraud, corruption and other Sanctionable Practices within the Bank Group and in operations financed by the Bank Group. These include projects financed by the Bank, misconduct involving staff with regard to operations financed by the Bank Group, administrative budgets and misuse of Bank resources. In addition, it monitors compliance with policies, procedures and guidelines that relate to integrity and ethics; as well as reviews transactions and other operational material to ensure compliance with the Bank's policies.

5.2 Building Staff AML/IFFs Capacity

5.2.1 Money Laundering and Financing of Terrorism issues, in particular and Illicit Financing issues, in general, are somewhat specialized and distinct from the other professional disciplines that Bank staff normally deal with. With the enhanced role envisaged for the Bank under this policy, the tasks set out for the Bank are clearly onerous and broad ranging, and call for the upgrading and strengthening of Bank's staff skills, capacity and expertise to deal with internal safeguards issues, and respond swiftly and effectively to RMCs request for assistance in this area.

5.2.2 The capacity and expertise of staff who will be working directly on anti-money laundering/anti-illicit financing issues would need to be upgraded on a regular basis. Moreover, a greater number of staff, especially those in the regional departments and field offices who have direct contact with RMCs, especially in terms of dialogue and project identification, need to be familiar with the subject. Priority will therefore, be given to the training of staff, especially those dedicated to handling ML/FT/IFF matters, to enable them address the issues effectively and to effectively drive the policy dialogue with RMCs and FSRBs. A training manual for IFFs will be prepared and updated from time to time. The staff training will be developed and conducted with the dedicated unit responsible for IFFs, in collaboration with other relevant departments, including EADI, IACD, GECL, OSGE, FTRY, OFSD, amongst others, with the assistance of external consultants. In addition to the internal in-house training programs, there will be external training programs for relevant staff, where necessary.

5.3 Assistance to Regional Member Countries

5.3.1 Cognizance of the negative impact that IFFs have on development, there is a need for the Bank to continue to enhance its role in combating IFFs in the continent as part of its mandate to promote good governance and socio-economic development of its RMCs. There is a growing need from RMCs for support to develop their policy and strategic framework for addressing IFFs issues. Other needs include support to undertake assessments of key risks relating to money laundering, terrorism financing, and illicit financial flows, and defining risk mitigation measures; building the capacity of personnel charged with upholding AML/CFT laws (e.g. investigators, prosecutors, judges); building the capacity of Financial Intelligence Units (FIUs); support to RMCs to build national capacities of tax authorities to tackle tax evasion, including enhancing the capacity of tax authorities to gather information on tax evasion to enable them benefit from the Automatic Information Exchange (AIE) mechanism; providing the infrastructure necessary to track and report cash movements across borders; support to national and regional institutions that alleviate IFFs in the context of the extractive industries; and encouraging and assisting countries to strengthen and prioritize the implementation of existing international standards or commitments established by the African Union, United Nations, FATF and other relevant groups.

5.3.2 The Bank will, in collaboration with other international donors, assist RMCs build institutional capacity to strengthen their system of information collection to allow full reciprocal information exchange by African countries; assist RMCs build human capacity and information technology to analyze information related to tax evasion and IFFs; support RMCs to put in place appropriate legal framework to promote wider access to information and greater transparency with a view to promoting the fight against IFFs; collaborate with the African Tax Administration Forum (ATAF), Tax Justice Network-Africa, and similar bodies to advocate for the extension of the AIE mechanism to African countries; and through the African Legal Support Facility (ALSF), provide support to RMCs to strengthen their legal expertise and negotiating capacity in issues relating to AIE.

5.3.3 The Bank's engagement in helping RMCs address the problem of asset recovery calls for the strengthening of legal, financial and public financial management systems in RMCs to improve transparency and public accountability and reduce theft of public assets. It also calls for support to national and international institutions that work to recover stolen assets, including providing legal and technical assistance to RMCs which could include financial assistance to defray the legal cost of asset recovery process, help in filing a request for mutual legal assistance, and advice on experts needed; and supporting the setting up, and strengthening of regional networks on asset recovery where they do not exist and strengthen them were they do. The Bank would however, not get directly involved in the investigation, tracing, law enforcement, prosecution, confiscation, and repatriation of stolen assets.

5.3.4 The needs of the Anti-Corruption Agencies, FIUs and other related agencies in RMCs, especially in the area of institutional and human capacity building, are enormous and are hardly met by the Governments especially in the low capacity countries and fragile states. The FIUs and similar agencies that are designated to counter corruption and economic and financial crimes are, in most cases, not properly funded because some authorities do not consider IFFs issues a priority. In some cases, these agencies are viewed with suspicion and their activities seen as a threat. Support from the Bank for institutional (infrastructure, and legal and regulatory framework) and human capacity building, as well as for the conduct of research, conferences, workshops and seminars, is of paramount importance to these agencies.

5.3.5 Initially, FATF member countries have provided much of the needed support on a bilateral grant basis. More recently, however, the needs for Technical Assistance and other supports have grown bigger and more pressing, thus requiring active interventions by international organizations including the World Bank, IMF and the African Development Bank. This has naturally increased RMCs' expectations of the

Bank to play a greater role in provision of necessary assistance to them. The Bank's assistance could be funded by Technical Assistance grants; project and program loans and grants; and/or from bilateral and multilateral trust funds administered by the Bank.

5.3.6 In providing financial and technical assistance to RMCs, the Bank will continue to enhance its fiduciary safeguards to ensure that it's lending is used only for the intended purposes and not subjected to financial abuse. This includes the responsibility of ensuring probity in the Bank's operations, elimination of fraud and corruption from its lending operations and financial assistance, as well as the prevention of fraudulent transactions that may disguise the origins of proceeds of crime and the misuse of the Bank's resources for money laundering, financial crimes, fraud and terrorism financing or other illegal purposes. Staff and Bank clients are required to report cases of fraud, corruption and other Sanctionable Practices (as defined in the IACD policy) within the Bank Group and in operations financed by the Bank Group, through the appropriate channels and IACD to conduct the necessary investigations.

5.4 Increasing Collaboration with International Partners

5.4.1 The Bank will increase and strengthen its collaboration and cooperation with the international organizations and agencies that work on AML and anti-illicit financing issues in the African region. This will ensure greater consistency in strategy and approach to each RMC among the organizations. It will also ensure better coordination of respective assistance projects and programs to each of the countries, thereby avoiding duplication of efforts. In addition, this collaboration will be of benefit to the Bank in that it will enable staff to keep abreast with the latest developments and strategies of the partner organizations and to share or exchange information and knowledge on AML/anti-illicit financing issues.

5.4.2 *Strengthening Collaboration with the FSRBs and other International Organizations:* There are, currently, four FATF-Style Regional Bodies (FSRBs) covering the African continent. These are the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG), the *Groupe d'Action contre le Blanchiment d'Argent en Afrique Centrale* (GABAC), the Intergovernmental Action Group against Money Laundering in West Africa (GIABA) and the Middle East and North Africa Financial Action Task Force against Money Laundering and Terrorism Financing (MENAFATF). They act as the sub-regional coordinators of TA and training needs, and as sub-regional centers for knowledge, information, and networking activities. Though the Bank has supported ESAAMLG and GIABA in the past and has been collaborating with them, it is important that for the Bank to strengthen this cooperation and collaboration more fully in its operational work. It is also important to expand this to the other two FSRBs (GABAC and MENAFATF). In its dialogue with RMCs, the Bank will also seek to encourage countries that are not yet members of the FSRBs to become members and those who are, to strengthen their support to the FSRBs. Cooperation and collaboration with other multilateral/bilateral organizations involved in the fight against IFFs such as the AU-UNECA, FATF, the IMF, World Bank, United Nations Office on Drugs and Crime (UNODC), and Global Financial Integrity, amongst others, would also be enhanced. In this regard, the Bank would consider collaborating with the IMF and World Bank in supporting AML national risk assessments using the tools that have been developed by the IMF and World Bank.

5.4.3 *Collaboration with the Civil Society and Non-Governmental Organizations:* The role of some multi-national corporations in illicit profit shifting has attracted the attention of development agencies and civil society across Africa. There is demonstrable public concern about the perceived escalation of crime, corruption and illicit/unethical corporate practices, and there is a growing demand for tax justice by governments and civil society alike. In collaboration with other international organizations, the Bank will continue to provide learning opportunities to update civil society, media and other non-state actors by, amongst others, organizing trainings, workshops and seminars, as well as providing sponsorship to participate in IFFs-related meetings for them. The TYS emphasizes demand-side accountability, which provides an entry point for structured engagement by the Bank with civil society, media and other non-

state actors to support a greater role for them in combating IFFs. Therefore, in the implementation of the capacity support initiatives of this policy and its strategic framework and action plan, there will be a heavy reliance on mobilizing, analyzing and making information on ML, FT and other IFFs in Africa accessible to stakeholders, including civil society, media and other non-state actors, with a view to enhancing their networking against ML and other IFFs, and building public confidence in state institutions, as well as enhancing their roles in detecting corruption cases and campaigning to recover stolen assets.

5.4.4 *Enhancing Participation in International and Regional Organizations' Meetings and Conferences:* To facilitate and enhance cooperation and collaboration with the FSRBs and other international and multilateral/bilateral organizations, including FATF, Egmont Group, and United Nations Convention against Corruption (UNCAC), the Bank would enhance its attendance of, and participation in, their meetings and workshops, by making its attendance of the plenary meetings and typology workshops of FATF and the FSRBs, amongst others, more regular and consistent. The Bank will also participate in the meetings of the Egmont Group and the conference of state parties to the UNCAC. This will enable Bank staff to keep abreast with the latest developments, as well as maintain working relationship with these organizations. In addition, participation in the discussions and dialogues of FSRBs technical working groups on national mutual evaluations and typology studies of the FSRBs, will enable the Bank to influence the direction of national strategies, policies and reforms, while participating in FATF's technical working groups will ensure that the Bank's views and concerns relating to its RMCs and the region are properly taken into account in FATF's discussions.

5.4.5 *Engaging Recipient Countries of IFFs:* IFFs can be considerably reduced with concerted action on national, regional and international level, especially if there is the will to do so from the richer (destination) countries. In this regard, the Bank will seek to engaged recipient countries of IFFs with a view to restricting absorption of IFFs into these countries by promoting more transparency of the international financial system, regular reporting of detailed deposit data, addressing obscurity surrounding beneficial ownership, and addressing tax evasion by encouraging automatic exchange of information (AEI) agreements between RMCs and destination countries where proceeds of tax evasion are lodged. The Bank will seek to provide support to RMCs to improve their negotiation capacities for tax treaties negotiations with IFFs recipient countries, and to enable them comply with minimum standards such as those set by the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS)[9]. The Bank will also continue to support the partnerships between the recipient countries and African countries, such as the *US-Africa Partnership on Illicit Finance*, and similar partnerships, which are meant to address issues relating to IFFs from both sides. In like manner, the Bank will support the setting up of regional network on recovery of stolen assets and encourage greater sharing of information or good practices, on issues such as mutual legal assistance amongst RMCs and between them and recipient countries. This will contribute to building the experience and knowledge critical to deal with financial centers in the recipient countries of IFFs and tax havens.

C. OPERATIONAL CONTENT OF THE POLICY

6. INSTRUMENTS

6.1 Anti-Illicit Finance Program and Tools

6.1.1 The Bank will strengthen its internal measures to prevent and detect illicit financial flows. These efforts will include the development of internal procedures and controls for Anti-IFFs and the

[9] The aim of BEPS is to target shifts of taxable income out of countries where the income is earned, to zero- or low-tax countries. This erodes the tax base of the affected countries and reduces their tax revenues.

development of a comprehensive Anti-IFFs training program for Bank staff as well as the acquisition of anti-illicit financing software amongst others. With regards to anti-IFFs tools, the Bank will acquire tools, such as, customer due diligence tools, name/entity matching tools, suspicious activity detection tools, know your customer quick reference guide, amongst others, that will facilitate the identification of suspicious activity, verification of the identity of clients and correspondence banks, and the application of enhanced due diligence, as well as information sharing within the Bank and with external stakeholders and law enforcement agencies. This will ensured increased automation of the Bank's due diligence processes and ensure enterprise-wide data consistency across master and downstream applications as well as a centralized, consistent 'single view' of all customer data across the Bank.

6.2 Policy Dialogue

6.2.1 Priority will be given to encouraging the incorporation of AML and anti-illicit financing issues in the policy dialogue with RMCs, particularly when RMCs request the Banks assistance in this area and routinely as an integral part of reforms measures in a Program Based Operation (PBO) and Institutional Support Projects (ISP). In this regard, these issues should be explicitly mainstreamed into Country Strategy Papers (CSPs) and Regional Integration Strategy Papers (RISPs), as well as into PBO, ISP, and Non-Sovereign Operations appraisal reports, and relevant sector strategies, and country dialogue processes.

6.2.2 In its policy dialogues with RMCs with less developed framework, the Bank would seek to draw the attention of the authorities to the dangers and risks that ML and Illicit Financing pose to their economy, in general, and to financial sector governance and integrity, in particular. In countries which have made substantial progress in their AML/CFT efforts, the Bank's dialogue will be focused on further strengthening the AML/CFT regime and ensuring their effective implementation. In any event, the Bank's dialogue with all RMCs will entail encouraging them to actively participate in international and regional fora and activities on AML and IFFs, thereby affording them access to technical advice and guidance from such fora. They would also be encouraged and assisted, where necessary, to develop and implement effective policies, strategies, and actions plans for combating illicit financing and illicit financial flows, as well as in building capacities to address IFFs and the recovery of stolen assets.

6.2.3 Inputs into the dialogue process with RMCs will include the Bank's own studies and assessments, including country specific and regional Economic and Sector Works (ESWs), as well as assessments carried out by international organizations including, the High-Level Panel on IFFs of the African Union, FATF and FATF-Style Regional bodies (FSRBs) like ESAAMLG, GABAC, GIABA and MENAFATF, and multilateral organizations such as the IMF, and World Bank. This approach will ensure coordination and consistency between the FSRBs, the other international organizations, and the African Development Bank in addressing IFFs matters. It will also facilitating cooperation amongst RMCs.

6.3 Loans/Grants

6.3.1 The main vehicle that the Bank will use in terms of loans/grants would be program-based operations, including general budget support operations and sector-specific (such as economic governance, and financial sector governance) budget support operations. This will ensure support to anti-illicit financing frameworks in a broader context of financial sector governance and integrity, anti-corruption and general governance reforms framework, ensure that the assistance will be in line with the Bank's existing operational priorities as enunciated in the Ten Year Strategy, the Governance Strategic Framework and Action Plan (GAP II), and the Financial Sector Development Strategy, amongst others. Moreover, the incorporation of AML/anti-illicit financing reforms measures into the reform matrices of PBOs, and their moderate use as loan covenants and tranche conditions, will help accelerate RMCs' concerted efforts and political commitments to AML/anti-illicit financing institutional framework, as

well as relevant legal and regulatory reforms. In addition to PBOs, the Bank would also use Institutional Support Projects (loans/grant) as a vehicle to deliver its support in this area.

6.4 Technical Assistance

6.4.1 Although current global financial situation has made the availability of, and access to, technical assistance (TA) grants extremely tight, its role in supporting institutional and human capacity building in the area of AML/anti-illicit financing cannot be over-emphasized. TA grants, delivered through the vehicle of Institutional Support Projects, is a particularly important instrument for supporting institutional capacity building for, and through, regional and sub-regional bodies involved in the fight against ML and Illicit Financial Flows. Where common needs for assistance for RMCs in a region or sub-region arise, a regional or sub-regional TA would be developed to provide the appropriate assistance through the region/sub-regional bodies. Even at individual national level, assistance through TA grants to national anti-corruption agencies, financial intelligence units, economic and financial crimes commissions, and similar agencies, would be considered depending on the nature, urgency, and the priority of the request.

7. IMPLEMENTATION ARRANGEMENT

7.1 Lessons from the Experience of Other MDBs

7.1.1 The current practice in the Asian Development Bank (AsDB) is similar to the Bank's. Their Anti-Money Laundering activities are undertaken within the context of its Governance and Public Sector Management operations. In addition some AML/CFT activities are undertaken in the regional departments, the Operations Services and Financial Management Department, the Controller's Department, the Office of Anticorruption and Integrity, the Office of the General Counsel, and the Treasury Department. On the other hand, the World Bank's AML/CFT work is conducted by the Financial Market Integrity Group (FMIG). Although not entirely autonomous, the FMIG operates like a distinct entity across the World Bank Group, and with external stakeholders. It interacts with various departments of the Bank, particularly departments tasked with work on anti-corruption, financial integrity, stolen asset recovery and criminal justice reform. Similarly, at the European Bank for Reconstruction and Development (EBRD) all integrity issues relating to anti-corruption, AML/CFT and staff issues, internal and external, are handled by the Office of the Chief Compliant Officer (OCCO), which also does investigation and sanctions for all integrity issues. Specifically, the Transaction Advice team within the OCCO is responsible for issues of ex-ante integrity due diligence, anti-money laundering (AML) and countering the financing of terrorism (CFT).

7.1.2 From the above and the review of the experience of other Development Partners' experience in Appendix 2 to this report, it appears that the Bank Group significantly lags behind with no clear institutional framework for its IFFs engagements. With increasing complexities of IFFs issues and the urgent need to progressively mainstream IFFs issues and practices into the Bank's operations and policy dialogues, as well as to scale-up the Bank's support to RMCs in these areas, as well as the need to enhance its internal capacity to address IFFs risks, there is a pressing need for the Bank to strengthen the institutional arrangement for addressing IFFs issues not only in its RMCs but also internally within the Bank. With regards to internal arrangement, the Bank could be guided by what obtains in the World Bank, IMF and EBRD.

7.2 Institutional Framework for Implementing the Policy

7.2.1 To operationalize the commitments made by Management in this policy, a IFFs Strategic Framework and Action Plan for the implementation of the policy is being prepared. Amongst others, the Strategic Framework and Action Plan would include: a detailed proposal of an institutional framework and financing mechanism for implementing the policy; an indicative five year work plan, including cost

estimates; and IFFs pillars related implementation responsibilities; as well as an indication of capacity building requirements and priorities. Management would be presenting the proposed IFFs Strategic Framework and Action Plan to the Board for consideration before the end of 2016.

7.2.2 In view of the cross-cutting nature of IFFs issues, which recently has focused attention on tax transparency, the Bank's IFFs work currently involves several departments, including OSGE, IACD, FTRY, ORPF, GECL, EDRE, and OAGL, amongst others, with OSGE acting as the focal department for IFFs activities in the Bank.

7.2.3 However, from the review of the experience of other Development Partners' experience in Appendix 2 to this report, it is clear that implementation of AML/anti-IFFs activities are not the same across all MDBs. However, the general tendency is that most MDBs are moving towards consolidating such roles, instead of spreading the roles across the institution.

7.2.4 Given that the amount of work envisaged for the Bank under the policy is onerous and broad ranging, the current approach of having a focal person in OSGE to coordinate IFFs activities in the Bank will no longer suffice. For an effective implementation of its IFFs programs under the policy, Management therefore, proposes the creation of a IFFs Operations and Advisory Team (or Group) (Economic and Financial Integrity Team or Group), as part of the Governance and Public Financial Management Coordination Office, under the Chief Economist and Vice President, for Economic Governance and Knowledge Management. The functions of the proposed Economic and Financial Integrity Team (EFIT) would be mostly focused on external IFFs activities and coordination. It would be responsible for handling all IFFs operations, dialogue with external stakeholders/partners and the coordination of all IFFs activities within the Bank. In addition, it is being proposed that all IFFs Compliance activities be consolidated under a IFFs Compliance Team within the IACD. The IFFs Compliance Team would be responsible for issues of ex-ante integrity due diligence, and anti-IFFs.

7.2.5 The proposed EFIT, which will mostly focus on external activities and coordination, would be the main organizational unit responsible for the conduct/coordination of the Bank's IFFs work. It would lead collaboration and consultations with the external stakeholders including RMCs, FSRBs, FATF, the World Bank, IMF and Global Financial Integrity on IFFs issues. It would lead the preparation of IFFs related operations for the provision of financial and technical assistance to RMCs. The office will also provide advisory services and training to RMCs in the areas of IFFs. It will oversee engagement on regional and global initiatives on IFFs. The Strategic Framework and Action Plan would provide a draft terms of reference for the proposed IFFs Office, and details on how its activities would be financed.

7.2.6 On its part, the proposed IFFs Compliance Team, within the IACD, will mostly focus on IFFs compliance issues. It would be the main organizational unit responsible for managing and maintaining the Bank Group's obligations as it relates to the supervision and reporting of money laundering and other IFFs activities. It would be responsible for designing, evaluating, supporting, and influencing a culture of compliance throughout the Bank Group, as well as assisting in the management and execution of an efficient compliance monitoring program. It will be responsible for maintaining a robust approach to Integrity Due Diligence (IDD) on prospective Bank Group's clients and projects including (but is not limited to) risks and issues such as: ownership structure and the identity of ultimate beneficial owners; origins of a company and the source of wealth of key figures; business practices and associations with counterparties; presence of Politically Exposed Persons (PEPs); quality of AML and CFT controls; project-related Know-Your Customers (KYC) functions concerning borrowers (non-sovereign operations) and investment companies, (such as private equity funds); reliance on government-issued licenses and permits; and use of offshore jurisdictions.

7.3 IFFs Role of Relevant Bank Units

7.3.1 The establishment of the proposed Economic and Financial Integrity Team and the IFFs Compliance Team in IACD, notwithstanding, some of the existing organizational units, dealing with internal IFFs function, including GECL, FTRY and ORPF, will continue to play their role. For instance, ORPF will continue to undertake fiduciary risk assessment and procurement reforms which contribute to mitigating IFFs risks.

7.3.2 *Know-Your Customer.* With regard to the Bank Group's correspondent banks, FTRY will be responsible for KYC functions relating to correspondence banks and will undertake documentation and justification of payments and beneficiaries, screening of outgoing payments to ensure compliance with correspondent banks KYC/AML policies and investigating incoming payments to ensure compliance with the Bank operations. GECL will be responsible for leading the process of coordinating the Bank's responses to questions and enquiries from counterparties, rating agencies and other external parties on the Bank's IFFs practices and safeguards. It will also, in collaboration with FTRY, coordinate responses to requests in respect of KYC/AML by counterparties and correspondent banks. It will, in addition, be responsible for ensuring that relevant clauses on IFFs are included in loan/grant agreements. For KYC functions related to operations (lending/investment) particularly with regards to borrowers and investee companies in non-sovereign operations, IACD, OPSD, GCRO and GECL will harness the process under the existing Implementation Guidelines for Integrity Due Diligence for non-sovereign operations[10] specifically, the provisions on Beneficiary Identification.

7.4 Resource Implications

7.4.1 Implementation of the policy will require the formal allocation of resources to ensure smooth and undisrupted implementation. It is deemed appropriate to allocate staff resources to the proposed IFFs unit which will centrally coordinate the Bank's IFFs activities and support the other departments in their envisaged IFFs related roles. To secure a smooth start of the policy implementation and in view of current resource constraints, the staff of the propose IFFs unit should be initially drawn from the existing staff complement of the Bank. Where necessary, consultants would be recruited to help staff of the unit address some initial tasks to start implementation of the policy, including training of staff of the proposed IFFs Operations and Advisory Team, IFFs Compliance Team, Operations departments and other relevant departments of the Bank.

7.4.2 In addition to staff resources, there will be need for resources to implement the Bank's IFFs program (project/program loans, grants; and technical assistance grants, etc.). Details of the envisaged programs and costing will be provided in the IFFs Strategic Framework and Action Plan.

8. MONITORING ARRANGEMENTS

8.1 Mechanisms to Deliver Results

8.1.1 The IFFs Strategic Framework and Action Plan will provide the strategic framework for the implementation of the IFFs Policy to achieve its goals. The mechanisms through which results will be delivered will include the use of institutional support projects (ISPs) and Program Based Operations (PBOs), given the Bank's wealth of experience in the design and implementation of these operations. Other mechanism that would be used by the Bank to deliver results in this area will include: (i) Technical assistance; (ii) Policy advice and briefs; (iii) Fact Sheets setting out the Bank's standpoint, role, capacity and work; (iv) Revised Bank documentation which incorporates IFFs safeguards; (v) Public media – including television interviews, documentaries and podcasts; (vi) Presentation at FSRBs meetings and

[10] See Document ADB/BD/WP/2014/96/Rev.2/Add.1 • ADF/BD/WP/2014/64/Rev.2/Add.1

Conference presentations; (vii) Fee-based advisory services, (where applicable); and (viii) Research and Publications.

8.2 Results Measurement

8.2.1 The Bank's anti-money laundering/anti-illicit financing operations will be results-oriented with the ultimate focus being on enhancement of outcomes. Compliance will be determined against performance indicators in the Indicative Results Measurement Framework of the IFFs Strategic Framework and Action Plan being prepared alongside this policy. The results measurement framework of the IFFs Strategic Framework and Action Plan will articulate key priorities and define the necessary actions to deliver on objectives. The result measurement framework will include expected impacts, expected outcomes and the output/activities to support them. In addition IFFs operations that would be supported by the Bank either using the instrument of ISPs or PBOs would have result measurement frameworks which will include indicators to measure expected impacts, expected outcomes and the output/activities.

9. RECOMMENDATIONS

9.1 It is recommended that the Boards approve the policy, and its implementation arrangement.

APPENDICES

APPENDIX 1: DEFINITION OF TERMS

1. *Illicit Financing:* For the purpose of this policy, illicit financial activities cover a wide range of misconduct, ranging from corruption to embezzlement of public funds, drug, human and natural resource products trafficking, financial crimes, fraud, tax evasion, money laundering, terrorism financing, cybercrime, proliferation financing, and financing of illicit small and light arms, amongst others. Such activities are a serious threat to security, peace and stability of a country.

2. *Illicit Financial Flows* (IFFs) is a broad term that covers both money laundering and terrorism financing as well as other illegal movement of funds. The UNECA High Level Panel on IFFs defines IFFs as money illegally earned, transferred or used. It has to do with the flow of money (mostly unrecorded) that are in violation of laws in their origin, or during their movement or use, and are therefore considered illicit. They derived mainly from (a) proceeds of theft, bribery and other forms of corruption by Government officials; (b) proceeds of criminal activities, including drug trading, racketeering, counterfeiting, contraband and terrorism financing; and (c) proceeds of tax evasion and laundered commercial transactions.

3. *Money Laundering* (ML) describes a process through which the origin of funds generated by illegal means is concealed. The process may be accomplished by using one or more financial institutions. It could also be done outside such institutions. When it uses the financial system money laundering is conventionally understood to involve three stages: (1) the introduction of the proceeds of crime (monies or other valuables) into the financial system (placement); (2) transactions to convert or transfer the funds to other locations or financial institutions (layering); and, (3) reintegrating the funds into the legitimate economy as "clean" money and investing it in various assets or business ventures (integration). These stages are not static and overlap broadly. Financial institutions may be misused at any point in the money laundering process. When proceeds of illegal activities are laundered outside financial institutions, they are, mostly, directly used to acquire assets that subsequently generate secondary proceeds.

4. *Terrorism Financing* means the providing or raising of funds or the provision of financial services in the knowledge of their being intended for financing an organization, preparing and committing any of the crimes envisaged by Applicable legislation as a terrorist act or for supporting an organized group, illegal military formation or criminal organization that has been formed or is being formed for the purpose of committing the said crimes. Terrorist activities almost always require support in the form of funding or services. Mobilizing and/or extending such support amounts to financing terrorism (FT). Terrorism may be funded from proceeds of crime or from other sources.

5. *Tax evasion* is an unlawful attempt to minimize tax liability through fraudulent techniques to circumvent or frustrate tax laws, such as deliberate under-statement of taxable income or willful non-payment of due taxes. Tax evasion can be a major component of IFFs and entails criminal or civil penalties.

6. *Tax avoidance* is the legal practice of seeking to minimize a tax bill by taking advantage of a loophole or exception to tax regulations or adopting an unintended interpretation of the tax code. Such practices can be prevented through statutory anti-avoidance rules; where such rules do not exist or are not effective, tax avoidance can be a major component of IFFs.

7. *Trade mispricing*, a trade-based money laundering technique, is the fraudulent over-invoicing of imports or under-invoicing of exports by entities in a country, usually for the purpose

of avoiding paying tax or levies in that country. This, together with other forms of tax evasion, accounts for the vast majority of illicit financial flows from Africa.

8. *Proliferation Financing:* According to a FATF report "Combating Proliferation Financing – A Status Report on Policy Development and Consultation" published in February 2010, proliferation financing is defined as the act of providing funds or financial services used, in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations.

9. *Financing of Illicit Small and Light Arms:* For the purpose of this policy, the financing of illicit small and light arms is defined as the act of providing funds or financial services used, in whole or in part, for the illegal acquisition, possession, export, trans-shipment, brokering, transport, transfer, stockpiling or use of small and light weapons, in contravention of national laws or, where applicable, international obligations.

10. *Politically Exposed Persons* (PEP) means any individuals who are or have been entrusted (domestically or by a foreign country or by an international organization) with prominent public functions, for example Heads of State or government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, and important political party officials. Many PEPs hold positions that can be abused for the purpose of laundering illicit funds or other predicate offences such as corruption or bribery. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves.

11. *Beneficial owner* is the real person or group of people who control(s) and benefit(s) from a corporation, trust, or account. The Financial Transparency Coalition (FTC) advocates that beneficial ownership information be collected and made publicly accessible. Transparency of beneficial ownership is one of the five FTC recommendations.

12. *Shell Bank (company)* means a bank (company) without a physical presence in any country.

APPENDIX 2: EXPERIENCE OF OTHER DEVELOPMENT PARTNERS

Experience of Selected Development Partners: A brief overview of the experience of the Bank's peers will assist in determining areas where intervention is likely to make significant impact, and guide the Bank on optimal methods.

World Bank: The World Bank sometimes separately, but often jointly with the IMF, has undertaken substantial AML/CFT initiatives. The World Bank Group's 2001 policy paper on "Enhancing Contributions to Combating Money Laundering" identified three main ways in which it would contribute to the global efforts to combat financial abuse and ML: (i) helping countries identify and address structural and institutional weaknesses that may contribute to lack of market integrity and potential financial abuses; (ii) participating in targeted international efforts to combat ML based on its mandate and expertise; and (iii) ensuring that the Bank Group's own financial transactions do not inadvertently undermine international actions to curb illegal practices. Much of the World Bank's operational AML/CFT activities are focused on the provision of technical assistance to support the strengthening of legislative frameworks in its client countries; national risk assessment, and preparation of national AML/CFT strategies. Specifically, the World Bank provides technical assistance to its client countries: (i) through workshops, mentorships, and advisory services; (ii) by engaging client countries and other relevant international organizations to influence policy changes at national and global levels; and (iii) by undertaking assessments of countries' AML and CFT regimes to diagnose effectiveness and areas of potential risks. None-operational AML/CFT activities of the World Bank include outreach work and publications; and participation at meetings of the FAFT, the FSRBs, the OECD, Egmont Group and at the conference of state parties to the UNCAC.

The World Bank's AML/CFT work is conducted by the Financial Market Integrity Group (FMIG). Although not entirely autonomous, the FMIG operates like a distinct entity across the World Bank Group, and with external stakeholders. It interacts with various departments of the Bank, particularly departments tasked with work on anti-corruption, financial integrity, stolen asset recovery and criminal justice reform. The FMIG accomplishes these activities with a team which comprises financial sector specialists, supervisors, lawyers, prosecutors, and asset disclosure specialists, amongst others. It is also the primary unit which provides other staff of the World Bank with tools to improve transparency in order to deter, expose and detect ML.

International Monetary Fund: In its AML/CFT activities, which are mainly in the form of assessment of compliance with the FATF standards and technical assistance, the IMF relies on close cooperation with the FATF and the World Bank. AML/CFT assessments are an important part of the IMF's Financial Sector Assessment Programs (FSAP) and Reports on the Observance of Standards and Codes (ROSC). FSAP policy requires that FSAPs incorporate a full AML/CFT assessment and the IMF's AML/CFT program now encompasses assessments under the ROSC program of countries' compliance with the AML/CFT standards established by FATF. The IMF's AML/CFT technical assistance aims to improve AML/CFT regimes worldwide and to provide concrete support to the IMF's membership. This assistance is delivered through timely and high-level programs customized to fit the specific needs and priorities of IMF member countries and their respective institutions.

Most of the AML/CFT technical assistance of the IMF is financed through a multi-donor AML/CFT Topical Trust Fund established in 2009. The AML/CFT Topical Trust Fund is supported by twelve donors namely; Norway, Switzerland, Canada, Japan, Kuwait, Qatar, Saudi Arabia, United Kingdom, Luxembourg, The Netherland, Korea and France. The trust fund aims to enhance financial sector and macroeconomic stability at both the national and international levels;

facilitate countries' integration into the global financial system; and improve fiscal governance, transparency, and effectiveness. As such, it contributes to financial sector development and revenue mobilization.

Asian Development Bank (AsDB): The AsDB adopted its AML/CFT policy titled "Enhancing the Asian Development Bank's Role in Combating Money Laundering and the Financing of Terrorism" in 2003. The Policy has four key elements: (i) assisting its developing member countries (DMCs) to establish and implement effective legal and institutional systems to combat money-laundering and the financing of terrorism; (ii) increasing collaboration with other international and donor organizations; (iii) strengthening internal controls; and (iv) enhancing AsDB staff capacity.

The Asian Development Bank (AsDB) Anti-Money Laundering activities are undertaken within the context of its Governance and Public Sector Management operations. In addition some AML/CFT activities are undertaken in the regional departments, the Operations Services and Financial Management Department, the Controller's Department, the Office of Anticorruption and Integrity (OAI), the Office of the General Counsel, and the Treasury Department. Recently however, there has been a tendency towards consolidating these functions, and the OAI is now more focused on AML due diligence and reaching out to institutions on AML capacity building.

The AsDB's AML/CFT work is predominantly of a capacity building nature. In assisting its DMCs in developing and strengthening their AML/CFT regimes, the key activities are policy dialogues, and assistance for the development of financial-sector and governance-related projects and TA (including regional TAs). The dialogues are useful vehicles for the incorporation of AML/CFT-related components into reform programs and in devising and implementing AML/CFT policies in the DMCs. It also delivers public awareness programs and supports mutual aid mechanisms to share information and legal assistance. Also, within the AsDB, there is a focus on strengthening and implementing internal control procedures, and enhancing staff capacity through developing knowledge-based products.

European Bank for Reconstruction and Development (EBRD): At the EBRD, all integrity issues relating to anti-corruption, AML/CFT and staff issues are handled by the Office of the Chief Compliant Officer (OCCO), which also does investigation and sanctions for all integrity issues. The OCCO is organized along four principle lines as follows: Ethics and Policy, Investigations, Transaction Advice, and Project Complaint Mechanism.

The Transaction Advice team within the OCCO is responsible for issues of ex-ante integrity due diligence, anti-money laundering (AML) and countering the financing of terrorism (CFT). Issues of confidentiality, conflicts of interest, corporate governance and ethics are addressed by the Ethics and Policy team. The Investigations team is responsible for investigating allegations of fraud or corruption in the Bank's projects and allegations of misconduct by Bank staff. The Project Complaint Mechanism (PCM) is the Bank's accountability mechanism for the assessment and review of complaints about Bank-financed projects and is concerned with the EBRD's Environmental and Social Policy and certain aspects of the EBRD's Public Information Policy.

The EBRD's Credit function plays a key role in the project approval process and is specifically charged with reviewing and documenting client-related integrity concerns and referring any significant concerns to OCCO's Transaction Advice team. The Transaction Advice team provides independent expert advice to management as to whether the potential risk is acceptable to the Bank.

Implications of Development Partners' Experience for the Bank Group

From the foregoing, it is clear that implementation of AML/anti-IFFs activities are not the same across all MDBs. However, the general tendency is that most MDBs are moving towards consolidating such roles, instead of spreading the roles across the institution. The above review of the experience of other Development Partners' experience also suggests some specific conclusions and comparisons with current Bank Group practices, especially with regards to institutional framework for the implementation of IFFs activities. They have dedicated units responsible for their respective IFFs engagements. They also have detailed procedures to guide all aspects of interventions in this area.

For instance, the World Bank's AML/CFT work is conducted/coordinated by the Financial Market Integrity Group (FMIG) which operates like a distinct entity across the World Bank Group. The FMIG accomplishes its activities with a team which comprises financial sector specialists, supervisors, lawyers, prosecutors, and asset disclosure specialists, amongst others. At the EBRD, all integrity issues relating to anti-corruption, AML/CFT and staff issues are handled by the Office of the Chief Compliant Officer (OCCO), which also does investigation and sanctions for all integrity issues. Specifically, the Transaction Advice team within the OCCO is responsible for issues of ex-ante integrity due diligence, anti-money laundering (AML) and countering the financing of terrorism (CFT). On its part, the IMF finances its AML/CFT technical assistance (TA) program through a dedicated multi-donor Trust Fund (The AML/CFT Topical Trust Fund) designed to provide the Fund with a pool of resources to finance virtually all of its AML/CFT Technical Assistance.

The Bank Group appears to significantly lag behind with no clear institutional framework for its IFFs engagements. With increasing complexities of IFFs issues and the urgent need to progressively mainstream IFFs issues and practices into the Bank's operations and policy dialogues, as well as to scale-up the Bank's support to RMCs in these areas, as well as the need to enhance its internal capacity to address IFFs risks, there is a pressing need for the Bank to strengthen the institutional arrangement for addressing IFFs issues not only in its RMCs but also internally within the Bank. With regards to internal arrangement, the Bank could be guided by what obtains in the World Bank, IMF and EBRD.

APPENDIX 3: INTERNATIONAL AML/CFT REGIME AND GLOBAL INITIATIVES

1. The international community has acted on many fronts to respond to the growing complexity and the international nature of rapidly evolving ML/FT methods. The emphasis is on promoting international cooperation and establishing a coordinated and effective international AML/CFT regime. Many international agencies have helped countries develop a capacity to prevent and counter ML. Since September 2001, they have extended their mandate to address the issue of FT. The following presents some of the main elements of the global and regional initiatives.

2. The Financial Action Task Force (FATF) was established in 1989 by the G-7 countries to respond more effectively to ML. The FATF Forty Recommendations require the criminalization of ML. In addition, the recommendations call on countries to adopt legislative and other measures in order to: freeze, seize and confiscate criminal proceeds; waive bank secrecy laws to permit financial institutions to monitor and report suspicious transactions; protect those reporting these transactions from civil and criminal liability; establish financial investigation units; and, cooperate fully in international law enforcement efforts to combat ML.

3. The FATF Special Recommendations require countries to criminalize the financing of terrorism, terrorist organizations and terrorist acts and to designate these new offences as ML predicate offences. The FATF is also involved in monitoring the progress of members in complying with its recommendations.

4. The United Nations Convention on Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (Vienna Convention), the UN Convention against Transnational Organized Crime (Palermo Convention), the UN Convention against Corruption and the International Convention for the Suppression of the Financing of Terrorism all contain provisions relating to the tracing, freezing, seizing and confiscation of instrumentalities and proceeds of crime.

5. Financial regulation standards are also set by the Basel Committee on Bank Supervision, for banks, the International Organization of Securities Commissioners (IOSCO), for securities firms and markets, and the International Association of Insurance Supervisors (IAIS), for insurance companies. Other self-regulating bodies, such as the International Federation of Accountants or the Wolsberg Group of Banks, have also set standards for their own area.

6. In 1988, the Basel Committee put forward some basic principles as part of its Statement for the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering. In 1992, the IOSCO addressed the issue of ML from the point of view of securities regulation and the reduction of systematic risks for investors. Its resolution on ML introduces a number of standards with which it expects its members to comply.

7. Many countries have established financial intelligence units (FIUs) as a focal point for the AML efforts and a point at which information is exchanged between financial institutions and law enforcement. Since 1995, a number of these units have begun to work closely together, to exchange information and to coordinate their AML efforts. They formed the Egmont Group which facilitates international exchanges and cooperation among FIUs in relation to both ML and to FT.

8. Several multi-lateral organizations can provide assistance to countries wishing to implement the FATF 40+9 recommendations. Some of them are particularly active in Africa, including the World Bank and the IMF, the Commonwealth Secretariat which counts a number of

Member States on the Continent, and the UNODC which has four regional offices in the region, in Dakar, Cairo, Nairobi, Pretoria and a country office in Nigeria. The World Bank and the IMF have accepted a responsibility to assist countries in implementing AML/CFT standards, particularly as they relate to banking supervision and financial institutions. They provide AML/CFT technical assistance to members and are funding projects to assess members' compliance with international AML/CFT standards.

9. Closely related to the work of these institutions is the work of the Financial Stability Forum on financial regulation and AML standards within offshore centres, and the work of the Bank for International Settlements on payment and settlement systems and their vulnerability to ML/FT.

10. As part of its work to promote good governance and to fight corruption, the Commonwealth has long been involved in international AML/CFT efforts. In 1993, it made available a Commonwealth Model Law. In 1996, it developed Guidance Notes for the Financial Sector which was revised in 2000 and in 2005 based on best practices.

11. For its part, the UNODC AML/CFT work in Africa is supported by its Global Programme against Money Laundering and the Terrorism Prevention Branch. The UNODC offices in Africa are currently managing several AML projects in various parts of the region. In September 2005, at the Round Table for Africa organized by UNODC in Nigeria, a program of action (2006-2010) to address crime, security and development on the continent was endorsed by representatives of 47 African Member States and by development partners and international organizations.

APPENDIX 4: AFRICAN INITIATIVES

1. In addition to the global initiatives mentioned above, many conventions were adopted and many cooperation initiatives were launched by African nations at the continental and sub-regional levels. The Organization of African Unity adopted a Convention on Preventing and Combating Terrorism (1999) (The Algiers Convention). In 2002, a Plan of Action of the African Union High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa was adopted which highlighted specific areas for action. These included ten specific measures to suppress the financing of terrorism, including national legislation to criminalize FT and ML, setting up FIUs, training personnel to combat and prevent ML, and cooperation with international financial institutions. The AU also adopted a Protocol to the OAU Convention on Terrorism (2004). The latter captured the Parties' commitment to implement fully the provisions of the OAU Convention on Terrorism and, among other things, to identify, detect, confiscate and freeze or seize any funds and other assets used or destined to be used for committing a terrorist act and to establish a mechanism to use such funds to compensate victims of terrorist acts or their families.

2. The African Peer Review Mechanism (APRM), an initiative of NEPAD, includes a focus on assessing corruption control mechanisms. Fostering the implementation of banking and financial standards is a key focus area of NEPAD. In 2002, its Steering Committee proposed an action plan focused on the adoption and strengthening of AML/CFT laws and promoting compliance with international AML/CFT standards.

3. The AU adopted a Convention on Corruption (2003) which, unfortunately, has yet to be ratified by enough Member States to come into force. The Convention calls for the criminalization of the use or concealment of proceeds from acts of corruption (article 4) and the laundering of the proceeds of corruption (article 6). It also establishes a regional cooperation framework for improved mutual law enforcement assistance, including extradition, investigations, as well as confiscations, seizure and repatriation of proceeds of corruption.

4. As mentioned previously, a program of action to address crime and security issues affecting development was adopted by African leaders from 47 States at the Round Table for Africa held in Abuja, Nigeria, in September 2005. One of the six clusters of activities included in the program of action for the period between 2006 - 2010 focuses on organized crime, money laundering, corruption, trafficking and terrorism. With respect to AML/CFT in particular, the program of action identifies three priorities for action and specifically identifies the ADB as a possible key partner for these activities. They are: (1) developing national laws and strategies in compliance with international standards and norms; (2) building institutional capacity, including setting up financial intelligence units to implement national laws and strategies; and, (3) supporting and assisting the establishment of effective and operational sub-regional organizations to combat money laundering.

5. There are three regional anti-money laundering groups, or FSRBs, that have been granted observer status to the FATF: the Middle East and North Africa Financial Action Task Force Against Money Laundering and Terrorism Financing (MENAFATF); the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG); and, the Intergovernmental Action Group against Money Laundering in West Africa (GIABA). A fourth group is being established in the context of the CEMAC and the UMAC, the Groupe d'Action contre le Blanchiment d'Argent en Afrique Centrale (GABAC). It has not yet been granted observer status with the FATF. Developing and strengthening such regional groupings can play a crucial role in the prevention of ML/FT. (See Appendix 3). The FSRBs not only have an advocacy and mobilization role to play, but they can also provide the mechanisms for monitoring developments in the AML/CFT field and for mutual evaluations.

APPENDIX 5: FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING THE FORTY RECOMMENDATIONS

A. AML/CFT POLICIES AND COORDINATION

1. Assessing risks and applying a risk-based approach

Countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively. Based on that assessment, countries should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. This approach should be an essential foundation to efficient allocation of resources across the anti-money laundering and countering the financing of terrorism (AML/CFT) regime and the implementation of risk-based measures throughout the FATF Recommendations. Where countries identify higher risks, they should ensure that their AML/CFT regime adequately addresses such risks. Where countries identify lower risks, they may decide to allow simplified measures for some of the FATF Recommendations under certain conditions.

Countries should require financial institutions and designated non-financial businesses and professions (DNFBPs) to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks.

2. National cooperation and coordination

Countries should have national AML/CFT policies, informed by the risks identified, which should be regularly reviewed, and should designate an authority or have a coordination or other mechanism that is responsible for such policies.

Countries should ensure that policy-makers, the financial intelligence unit (FIU), law enforcement authorities, supervisors and other relevant competent authorities, at the policy-making and operational levels, have effective mechanisms in place which enable them to cooperate, and, where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.

B. MONEY LAUNDERING AND CONFISCATION

3. Money laundering offence

Countries should criminalise money laundering on the basis of the Vienna Convention and the Palermo Convention. Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences.

4. Confiscation and provisional measures

Countries should adopt measures similar to those set forth in the Vienna Convention, the Palermo Convention, and the Terrorist Financing Convention, including legislative measures, to enable their competent authorities to freeze or seize and confiscate the following, without prejudicing the rights of bona fide third parties: (a) property laundered, (b) proceeds from, or instrumentalities used in or intended for use in money laundering or predicate offences, (c) 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, or (d) property of corresponding value.

Such measures should include the authority to: (a) identify, trace and evaluate property that is subject to confiscation; (b) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; (c) take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation; and (d) take any appropriate investigative measures.

Countries should consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction (non-conviction based confiscation), or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law.

C. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

5. Terrorist financing offence

Countries should criminalise terrorist financing on the basis of the Terrorist Financing Convention, and should criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific terrorist act or acts. Countries should ensure that such offences are designated as money laundering predicate offences.

6. Targeted financial sanctions related to terrorism and terrorist financing

Countries should implement targeted financial sanctions regimes to comply with United Nations Security Council resolutions relating to the prevention and suppression of terrorism and terrorist financing. The resolutions require countries to freeze without delay the funds or other assets of, and to ensure that no funds or other assets are made available, directly or indirectly, to or for the benefit of, any person or entity either (i) designated by, or under the authority of, the United Nations Security Council under Chapter VII of the Charter of the United Nations, including in accordance with resolution 1267 (1999) and its successor resolutions; or (ii) designated by that country pursuant to resolution 1373 (2001).

7. Targeted financial sanctions related to proliferation

Countries should implement targeted financial sanctions to comply with United Nations Security Council resolutions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. These resolutions require countries to freeze without delay the funds or other assets of, and to ensure that no funds and other assets are made available, directly or indirectly, to or for the benefit of, any person or entity designated by, or under the authority of, the United Nations Security Council under Chapter VII of the Charter of the United Nations.

8. Non-profit organisations

Countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse, including:

(a) by terrorist organisations posing as legitimate entities;

(b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and

(c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

D. PREVENTIVE MEASURES

9. Financial institution secrecy laws

Countries should ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations.

CUSTOMER DUE DILIGENCE AND RECORD-KEEPING

10. Customer due diligence

Financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names.

Financial institutions should be required to undertake customer due diligence (CDD) measures when:

(i) establishing business relations;

(ii) carrying out occasional transactions: (i) above the applicable designated threshold (USD/EUR 15,000); or (ii) that are wire transfers in the circumstances covered by the Interpretive Note to Recommendation 16;

(iii) there is a suspicion of money laundering or terrorist financing; or

(iv) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

The principle that financial institutions should conduct CDD should be set out in law. Each country may determine how it imposes specific CDD obligations, either through law or enforceable means.

The CDD measures to be taken are as follows:

(a) Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information.

(b) Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions understanding the ownership and control structure of the customer.

(c) Understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship.

(d) Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.

Financial institutions should be required to apply each of the CDD measures under (a) to (d) above, but should determine the extent of such measures using a risk-based approach (RBA) in accordance with the Interpretive Notes to this Recommendation and to Recommendation 1.

Financial institutions should be required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. Countries may permit financial institutions to complete the verification as soon as reasonably practicable following the establishment of the relationship, where the money laundering and terrorist financing risks are effectively managed and where this is essential not to interrupt the normal conduct of business.

Where the financial institution is unable to comply with the applicable requirements under paragraphs (a) to (d) above (subject to appropriate modification of the extent of the measures on a risk-based approach), it should be required not to open the account, commence business relations or perform the transaction; or should be required to terminate the business relationship; and should consider making a suspicious transactions report in relation to the customer.

These requirements should apply to all new customers, although financial institutions should also apply this Recommendation to existing customers on the basis of materiality and risk, and should conduct due diligence on such existing relationships at appropriate times.

11. Record-keeping

Financial institutions should be required to maintain, for at least five years, all necessary records on transactions, both domestic and 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 activity.

Financial institutions should be required to keep all records obtained through CDD measures (e.g. copies or records of official identification documents like passports, identity cards, driving licences or similar documents), account files and business correspondence, including the results of any analysis undertaken (e.g. inquiries to establish the background and purpose of complex, unusual large transactions), for at least five years after the business relationship is ended, or after the date of the occasional transaction.

Financial institutions should be required by law to maintain records on transactions and information obtained through the CDD measures.

The CDD information and the transaction records should be available to domestic competent authorities upon appropriate authority.

ADDITIONAL MEASURES FOR SPECIFIC CUSTOMERS AND ACTIVITIES

12. Politically exposed persons

Financial institutions should be required, in relation to foreign politically exposed persons (PEPs) (whether as customer or beneficial owner), in addition to performing normal customer due diligence measures, to:

(a) have appropriate risk-management systems to determine whether the customer or the beneficial owner is a politically exposed person;

(b) obtain senior management approval for establishing (or continuing, for existing customers) such business relationships;

(c) take reasonable measures to establish the source of wealth and source of funds; and

(d) conduct enhanced ongoing monitoring of the business relationship.

Financial institutions should be required to take reasonable measures to determine whether a customer or beneficial owner is a domestic PEP or a person who is or has been entrusted with a prominent function by an international organisation. In cases of a higher risk business relationship with such persons, financial institutions should be required to apply the measures referred to in paragraphs (b), (c) and (d).

The requirements for all types of PEP should also apply to family members or close associates of such PEPs.

13. Correspondent banking

Financial institutions should be required, in relation to cross-border correspondent banking and other similar relationships, in addition to performing normal customer due diligence measures, to:

(a) gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action;

(b) assess the respondent institution's AML/CFT controls;

(c) obtain approval from senior management before establishing new correspondent relationships;

(d) clearly understand the respective responsibilities of each institution; and

(e) with respect to "payable-through accounts", be satisfied that the respondent bank has conducted CDD on the customers having direct access to accounts of the correspondent bank, and that it is able to provide relevant CDD information upon request to the correspondent bank.

Financial institutions should be prohibited from entering into, or continuing, a correspondent banking relationship with shell banks. Financial institutions should be required to satisfy themselves that respondent institutions do not permit their accounts to be used by shell banks.

14. Money or value transfer services

Countries should take measures to ensure that natural or legal persons that provide money or value transfer services (MVTS) are licensed or registered, and subject to effective systems for monitoring and ensuring compliance with the relevant measures called for in the FATF Recommendations. Countries should take action to identify natural or legal persons that carry out MVTS without a license or registration, and to apply appropriate sanctions.

Any natural or legal person working as an agent should also be licensed or registered by a competent authority, or the MVTS provider should maintain a current list of its agents accessible by competent authorities in the countries in which the MVTS provider and its agents operate. Countries should take measures to ensure that MVTS providers that use agents include them in their AML/CFT programmes and monitor them for compliance with these programmes.

15. New technologies

Countries and financial institutions should identify and assess the money laundering or terrorist financing risks that may arise in relation to (a) the development of new products and new business practices, including new delivery mechanisms, and (b) the use of new or developing technologies for both new and pre-existing products. In the case of financial institutions, such a risk assessment should take place prior to the launch of the new products, business practices or the use of new or developing technologies. They should take appropriate measures to manage and mitigate those risks.

16. Wire transfers

Countries should ensure that financial institutions include required and accurate originator information, and required beneficiary information, on wire transfers and related messages, and that the information remains with the wire transfer or related message throughout the payment chain.

Countries should ensure that financial institutions monitor wire transfers for the purpose of detecting those which lack required originator and/or beneficiary information, and take appropriate measures.

Countries should ensure that, in the context of processing wire transfers, financial institutions take freezing action and should prohibit conducting transactions with designated persons and entities, as per the obligations set out in the relevant United Nations Security Council resolutions, such as resolution 1267 (1999) and its successor resolutions, and resolution 1373(2001), relating to the prevention and suppression of terrorism and terrorist financing.

RELIANCE, CONTROLS AND FINANCIAL GROUPS

17. Reliance on third parties

Countries may permit financial institutions to rely on third parties to perform elements (a)-(c) of the CDD measures set out in Recommendation 10 or to introduce business, provided that the criteria set out below are met. Where such reliance is permitted, the ultimate responsibility for CDD measures remains with the financial institution relying on the third party.

The criteria that should be met are as follows:

(a) A financial institution relying upon a third party should immediately obtain the necessary information concerning elements (a)-(c) of the CDD measures set out in Recommendation 10.

(b) Financial institutions should take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to the CDD requirements will be made available from the third party upon request without delay.

(c) The financial institution should satisfy itself that the third party is regulated, supervised or monitored for, and has measures in place for compliance with, CDD and record-keeping requirements in line with Recommendations 10 and 11.

(d) When determining in which countries the third party that meets the conditions can be based, countries should have regard to information available on the level of country risk.

When a financial institution relies on a third party that is part of the same financial group, and (i) that group applies CDD and record-keeping requirements, in line with Recommendations 10, 11 and 12, and programmes against money laundering and terrorist financing, in accordance with Recommendation 18; and (ii) where the effective implementation of those CDD and record-keeping requirements and AML/CFT programmes is supervised at a group level by a competent authority, then relevant competent authorities may consider that the financial institution applies measures under (b) and (c) above through its group programme, and may decide that (d) is not a necessary precondition to reliance when higher country risk is adequately mitigated by the group AML/CFT policies.

18. Internal controls and foreign branches and subsidiaries

Financial institutions should be required to implement programmes against money laundering and terrorist financing. Financial groups should be required to implement group-wide programmes against money laundering and terrorist financing, including policies and procedures for sharing information within the group for AML/CFT purposes.

Financial institutions should be required to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the home country requirements implementing the FATF Recommendations through the financial groups' programmes against money laundering and terrorist financing.

19. Higher-risk countries

Financial institutions should be required to apply enhanced due diligence measures to business relationships and transactions with natural and legal persons, and financial institutions, from countries for which this is called for by the FATF. The type of enhanced due diligence measures applied should be effective and proportionate to the risks.

Countries should be able to apply appropriate countermeasures when called upon to do so by the FATF. Countries should also be able to apply countermeasures independently of any call by the FATF to do so. Such countermeasures should be effective and proportionate to the risks.

REPORTING OF SUSPICIOUS TRANSACTIONS

20. Reporting of suspicious transactions

If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, by law, to report promptly its suspicions to the financial intelligence unit (FIU).

21. Tipping-off and confidentiality

Financial institutions, their directors, officers and employees should be:

(a) protected by law from criminal and 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 FIU, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred; and

(b) prohibited by law from disclosing ("tipping-off") the fact that a suspicious transaction report (STR) or related information is being filed with the FIU.

DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

22. DNFBPs: customer due diligence

The customer due diligence and record-keeping requirements set out in Recommendations 10, 11, 12, 15, and 17, apply to designated non-financial businesses and professions (DNFBPs) in the following situations:

(a) Casinos – when customers engage in financial transactions equal to or above the applicable designated threshold.

(b) Real estate agents – when they are involved in transactions for their client concerning the buying and selling of real estate.

(c) Dealers in precious metals and dealers in precious stones – when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.

(d) Lawyers, notaries, other independent legal professionals and accountants – when they prepare for or carry out transactions for their client concerning the following activities:

- buying and selling of real estate;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation or management of companies;
- creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

(e) Trust and company service providers – when they prepare for or carry out transactions for a client concerning the following activities:

- acting as a formation agent of legal persons;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

23. DNFBPs: Other measures

The requirements set out in Recommendations 18 to 21 apply to all designated non-financial businesses and professions, subject to the following qualifications:

(a) Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in paragraph (d) of Recommendation 22. Countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing.

(b) Dealers in precious metals and dealers in precious stones should be required to report suspicious transactions when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.

(c) Trust and company service providers should be required to report suspicious transactions for a client when, on behalf of or for a client, they engage in a transaction in relation to the activities referred to in paragraph (e) of Recommendation 22.

E. TRANSPARENCY AND BENEFICIAL OWNERSHIP OF LEGAL PERSONS AND ARRANGEMENTS

24. Transparency and beneficial ownership of legal persons

Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

25. Transparency and beneficial ownership of legal arrangements

Countries should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries, that can be obtained or accessed in a timely fashion by competent authorities. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

F. POWERS AND RESPONSIBILITIES OF COMPETENT AUTHORITIES, AND OTHER INSTITUTIONAL MEASURES

REGULATION AND SUPERVISION

26. Regulation and supervision of financial institutions

Countries should ensure that financial institutions are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations. Competent authorities or financial supervisors should take the necessary legal or regulatory measures to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, or holding a management function in, a financial institution. Countries should not approve the establishment, or continued operation, of shell banks.

For financial institutions subject to the Core Principles, the regulatory and supervisory measures that apply for prudential purposes, and which are also relevant to money laundering and terrorist financing, should apply in a similar manner for AML/CFT purposes. This should include applying consolidated group supervision for AML/CFT purposes.

Other financial institutions should be licensed or registered and adequately regulated, and subject to supervision or monitoring for AML/CFT purposes, having regard to the risk of money laundering or terrorist financing in that sector. At a minimum, where financial institutions provide a service of money or value transfer, or of money or currency changing, they should be licensed or registered, and subject to effective systems for monitoring and ensuring compliance with national AML/CFT requirements.

27. Powers of supervisors

Supervisors should have adequate powers to supervise or monitor, and ensure compliance by, financial institutions with requirements to combat money laundering and terrorist financing, including the authority to conduct inspections. They should be authorised to compel production of any information from financial institutions that is relevant to monitoring such compliance, and to impose sanctions, in line with Recommendation 35, for failure to comply with such requirements. Supervisors should have powers to impose a range of disciplinary and financial sanctions, including the power to withdraw, restrict or suspend the financial institution's license, where applicable.

28. Regulation and supervision of DNFBPs

Designated non-financial businesses and professions should be subject to regulatory and supervisory measures as set out below.

(a) Casinos should be subject to a comprehensive regulatory and supervisory regime that ensures that they have effectively implemented the necessary AML/CFT measures. At a minimum:

- casinos should be licensed;
- competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, holding a management function in, or being an operator of, a casino; and
- competent authorities should ensure that casinos are effectively supervised for compliance with AML/CFT requirements.

(b) Countries should ensure that the other categories of DNFBPs are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. This should be performed on a risk-sensitive basis. This may be performed by (a) a supervisor or (b) by an appropriate self-regulatory body (SRB), provided that such a body can ensure that its members comply with their obligations to combat money laundering and terrorist financing.

The supervisor or SRB should also (a) take the necessary measures to prevent criminals or their associates from being professionally accredited, or holding or being the beneficial owner of a significant or controlling interest or holding a management function, e.g. through evaluating persons on the basis of a "fit and proper" test; and (b) have effective, proportionate, and dissuasive sanctions in line with Recommendation 35 available to deal with failure to comply with AML/CFT requirements.

OPERATIONAL AND LAW ENFORCEMENT

29. Financial intelligence units

Countries should establish a financial intelligence unit (FIU) that serves as a national centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis. The FIU should be able to obtain additional information from reporting entities, and should have access on a timely basis to the financial, administrative and law enforcement information that it requires to undertake its functions properly.

30. Responsibilities of law enforcement and investigative authorities

Countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations within the framework of national AML/CFT policies. At least in all cases related to major proceeds-generating offences, these designated law enforcement authorities should develop a pro-active parallel financial investigation when pursuing money laundering, associated predicate offences and terrorist financing. This should include cases where the associated predicate offence occurs outside their jurisdictions. Countries should ensure that competent authorities have responsibility for expeditiously identifying, tracing and initiating actions to freeze and seize property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime. Countries should also make use, when necessary, of permanent or temporary multi-disciplinary groups specialised in financial or asset investigations. Countries should ensure that, when necessary, cooperative investigations with appropriate competent authorities in other countries take place.

31. Powers of law enforcement and investigative authorities

When conducting investigations of money laundering, associated predicate offences and terrorist financing, competent authorities should be able to obtain access to all necessary documents and information for use in those investigations, and in prosecutions and related actions. This should include powers to use compulsory measures for the production of records held by financial institutions, DNFBPs and other natural or legal persons, for the search of persons and premises, for taking witness statements, and for the seizure and obtaining of evidence.

Countries should ensure that competent authorities conducting investigations are able to use a wide range of investigative techniques suitable for the investigation of money laundering, associated predicate offences and terrorist financing. These investigative techniques include: undercover operations, intercepting communications, accessing computer systems and controlled delivery. In addition, countries should have effective mechanisms in place to identify, in a timely manner, whether natural or legal persons hold or control accounts. They should also have mechanisms to ensure that competent authorities have a process to identify assets without prior notification to the owner. When conducting investigations of money laundering, associated predicate offences and terrorist financing, competent authorities should be able to ask for all relevant information held by the FIU.

32. Cash couriers

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

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

Countries should ensure that effective, proportionate and dissuasive sanctions are available to deal with persons who make false declaration(s) or disclosure(s). In cases where the currency or bearer negotiable instruments are related to terrorist financing, money laundering or predicate offences, countries should also adopt measures, including legislative ones consistent with Recommendation 4, which would enable the confiscation of such currency or instruments.

GENERAL REQUIREMENTS

33. Statistics

Countries should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of their AML/CFT systems. This should include statistics on the STRs received and disseminated; on money laundering and terrorist financing investigations, prosecutions and convictions; on property frozen, seized and confiscated; and on mutual legal assistance or other international requests for cooperation.

34. Guidance and feedback

The competent authorities, supervisors and SRBs should establish guidelines, and provide feedback, which will assist financial institutions and designated non-financial businesses and professions in applying national measures to combat money laundering and terrorist financing, and, in particular, in detecting and reporting suspicious transactions.

SANCTIONS

35. Sanctions

Countries should ensure that there is a range of effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, available to deal with natural or legal persons covered by Recommendations 6, and 8 to 23, that fail to comply with AML/CFT requirements. Sanctions should be applicable not only to financial institutions and DNFBPs, but also to their directors and senior management.

G. INTERNATIONAL COOPERATION

36. International instruments

Countries should take immediate steps to become party to and implement fully the Vienna Convention, 1988; the Palermo Convention, 2000; the United Nations Convention against Corruption, 2003; and the Terrorist Financing Convention, 1999. Where applicable, countries are also encouraged to ratify and implement other relevant international conventions, such as the Council of Europe Convention on Cybercrime, 2001; the Inter-American Convention against Terrorism, 2002; and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005.

37. Mutual legal assistance

Countries should rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to money laundering, associated predicate offences and terrorist financing investigations, prosecutions, and related proceedings. Countries should have an adequate legal basis for providing assistance and, where appropriate, should have in place treaties, arrangements or other mechanisms to enhance cooperation. In particular, countries should:

(a) Not prohibit, or place unreasonable or unduly restrictive conditions on, the provision of mutual legal assistance.

(b) Ensure that they have clear and efficient processes for the timely prioritisation and execution of mutual legal assistance requests. Countries should use a central authority, or another established official mechanism, for effective transmission and execution of requests. To monitor progress on requests, a case management system should be maintained.

(c) Not refuse to execute a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(d) Not refuse to execute a request for mutual legal assistance on the grounds that laws require financial institutions or DNFBPs to maintain secrecy or confidentiality (except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies).

(e) Maintain the confidentiality of mutual legal assistance requests they receive and the information contained in them, subject to fundamental principles of domestic law, in order to protect the integrity of the investigation or inquiry. If the requested country cannot comply with the requirement of confidentiality, it should promptly inform the requesting country.

Countries should render mutual legal assistance, notwithstanding the absence of dual criminality, if the assistance does not involve coercive actions. Countries should consider adopting such measures as may be necessary to enable them to provide a wide scope of assistance in the absence of dual criminality.

Where dual criminality is required for mutual legal assistance, that requirement should be deemed to be satisfied regardless of whether both countries place the offence within the same category of offence, or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence.

Countries should ensure that, of the powers and investigative techniques required under Recommendation 31, and any other powers and investigative techniques available to their competent authorities:

(a) all those relating to the production, search and seizure of information, documents or evidence (including financial records) from financial institutions or other persons, and the taking of witness statements; and

(b) a broad range of other powers and investigative techniques;

are also available for use in response to requests for mutual legal assistance, and, if consistent with their domestic framework, in response to direct requests from foreign judicial or law enforcement authorities to domestic counterparts.

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.

Countries should, when making mutual legal assistance requests, make best efforts to provide complete factual and legal information that will allow for timely and efficient execution of requests, including any need for urgency, and should send requests using expeditious means. Countries should, before sending requests, make best efforts to ascertain the legal requirements and formalities to obtain assistance.

The authorities responsible for mutual legal assistance (e.g. a Central Authority) should be provided with adequate financial, human and technical resources. Countries should have in place processes to ensure that the staff of such authorities maintain high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled.

38. Mutual legal assistance: freezing and confiscation

Countries should ensure that they have the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered; proceeds from money laundering, predicate offences and terrorist financing; instrumentalities used in, or intended for use in, the commission of these offences; or property of corresponding value. This authority should include being able to respond to requests made on the basis of non-conviction-based confiscation proceedings and related provisional measures, unless this is inconsistent with fundamental principles of their domestic law. Countries should also have effective mechanisms for managing such property, instrumentalities or property of corresponding value, and arrangements for coordinating seizure and confiscation proceedings, which should include the sharing of confiscated assets.

39. Extradition

Countries should constructively and effectively execute extradition requests in relation to money laundering and terrorist financing, without undue delay. 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. In particular, countries should:

(a) ensure money laundering and terrorist financing are extraditable offences;

(b) ensure that they have clear and efficient processes for the timely execution of extradition requests including prioritisation where appropriate. To monitor progress of requests a case management system should be maintained;

(c) not place unreasonable or unduly restrictive conditions on the execution of requests; and

(d) ensure they have an adequate legal framework for extradition.

Each country should either extradite its own nationals, or, where a country does not do so solely on the grounds of nationality, that country should, at the request of the country seeking extradition, submit the case, without undue delay, to its competent authorities for the purpose of prosecution of the offences set forth in the request. Those authorities should take their decision and conduct their proceedings in the same manner as in the case of any other offence of a serious nature under the domestic law of that country. The countries concerned should cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecutions.

Where dual criminality is required for extradition, that requirement should be deemed to be satisfied regardless of whether both countries place the offence within the same category of offence, or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence.

APPENDIX 6: FINANCIAL ACTION TASK FORCE SPECIAL RECOMMENDATIONS ON TERRORISM FINANCING

Recognizing 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 organizations. 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 organizations 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 organizations.

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 organizations, they should be required to report promptly their suspicions to the competent authorities.

V. International Cooperation

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

Consistent with fundamental principles of domestic law, countries should have simplified extradition mechanisms, such as allowing direct transmission of requests for provisional arrests between appropriate authorities, extraditing persons based only on warrants of arrests or judgments, or introducing a simplified extradition of consenting persons who waive formal extradition proceedings. The authorities responsible for extradition should be provided with adequate financial, human and technical resources. Countries should have in place processes to ensure that the staff of such authorities maintain high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled.

40. Other forms of international cooperation

Countries should ensure that their competent authorities can rapidly, constructively and effectively provide the widest range of international cooperation in relation to money laundering, associated predicate offences and terrorist financing. Countries should do so both spontaneously and upon request, and there should be a lawful basis for providing cooperation. Countries should authorise their competent authorities to use the most efficient means to cooperate. Should a competent authority need bilateral or multilateral agreements or arrangements, such as a Memorandum of Understanding (MOU), these should be negotiated and signed in a timely way with the widest range of foreign counterparts.

Competent authorities should use clear channels or mechanisms for the effective transmission and execution of requests for information or other types of assistance. Competent authorities should have clear and efficient processes for the prioritisation and timely execution of requests, and for safeguarding the information received.