

KINGSTON DECLARATION ON MONEY LAUNDERING

FINAL

Kingston, Jamaica
November 5-6, 1992

KINGSTON DECLARATION ON MONEY LAUNDERING

1. MINISTERS AND OTHER REPRESENTATIVES OF CARIBBEAN AND LATIN AMERICAN GOVERNMENTS MEETING TOGETHER IN KINGSTON, 5-6 NOVEMBER 1992, CONSIDERED THE PROBLEM OF MONEY LAUNDERING AS IT AFFECTS EACH PARTICIPATING JURISDICTION AND THE INTERNATIONAL COMMUNITY, THE PROGRESS WHICH HAS BEEN ACHIEVED IN RECENT YEARS AND FURTHER ACTION REQUIRED;

2. RECALLING THE MEETING HELD IN ARUBA IN JUNE 1990 WITH ITS CONSIDERATION OF THE 40 RECOMMENDATIONS OF THE FINANCIAL ACTION TASK FORCE AND THE 19 ARUBA RECOMMENDATIONS;

3. HAVING NOTED THE REPORT OF THE TECHNICAL WORKSHOP OF EXPERTS ON MONEY LAUNDERING, HELD IN KINGSTON, 26-28 MAY 1992, WHICH DEALT WITH THE LEGAL, FINANCIAL, POLITICAL AND TECHNICAL ASSISTANCE ASPECTS OF THE PROBLEM, ITS SOLUTION AND SUBSEQUENT IMPLEMENTATION;

4. DETERMINED TO MAKE REAL PROGRESS AGAINST THE PROBLEMS OF DRUG TRAFFICKING AND MONEY LAUNDERING;

5. AGREED THAT THEY WOULD SIGN AND RATIFY THE 1988 UN CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES AND FURTHER AGREED TO ENDORSE AND IMPLEMENT BOTH THE 40 FATF RECOMMENDATIONS AND 19 ARUBA RECOMMENDATIONS;

6. RECOGNISED THE NEED FOR A MECHANISM TO MONITOR AND ENCOURAGE PROGRESS OVER THREE YEARS TO ENSURE FULL IMPLEMENTATION OF THIS DECLARATION;

7. ACCEPTED AND WARMLY WELCOMED THE OFFER FROM TRINIDAD AND TOBAGO TO ACT AS HOST OF A CONFERENCE OF CFATF IN TWELVE MONTHS TO EVALUATE PROGRESS, AND TO PROVIDE THE FACILITIES FOR A SMALL SECRETARIAT FOR THIS INITIAL PERIOD TO ASSIST PARTICIPATING COUNTRIES WITH THE IMPLEMENTATION

PROCESS, AND AGREED THAT THE SECRETARIAT WOULD REPORT TO AND ACT UNDER THE DIRECTION OF A STEERING GROUP OF REPRESENTATIVE CFATF MEMBERS AND DONOR COUNTRIES TO BE CHAIRED INITIALLY BY TRINIDAD AND TOBAGO, AND THAT THE INITIAL COMPOSITION OF THE STEERING GROUP WOULD ENSURE THAT EACH GROUP OF CARIBBEAN GOVERNMENTS WOULD BE REPRESENTED - CARICOM, DUTCH LANGUAGE MEMBERS, OECS, SPANISH LANGUAGE MEMBERS AND UK DEPENDENT TERRITORIES. THE FATF DONOR COUNTRIES WILL MAKE THEIR BEST EFFORTS TO PROVIDE SUPPORT FOR TRINIDAD AND TOBAGO IN MAKING THIS PROPOSAL AS THEY PREVIOUSLY SUPPORTED JAMAICA IN THE CFATF INITIATIVE.

THE SECRETARIAT

8. THE PROPOSED SECRETARIAT WILL:

A)CO-ORDINATE AND MAKE TECHNICAL RECOMMENDATIONS ON SELF-ASSESSMENT PROCESS OF CFATF MEMBERS, INCLUDING SENDING OUT, COLLATING AND ANALYSING SELF ASSESSMENT QUESTIONNAIRES;

B)MAKE ARRANGEMENTS FOR AND PARTICIPATE IN EVALUATIONS OF CFATF MEMBERS;

C)IDENTIFY AND ACT AS A CLEARING HOUSE FOR FACILITATING TRAINING AND TECHNICAL ASSISTANCE NEEDS OF CFATF MEMBERS, INCLUDING DEALING WITH REQUESTS FOR TRAINING AND TECHNICAL ASSISTANCE FROM CFATF MEMBERS AND ADVISING ON SOURCES OF ASSISTANCE;

D)ACT AS THE LIAISON POINT BETWEEN CFATF AND THIRD COUNTRIES AND INTERNATIONAL/REGIONAL ORGANISATIONS INVOLVED IN COUNTERING MONEY LAUNDERING AND RELATED MATTERS;

E)DRAFT ANNUAL CFATF REPORT.

9.THE DELEGATES CONSIDERED THE IMPLICATIONS OF THE LEGAL AND FINANCIAL RECOMMENDATIONS. THEY NOTED THAT GOVERNMENTS WERE FREE TO CHOOSE THEIR METHODS OF IMPLEMENTATION BASED ON THEIR INDIVIDUAL CIRCUMSTANCES. THEY HAD THE FOLLOWING POINTS OF EMPHASIS:

LEGAL ISSUES

10.CFATF GOVERNMENTS SHOULD ADOPT A NEW DEFINITION OF MONEY LAUNDERING BASED ON OAS MODEL REGULATIONS.

11.EACH JURISDICTION, WILL AS SOON AS POSSIBLE, ENACT STATUTORY PROVISIONS WITH REGARD TO THE SEIZURE AND FORFEITURE OF ASSETS AND PROCEEDS OF DRUG TRAFFICKING. IN PARTICULAR, SUCH LEGISLATION SHOULD PROVIDE FOR:

A)THE AUTHORITY TO IDENTIFY, TRACE AND EVALUATE PROPERTY THAT IS SUBJECT TO CONFISCATION;

B)CARRYING OUT PROVISIONAL MEASURES SUCH AS FREEZING AND SEIZING, TO PREVENT ANY DEALING, TRANSFER, OR DISPOSAL OF SUCH ASSETS AND PROCEEDS, AND THE TAKING OF ANY APPROPRIATE INVESTIGATIVE MEASURES;

C)UNCONDITIONAL ENTITLEMENT BY ANY PERSON AFFECTED BY THE SEIZURE OF ASSETS OR PROCEEDS TO HAVE ACCESS TO THE COURTS TO CHALLENGE SUCH SEIZURES WHEN THE SAME IS EFFECTED BY ADMINISTRATIVE DECISIONS OTHER THAN IN A JUDICIAL PROCEEDING;

D)FORFEITURE OR CONFISCATION IN ALL CASES FOLLOWING UPON A CONVICTION;

E)WHERE CONSTITUTIONALLY POSSIBLE, EVIDENTIARY PROVISIONS WHEREBY A REPUTABLE PRESUMPTION IS STATUTORY RAISED ENTITLING THE COURTS OF EACH JURISDICTION TO FIND THAT ALL PROPERTY

OBTAINED DURING A PRESCRIBED PERIOD OF TIME BY A PERSON CONVICTED OF DRUG TRAFFICKING HAS BEEN DERIVED FROM SUCH CRIMINAL ACTIVITY.

12. EACH JURISDICTION RECOGNISING THAT MUTUAL LEGAL ASSISTANCE IS NECESSARY IN THE FIGHT AGAINST DRUG MONEY LAUNDERING:

- A) UNDERTAKES TO ENTER INTO ARRANGEMENTS ENSURING BOTH INFORMAL AS WELL AS FORMAL MEANS OF MUTUAL ASSISTANCE, AND THEREFORE FURTHER AGREES TO CONSIDER ADOPTING AS SOON AS POSSIBLE
 - i) THE OAS MODEL REGULATIONS CONCERNING MONEY LAUNDERING OFFENCES, AND
 - ii) THE OAS INTER-AMERICAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS;
- (B) AGREES THAT, WHERE CONSTITUTIONALLY POSSIBLE, MONEY LAUNDERING SHOULD BE AN EXTRADITABLE OFFENCE IN EACH JURISDICTIONS;
- (C) AGREES THAT SIMPLIFIED EXTRADITION PROCEDURES, WHERE DESIRABLE, MAY BE PUT IN PLACE IN EACH JURISDICTION, WITH SIMILAR REGIONAL MECHANISMS TO FACILITATE EXTRADITION;
- (D) AGREES THAT EACH JURISDICTION OF DOMESTIC COURTS TO TRY MONEY LAUNDERING OFFENCES SHOULD NOT BE LIMITED BY THE NEED FOR A STRICT TERRITORIAL CONNECTION TO THE DRUG OFFENCE;
- (E) AGREES THAT EACH JURISDICTION SHOULD UNDERTAKE TO TAKE SUCH STEPS AS MAY BE NECESSARY TO FACILITATE THE SHARING BY ONE JURISDICTION OF CONFISCATED ASSETS WITH OTHER JURISDICTIONS WHICH PARTICIPATED IN THE INVESTIGATIONS LEADING TO FORFEITURE;

- (F) AGREES THAT EACH JURISDICTION SHOULD TAKE APPROPRIATE MEASURES TO ESTABLISH AN ASSET FORFEITURE FUND INTO WHICH ALL OR PART OF CONFISCATED PROPERTY WOULD BE DEPOSITED FOR LAW ENFORCEMENT, HEALTH, EDUCATION OR OTHER APPROPRIATE PURPOSES;
- (G) AGREES THAT THE MEASURES TAKEN IN EACH JURISDICTION PROVIDING FOR THE IMPLEMENTATION OF THE ABOVE PROVISIONS BE SUCH AS TO ENABLE ALL JURISDICTIONS IN THE REGION TO BE INCLUDED AS PARTICIPATING JURISDICTIONS BENEFITING FROM SUCH MEASURES.

FINANCIAL ISSUES

13. **CUSTOMER IDENTIFICATION**

STRONG LEGAL REQUIREMENTS REGARDING CUSTOMER IDENTIFICATION ARE NEEDED. IT IS UNDERSTOOD THAT IT WOULD BE ACCEPTABLE TO HAVE NUMBERED ACCOUNTS, PROVIDING THAT THE BANK KNOWS THE IDENTITY OF THE CUSTOMER AND WOULD MAKE THAT INFORMATION AVAILABLE TO COMPETENT AUTHORITIES.

14. **CURRENCY TRANSACTIONS**

IMPLEMENTATION WILL BE UP TO EACH COUNTRY AND WILL BE INFLUENCED BY COST, USE OF THE DATA, CAPABILITY AND SIZE OF THE FINANCIAL SYSTEM. WHEN DEALING WITH LARGE CURRENCY TRANSACTIONS, CUSTOMER IDENTIFICATION AND RECORD-KEEPING DATA ARE MANDATORY, WHEREAS EACH GOVERNMENT MAY CHOOSE BETWEEN VOLUNTARY OR REQUIRED REPORTING OF TRANSACTIONS.

15. **RECORD - KEEPING**

THE KEEPING OF RECORDS AND THE PERIOD OF TIME FOR WHICH THEY SHOULD BE KEPT SHOULD BE LEGISLATIVELY MANDATED, EXCEPT THAT NOT ALL ELEMENTS OF THE DATA TO BE RECORDED NEED TO BE ADDRESSED BY

LEGISLATION. LEGAL REQUIREMENTS FOR EVIDENCE IN COURT MUST BE SATISFIED.

16. **SUSPICIOUS ACTIVITY**

BANK SECRECY LAWS SHOULD BE AMENDED, WHERE NECESSARY, TO ACCOMMODATE AND SUPPORT THE REPORTING OF UNUSUAL AND/OR SUSPICIOUS TRANSACTIONS. FINANCIAL INSTITUTIONS MAY USE GUIDELINES TO IDENTIFY SUSPICIOUS AND/OR UNUSUAL TRANSACTIONS. WHILE LEGISLATION TO MANDATE THE REPORTING OF UNUSUAL TRANSACTIONS COULD BE ENACTED, IT MAY NOT BE NECESSARY.

17. **MONEY MANAGEMENT TECHNIQUES REDUCING THE USE OF CASH**

MARKET FORCES IN THE INDIVIDUAL COUNTRIES WILL DICTATE THE RATE AT WHICH ALTERNATIVES TO CASH ARE ADOPTED.

18. **CONTROL**

IN LICENSING FINANCIAL INSTITUTIONS, THE CONTROLLING SHARE HOLDERS SHOULD BE SCREENED AND SUCH SCREENING SHOULD BE REPEATED ON ANY SUBSTANTIAL CHANGE OF CONTROL.

19. IN CONCLUSION GOVERNMENTS ARE URGED TO TAKE ALL APPROPRIATE STEPS TO ENSURE THE INTEGRITY OF THEIR DOMESTIC AND INTERNATIONAL FINANCIAL SYSTEMS.

20. ALL GOVERNMENTS RE-AFFIRMED THEIR DETERMINATION TO DEFEAT THE EVILS OF DRUG TRAFFICKING AND MONEY LAUNDERING. THE DELEGATES THANKED THE GOVERNMENT OF JAMAICA FOR ITS HOSPITALITY IN HOSTING THE CONFERENCE AND THE EARLIER TECHNICAL MEETING.