

Caribbean Financial Action Task Force



MONEY LAUNDERING PREVENTION GUIDELINES FOR CFATF MEMBER GOVERNMENTS, FREE TRADE ZONE AUTHORITIES, AND MERCHANTS

Background

1. On October 18, 2000, government, law enforcement, and Free Trade Zone officials, operating under the aegis of the CFATF, met in Aruba to develop compliance programs and best practices guidelines to ensure that Free Trade Zones are operated in a manner that prevents their misuse by criminal elements.
2. These officials took note that in today's globalized economy, domestic and international trade, including that coursing through Free Trade Zones, is especially vulnerable to misuse by criminals engaged in illicit trafficking of narcotics, other serious crimes, and related trade-based money laundering.

3. Meeting participants acknowledged this problem and voiced their commitment to devising and implementing reasonable measures to reduce the risks of money laundering.
4. Taking note of Article 18 of the 1988 United Nation Convention Against the Illicit Traffic of Narcotic Drugs and Psychotropic Substances, (the Vienna Convention), CFATF Members recognized the need to implement enhanced regulatory measures in Free Trade Zones designed to prevent and sanction illicit drug trafficking and money laundering through Free Trade Zones.
5. With the goal of protecting legitimate international trade through Free Trade Zones against criminal misuse, the CFATF has undertaken to develop these Money Laundering Prevention Guidelines (Guidelines) for its Members and for Free Trade Zone Authorities and Free Trade Zone Businesses operating in their jurisdictions.
6. Acknowledging that crime in today's global economy cannot be effectively eradicated by government alone, CFATF Members premise these Guidelines upon the principle that Governments and the private sector must work together as partners, and that any legislative regime enacted and implemented by Governments must ensure transparency and integrity in commerce.
7. Free Trade Zone Authorities and businesses operating in Free Trade Zones in the region must operate in accordance with and adhere strictly to effective anti-money laundering rules and regulations that guarantee this transparency and integrity.
8. There must be optimal cooperation between and among individual Governments and their Free Trade Zone Authorities, businesses operating in those Zones, and law enforcement entities to ensure the success of this undertaking. CFATF Members acknowledge the need for international cooperation between Governments and undertake, through implementation of these Guidelines, to ensure the creation of common and compatible databases to collect and report data relating to international commerce.
9. Equally important, CFATF Members further undertake to ensure that this data is made available to competent authorities in other countries in accordance with applicable law, subject to strict safeguards to ensure proper use of information, to detect and prosecute crime and related proceedings.
10. Finally, CFATF Members are cognizant of the fact that the economic potential of a Free Trade Zone is of great importance to their respective

economies. Simultaneously, they acknowledge that this economic potential is threatened by criminal misuse of Free Trade Zones.

11. Accordingly, in devising these Guidelines, CFATF Members have endeavored to achieve a balance between protecting and promoting the economic potential of Free Trade Zones, while at the same time providing effective preventative measures and all the tools required in order to effectively combat crime in them.

Methodology

1. In researching trade-based money laundering through the Region's Free Trade Zones, the CFATF convened a two-part Typology Exercise. Part 1 was held October 18, 2000, in Aruba.
2. At this meeting, CFATF judicial, law enforcement, and Free Trade Zone officials examined and addressed:
 - Vulnerabilities of Free Trade Zones;
 - Operations of the financial and non-financial sectors within a Free Trade Zone;
 - Reporting mechanisms and due diligence practices within Free Trade Zones.
3. Part 2 of this Typology Exercise convened on March 29, 2001, in Port of Spain, Trinidad.
4. At this meeting, CFATF judicial, law enforcement, and Free Trade Zone officials discussed:
 - The Private Sector approach;
 - The necessary regulatory and supervisory framework;
 - The format and content of the proposed Recommendations.

CONCLUSIONS AND RECOMMENDATIONS

With these considerations and objectives in mind, and upon the Plenary's recommendation based upon the observations and information provided by

the noted experts, the Council of Ministers recommends that, where necessary, each CFATF Member Government:

1. Devise, enact, and effectively implement a comprehensive legislative regime affecting Free Trade Zones. The legislative regime must clearly and unequivocally define the term “Free Trade Zone” and must govern all areas of its operations. Areas of Free Trade Zone operations to be governed include, but are not limited to: the granting and revocation of licenses to operate a business therein; record keeping and reporting requirements for these businesses; and, establishing and defining the oversight and supervisory authority, functions, responsibilities, and powers of the Free Trade Zone Authority. Where necessary, such a legislative regime should meet the following requirements:
 - (a) The Free Trade Zone Authority, if necessary, should be physically present and operate in the Free Trade Zone. The appropriate National authorities should, at minimum, oversee and supervise all operations in the Free Trade Zone and enforce sanction violations of all applicable laws and regulations.
 - (b) Businesses operating in Free Trade Zones must comply with all applicable laws and regulations and must establish an anti-money laundering compliance program which includes an independent review and internal audits. It is strongly recommended that businesses designate a compliance officer who shall be responsible for monitoring and ensuring implementation of the compliance program.
 - (c) Businesses operating in Free Trade Zones should be required to identify their clients and to keep the record of each transaction and to report suspicious activities to the competent authorities.
 - (d) Free Trade Zone Businesses should be required to report suspicious transactions to the competent authority in the form and manner that the authority directs. Additionally, it may be required that all businesses operating in Free Trade Zones should report to the competent authority all transactions in cash or negotiable bearer instruments exceeding US\$ 10,000.00 or its equivalent in other currency, or postal or other money orders, travelers checks and third party checks.
 - (e) Governments should discourage businesses operating in Free Trade Zones from accepting cash payments, or payments in money orders or third party checks, travelers checks, wire transfers, or other means from parties that are not directly related, as either the seller or buyer, to the underlying transaction. These businesses should, at a minimum, record

such transactions and, when determined as suspicious report such transactions to the competent authorities.

2. Require competent Authorities to make available to regulated businesses current copies of all applicable laws, administrative resolutions, regulations, advisories and directives regarding: the conduct of business in the Free Trade Zone; compliance with all applicable legal requirements; and, advisories regarding suspicious activity and recommended countermeasures.
3. Require competent Authorities to designate, as part of their core operation, a specialized unit responsible for all matters dealing with the prevention of money laundering and to carry out ongoing related training for businesses operating in the Free Trade Zone. This unit should, at a minimum, produce an instruction manual detailing the powers vested in the Authority, the obligations of businesses operating in the Free Trade Zone, and the internal anti-money laundering mechanisms, including all reporting and record keeping requirements, which must be maintained by these businesses.
4. Devise and implement all necessary measures to establish and promote coordination between the administrative and all other authorities involved in the prevention, investigation, and prosecution of money laundering activities.
5. Take affirmative measures to ensure uniformity in data collection practices affecting international commerce and enact measures to ensure that the data collected related to international commerce is available to other governments in accordance with applicable law.

INTERPRETATIVE NOTES

1. Definition of a Free Trade Zone

A Free Trade Zone¹ may be defined as:

¹ **Such organisations could be defined under various names, such as:** Free Zones, Freeport Zones, (Port) Free Trade Zones, Foreign Trade Zones, Duty Free Trade Zones, Commercial Free Trade Zones, Export Processing Zones, Logistic Zones, Trade Development Zones, Industrial Zones/Parks/Areas, Hi-Tech Industry Parks, Hi-Tech and Neo-Tech Industrial Development Zones, Investment Zones, Bonded Zones, Special Economic Zones, Economic Development

An area or regime within a country under special customs and/or tax controls, in which enterprises are licensed to conduct business or provide services for export purposes through the granting of special incentives to stimulate their development.

Such areas could include, among others:

- The receipt of goods duty free for processing and export;
- The provision of financial services such as banking, brokerage services and insurance;
- The provision of services such as tourism and gambling;
- The provision of technology based services;
- The provision of services with the petroleum industry.

2. Admission of Businesses to Operate in Free Trade Zones

- (a) A legislative regime regulating Free Trade Zones (FTZ) must, among other things, govern the granting and revocation of licenses to operate a business therein. Because these guidelines are intended to help governments to ensure transparency and integrity in legitimate international trade and thereby protect it against criminal misuse, it is important to identify the parties to any given transaction.
- (b) It is equally important to fully and clearly identify the parties who control and operate businesses within a Free Trade Zone regime and to ensure that these are bound by all applicable laws and can be reached by competent authorities.
- (c) Accordingly, Governments should ensure that businesses are registered and incorporated in accordance with applicable laws.
- (d) These laws should require that Articles of Incorporation be filed upon registration and that the identity of all corporate officers and owners be fully disclosed. The identity of shareholders should be made accessible as determined by the applicable laws.
- (e) Further, any changes made to all of the foregoing information must be reported to the competent authorities and should be verified and updated periodically (minimum once every three

Zones, Economic and Technological Development Zones, Resource Economic Development Zones and Border Economic Cooperation Zones.

years) to reflect any changes in ownership, location or other matters.

3. Free Trade Zone Businesses Operating as an Agent.

- (a) In some cases a business not physically based in, registered, or incorporated in the same country as the Free Trade Zone may operate through a wholly-owned subsidiary, or other business that is physically present in the zone and registered and incorporated locally. In such cases, the business located within the Free Trade Zone and incorporated under local law is operating in a representative capacity, or as an Agent (company/branch).
- (b) To ensure transparency and integrity in all operations conducted by that Agent, applicable law should require that, whenever the business is acting as an Agent for another party, it must disclose that fact to the Free Trade Zone Authority. This information should be provided to all persons and all authorities with whom the Agent conducts business on behalf of the other party. Further, the Agent, in all such cases, should fully disclose the identity of the person on whose behalf he is acting.

4. Revocation of Licence to Operate a Business in a Free Trade Zone

- (a) Competent Authorities governing a Free Trade Zone will vary from one jurisdiction to the next, depending upon the provisions of local, applicable law. These Guidelines assume that for any Free Trade Zone there will be a Free Trade Zone Authority.
- (b) At a minimum, the competent Authorities should be empowered to impose sanctions such as imposition of fines, the suspension or revocation of licenses to operate a business.
- (c) Conditions that shall result in the suspension of business operations and/or the revocation of a license to conduct business must be clearly defined by the competent authority, likewise conditions that could result in the imposition of a civil or administrative fine shall be clearly defined by the competent Authority.

Port of Spain, March 29th, 2001