

CARIBBEAN FINANCIAL ACTION TASK FORCE

**ANNUAL REPORT
1995 - 1996**

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SUMMARY

The activities of the second operational year of the Caribbean Financial Action Task Force (CFATF) were conducted under the continued chairmanship of Trinidad & Tobago. Achievements included the development and application of the mutual evaluation programme, the appointment of a Deputy Executive Director, the adoption of a Memorandum of Understanding which consolidates the structure and membership of the CFATF, and the formulation of a regional training project in conjunction with the UNDCP.

The self assessment programme monitors advances made in implementing the recommendations. Member governments completed a questionnaire which addressed the status of implementation of the recommendations. Analysis of the responses indicates that there has been further enactment of measures to counter money laundering. This work will be enhanced by a project to study money laundering activity as it is known to occur within the region, referred to as a 'typology' exercise.

The mutual evaluation programme has been pursued through the year. This provides a detailed examination of measures adopted to counter money laundering and has a particular value in establishing a broad understanding of the effectiveness of different approaches to the problem. New procedures were adopted for the conduct of evaluations and were first used for the consideration of the Cayman Island's report. Further examinations were carried out in Panama and Costa Rica and these reports, together with the report on Trinidad and Tobago will follow the same procedure for adoption. The FATF reports on the evaluations of the Netherlands Antilles and Aruba were noted by the CFATF Council. Other members have volunteered for mutual evaluation for the forthcoming year's work programme.

Technical assistance and training remains a major priority. The Secretariat assisted the UNDCP in preparing proposals for a regional training project with the objective of co-ordinating assistance to members. Several courses were held throughout the year by individual governments, international organisations and donor countries.

A plenary meeting of the CFATF was held in Port of Spain in March 1996 and considered a variety of matters and made proposals for agreement by Ministers. The Ministerial Council meeting was held in San José, Costa Rica in October 1996.

ADOPTION OF THE MEMORANDUM OF UNDERSTANDING

At the March 1996 Plenary it was noted that the CFATF lacked a constitution embodying the Kingston Declaration and the objectives, principles, functions, and terms of membership of the CFATF. An *ad hoc* Working Group, chaired by Trinidad and Tobago, was formed to address these concerns. Aruba, the Cayman Islands, Colombia, Costa Rica, the Netherlands Antilles, and St Lucia elected to participate.

The Working Group drafted a Memorandum of Understanding (MOU) setting out the objectives of the CFATF, the status of Members and other organisations, funding, and the role of the Secretariat. Members' comments were considered by the Working Group which prepared a final text including agreed modifications to the original draft.

The CFATF Council, meeting in San José on 9-10 October 1996 formally adopted the MOU after discussion. A total of 21 Members signed the MOU and these countries now comprise the CFATF. Of the former 26 CFATF members, Dominica, Guyana, St. Kitts & Nevis, Suriname and Venezuela were not represented at the Council and have not yet signed the MOU. Colombia, Jamaica and Mexico were represented and elected not to sign the MOU; Jamaica is considering signing with reservation; Mexico intends to seek admission as a Co-operating and Supporting Nation. The FATF countries which have supported the CFATF since its inception are now known as Co-operating and Supporting Nations and issued a Joint Statement of Co-operation and Support at the Council meeting. The MOU and the Joint Statement are attached at Appendix A.

Costa Rica succeeded the Chair at the Council meeting in San José, having been elected deputy Chair in May 1995. Barbados was elected deputy Chair for the next twelve months, and will in turn succeed the Chair in 1997. The Council also agreed on the appointment of Mr. Carlos Correa as the Executive Director on the conclusion of Mr. Tim Wren's appointment in early 1997.

NEW CFATF MEMBERSHIP

Although Central America is not regarded as a haven for money laundering, it is nevertheless an area of concern to the CFATF. As anti-money laundering measures are adopted and implemented in the Caribbean and throughout the Americas, launderers will seek jurisdictions where such measures have not been adopted or implemented.

When the CFATF was originally founded it was intended that all countries in or bordering the Caribbean Basin, including Central America should be included in the membership. Although all the governments of Central America were invited to attend the Kingston Ministerial Meeting, these, for a variety of reasons, could not.

In mid-1996 the then chair designate (Minister Castro of Costa Rica) pursued an agreement from the May 1995 Ministerial meeting to secure the Membership of all Central American governments. In June 1996, at a meeting of Ministers of National Security in Guatemala, Minister Castro invited his counterparts from Central America to attend the Council meeting. An invitation was also extended to the Government of Belize. Consequently the governments of Belize, Guatemala, and Nicaragua attended the Council meeting in Costa Rica and were admitted as new members.

As a follow-up, the Secretariat will provide additional support for new Members with briefings on CFATF activities. The Secretariat will also conduct a sub-regional needs assessment for technical

assistance and training and make project proposals modelled on a similar project carried out by the Secretariat in conjunction with the UNDCP in the Caribbean.

FUNDING

During the first two years the CFATF has been funded by contributions from five donor FATF countries, within the terms of the Kingston Declaration. The UK has underwritten the cost of the executive director, seconded under an overseas aid programme, and the Governments of the Netherlands, the United States of America, Canada and France have provided financial contributions for the operational budget. During 1996 the USA has also seconded the deputy executive director to the secretariat. The Government of Trinidad and Tobago provides office accommodation for the Secretariat.

In May 1995 Members expressed their wish to contribute to the operating costs of the CFATF during 1996. It was resolved that each Member would pay US\$5,000 for the year January 1, 1996 to December 31, 1996. To date fourteen members have paid their contributions and arrangements are being made regarding the outstanding contributions. In addition, *ad hoc* contributions have been made in 1996 by Canada and the USA.

The Council adopted a budget for 1997 which allows for increased costs, particularly telephone charges and travel, occasioned by the appointment of the deputy executive director. Allowance has also been made for the acquisition of additional computer equipment for the secretariat. Additional costs which arise from the implementation of training projects or similar activities are expected to be borne within individual project budgets. The accounts are audited annually. Coopers & Lybrand will continue as the Accountant and Auditor to the CFATF .

TRAINING AND TECHNICAL ASSISTANCE

With the increasingly widespread adoption of laws which criminalise money laundering and permit the confiscation of criminal assets, the implementation of these laws is becoming more important. Some members have already achieved results by the restraint and confiscation of criminal assets. However, many jurisdictions still lack either the technical expertise or the resources to provide for training of civil servants, prosecutors and police investigators. Limited resources in public prosecutor's departments and police forces place further constraints on the operational deployment of trained staff, particularly in smaller member jurisdictions.

Since its creation the CFATF Secretariat has been directed "...to identify and act as a clearing house for facilitating training and technical assistance needs of members, including dealing with requests for training and technical assistance from members and advising on sources of assistance."

In 1994 the Secretariat noted that operational co-ordination of training between donor countries and international organisations was lacking, despite increasingly close co-operation between the various organisations at a policy level. The Secretariat organised a meeting of relevant agencies and organisations, hosted by the United Nations Drug Control Programme (UNDCP) Regional Office in Barbados, and as a result it was determined that the Secretariat and the UNDCP should develop a regional approach for countering narcotics money laundering in the Caribbean. The meeting proposed a UNDCP funded project to set up a co-ordinated strategy to implement training and

technical assistance programs provided by donors. This proposal was approved by UNDCP - Vienna.

Between November 1995 and March 1996 the Deputy Executive Director, funded by the UNDCP, carried out a series of visits to 19 jurisdictions and prepared a project document, entitled "Empowering Caribbean governments to effectively combat money laundering and to confiscate criminally related assets". The project document was submitted to the UNDCP on June 21, 1996.

This project will provide enduring benefits to Caribbean governments. It will enhance the ability of existing institutions (and create new institutions as necessary) to investigate and prosecute money laundering, financial crimes, and asset seizure and forfeiture cases. It will include training for law enforcement and the judiciary, and will develop new and existing laws and mutual legal assistance/extradition treaties between governments.

The strategy proposes four separate but parallel initiatives affecting four sectors: judicial; law enforcement; customs; and the financial sector. The proposal designates the CFATF as responsible for the co-ordination between each project sector/initiative. To accomplish this, it is proposed that the CFATF will establish a Steering Committee including associate members and observers. The project is designed to last three years.

The CFATF Council approved the Secretariat's role and established a steering committee from the plenary to review the co-ordination of training and technical assistance activities, and undertook to secure additional resources to carry out these functions of the Secretariat.

The Council mandated the Secretariat to develop a regional technical assistance and training program for Spanish speaking Members of the CFATF, drawing on resources available in Central America (e.g. OAS/CICAD, ILANUD and the UNDCP).

In early 1996 an Anglo-French proposal called for an EU drugs control initiative in the Caribbean. Subsequently, a team of EU experts conducted a needs assessment and prepared a regional report. This report concluded there is need for a mechanism for the co-ordination of training and technical assistance made available in the Caribbean by donor countries and organisations, and calls for action in six substantive areas: demand reduction; law enforcement; legal/judicial support; the fight against money laundering; control of precursors; and, supply reduction.

The EU report acknowledged the existence of anti-money laundering legislation in most Caribbean jurisdictions, noted the substantial support provided by the CFATF, but concluded that the effective implementation of this legislation is limited. To address this, the experts propose the formation of a Financial Investigation Unit (FIU) comprising professional regional and European experts. As proposed, the FIU would function in the entire Caribbean region, conducting, supporting, and/or advising on investigations as requested, and providing training. As proposed, the FIU would be "attached to, although not necessarily collocated with the CFATF Secretariat".

In response to the EU proposal, the Secretariat noted that the CFATF mandate does not include operational enforcement or investigative actions and proposed to limit its role to the guidance and co-ordination of the training function of the FIU. To ensure maximum training benefits, the Secretariat also proposed that regional investigators be attached to the FIU for a defined period. This would make these trained investigators available to their domestic agencies to function as both on-the-job trainers and investigators. These proposals were considered by the UNDCP Regional meeting on drug control co-operation in the Caribbean which was held in Barbados in

May 1996. The recommendations of that meeting are under active consideration by donor countries from Europe and North America.

During 1995-1996 donor countries and international organisations continued to provide a variety of training programmes, including legal training courses and workshops. Regionally, training was on governments' and organisations' own initiative which made a welcome contribution to implementing the recommendations and indicates an increasing level of support for the work of the CFATF.

In March 1996 the Panamanian Bankers' Association hosted a regional training symposium aimed at the financial sector and the supervisors which was well supported. In October 1996 the government of the Netherlands Antilles convened a symposium on international crime, the conclusions of which will have a positive effect. In July 1996 at Roatan, Honduras, several Central American countries¹ adopted the Central American Convention for the Prevention and Control of Money Laundering and Related Offences. This Convention, which was drafted by the Centre for Central American Judicial Development and Co-operation, seeks to harmonise anti-money laundering legislation throughout Central America. In 1997 the Cayman Islands plan to hold a biannual conference for the private sector on the modalities and typologies of money laundering.

MONITORING PROGRESS IN IMPLEMENTING THE RECOMMENDATIONS

Self Assessment

Self assessments are one of two central principles of the CFATF. They provide the members of the CFATF with a snapshot of the level of progress each country or territory has made in implementing the recommendations. Equally important, they provide the Secretariat with information which will enable it to analyse technical assistance needs of CFATF Members.

As discussed above in Training and Technical Assistance, there are significant initiatives under study by the UNDCP and the European Commission. The Secretariat developed the UNDCP proposal for a regional programme for technical assistance and training. In parallel, a group of experts convened by the European Commission has included a significant role for the CFATF Secretariat in training and technical assistance initiatives it proposes for the region.

Consequently, the importance of self assessment increases substantially. Training efforts undertaken by Associate Member and other states can only be correctly focused and produce the maximum benefit for the region if they are premised on an accurate analysis of Members' needs. Each Member is best situated to participate in determining what its needs are; the most readily available mechanism for accomplishing that needs analysis is the self assessment programme, which sets objective standards to assess implementation.

In 1995 it was agreed that the self-assessment programme would be pursued on an ongoing basis. From replies received in response to the questionnaires an analysis has been prepared. Where complete responses were not provided the analysis relies on data provided in the response to earlier surveys in 1992 and 1994, as in many instances this data remains valid. The following is a summary of the members' state of implementation

¹Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.

Legal Issues

The membership of the CFATF has continued to make progress over the past two years in adopting the legal Recommendations. Twenty-three members indicate that they now have the necessary provisions for the identification, seizing and forfeiture of assets derived from drug trafficking. It is believed however that the remaining members have also adopted these provisions to some extent. Most require a criminal conviction prior to the confiscation order.

Nine jurisdictions have recently introduced laws making drug money laundering a criminal offence, which creates a majority of members in this position. The two remaining members who have yet to take action (Guyana and Suriname) expect to pass the necessary legislation within the next 12 months. In some instances the existing laws do not extend to a drug trafficker laundering his own proceeds.

As yet, only seven members (Aruba, Barbados, Colombia, Netherlands Antilles, Mexico, Panama, and St Kitts and Nevis) have laws which criminalise the laundering of the proceeds of other crimes, although some members have already recognised the desirability of doing so and others already have the ability to schedule other predicate offences in their existing law.

Seven members indicated that they still have significant restrictions on their ability to provide assistance to other jurisdictions seeking to identify, freeze or confiscate criminal assets. At present sixteen members have bilateral treaties in effect. Several of those who have any treaties are considering or negotiating further agreements. At present eleven members are party to a treaty which provides for assistance for non-drug predicates for money laundering (Antigua and Barbuda, Aruba, Bahamas, Barbados, Cayman Islands, Colombia, Grenada, Mexico, Montserrat, Netherlands Antilles, and St. Kitts and Nevis). The majority of members' laws allow for extradition for drug money laundering offences. Five members (Antigua and Barbuda, Cayman Islands, Costa Rica, Netherlands Antilles and Panama) have introduced arrangements for sharing of confiscated assets between jurisdictions, but the majority still have no formal mechanisms to do so.

An area where substantial progress has been achieved is in the ratification and implementation of the 1988 Vienna Convention. All members have either signed or acceded to the convention, although some members still need to pass laws to fully comply with its requirements. Although the Kingdom of the Netherlands has ratified the Convention, its associate states (CFATF Members Aruba and the Netherlands Antilles) are not deemed to have done so. This is because their domestic legislation requires that all laws mandated by the Convention be enacted prior to ratification. Both Aruba and the Netherlands Antilles are very close to enacting all measures required by the Convention and it is expected that ratification will occur very soon.

Six members have introduced measures to comply with the Recommendation dealing with illicit funds crossing borders. Thirteen are studying, and eight more are planning to introduce, such measures.

Financial Issues

The 1994-1995 self-assessment exercise showed that, whilst the Recommendations which address financial matters were not fully applied by all members, major overall progress had been made. Considerable differences still persist in the state of implementation of the various Recommendations between the banking sector and non-bank financial institutions (NBFIs).

Almost all members comply fully with the customer identification requirements, although there are still some exceptions with regard to the identification of third party beneficiaries of accounts, especially among NBFIs. All members but one are in full or partial compliance with record-keeping rules.

Significant progress has been made in implementing Recommendations dealing with the increased diligence of financial institutions: almost all governments require banks, and to a slightly lesser extent non-bank financial institutions, to pay special attention to complex, unusually large transactions. Most members permit (and some now require) their banks to report their suspicions if they suspect that funds stem from criminal activity. However, only a small proportion have identified an authority or agency competent to deal with such information. Where such reports are permitted or even required the volume of reports appears to be low and it may be that this area deserves more specific attention. Of those members which do receive reports, only half permit the exchange of information, either spontaneously or on request.

At present, a small minority of members still do not require banks or non-banks to develop specific programmes against money laundering. In the others, the supervisory authorities ensure that adequate programmes are set up. Far fewer seem to conduct examinations to ensure that non-bank institutions have adequate systems in place. Guidelines have already been established by two thirds of the member governments to assist their banks in detecting suspicious transactions. A similar proportion indicate that they have taken measures to ensure that banks and other financial businesses are not controlled or acquired by criminals, although almost all members have thorough requirements for the identification of individuals who own or control licensed banks, together with similar requirements when changes in ownership occur.

It has been noted that during the past twelve months similar surveys have been used by the Offshore Banking Group, CICAD, the Summit of the Americas money laundering workshops, and the Commonwealth Secretariat. Recognising that each request inevitably places a burden on the officials who have to respond, initiatives are in hand to improve co-ordination and, where possible, to exchange data. This is particularly the case with the Commonwealth Secretariat, which was mandated by Finance Ministers to carry out a similar survey. In order to avoid any duplication, future surveys will adopt identical questionnaires and, subject to the agreement of countries participating in both schemes, the data arising will be exchanged between the Secretariats.

Typology exercises

Money launderers' methods involve the use of established and new banking technologies, domestic and offshore banks and businesses, duty-free zones, non-bank financial institutions, and other entities. Methods used by launderers continually evolve in order to evade the measures which are instituted to detect and to deter this crime.

In January 1996, the Secretariat initiated an exercise, referred to as a 'typology' exercise, to study and understand money laundering as it is known to occur, as well as the evolving methods used by launderers. A questionnaire was distributed to each Member. The responses were limited to those members who have either studied the phenomenon or secured results. The CFATF now intends to expand this approach by conducting a further typology exercise including a meeting of experts in which all Members will participate. This exercise will provide a more detailed insight into money laundering as it occurs within the region and beyond.

During 1995-1996 the FATF completed a similar typology exercise, followed by a major review of the 40 FATF Recommendations. This resulted in amendments to the 40 recommendations designed to ensure that: (i) the recommendations adequately addressed money laundering methods discovered by FATF experts; and, (ii) the recommendations would be formulated in broad terms that would not require further revision in the future.

Following this CFATF typology exercise it will be logical to review the amendments to the FATF Recommendations and determine whether the CFATF recommendations require changes. In order to pursue this an Experts Working Group will be formed and charged with reviewing FATF amendments to the 40 recommendations; analysing their applicability to conditions in the Caribbean region; recommending the adoption of the amended FATF Recommendations with any necessary revisions to reflect conditions in CFATF countries; recommend amendments to the 19 CFATF recommendations; and, finally, developing suspicious transaction profiles for CFATF members.

Mutual Evaluation

Mutual Evaluations are the second central principle of the CFATF. Members which are the subject of a mutual evaluation are provided with an impartial evaluation of their implementation of the recommendations. The objective of the mutual evaluation programme is to create a constructive, consultative mechanism through which Members of the same peer group can candidly and constructively comment on, and improve one another's efforts.

To date, six of twenty-six CFATF Members have undergone Mutual Evaluation. In November 1993 the Cayman Islands and Trinidad & Tobago agreed to participate in the first mutual evaluations. The Cayman Islands and Trinidad & Tobago were evaluated in January and April 1995, respectively. In March 1995 the CFATF Secretariat participated in the examination conducted by the FATF of the Netherlands Antilles and Aruba, the procedures used were the same as those applied by the CFATF. Subsequently, Costa Rica and Panama have been examined in October, 1995, and July, 1996, respectively.

Six members will be evaluated in 1996-7. The conduct of some evaluations planned for 1996 has been delayed. Some jurisdictions have cited ongoing work on new or amended legislation as the rationale for deferment, in other cases, changes in government as a result of national or presidential elections have accounted for the delay.

The evaluation reports of the Netherlands Antilles and Aruba have been adopted by the FATF. These reports were presented to the Council to be noted. The Plenary, in March 1996, defined a standard procedure for dealing with mutual evaluation reports and this was applied to the examiners' evaluation report of the Cayman Islands. This report was then presented to the Council in October 1996 and adopted. The following is a summary of that report.

The Cayman Islands.

The Cayman Islands volunteered to be the first member to participate in mutual evaluations conducted by the CFATF. An evaluation team comprising experts from Bermuda, Jamaica, and Trinidad & Tobago visited Grand Cayman between 24th and 27th January 1995 and conducted interviews with a broad range of government and non-government bodies involved in the fight against money laundering in the Cayman Islands.

The Cayman Islands are not a significant drug consuming territory, although cocaine and marijuana are imported and transhipped to North America. Like any other established international financial centre, the Cayman Islands are attractive to those who wish to launder illicit funds. The introduction of new laws and systems is intended to discourage that attraction and to overcome the lingering reputation for illicit money laundering. As a major offshore financial centre, which mainly offers services to North America and Europe, most money laundering derives from crimes committed in North America and Europe rather than locally.

The Cayman Islands have laws which criminalise the laundering of the proceeds of serious crime², and provide for the restraint and confiscation of the proceeds of crime, and for mutual assistance between the Cayman Islands and other countries. On 2nd November 1994, at the invitation of the Cayman Islands Government, the United Kingdom extended its ratification of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances to the Cayman Islands. Provision is also made for the seizure and forfeiture of imported or exported cash suspected to represent drug trafficking proceeds although this power has not yet been used.

There are several laws providing for international co-operation with other jurisdictions, including the Mutual Legal Assistance (United States of America) Law 1986, which extended a Treaty between the U.K. and the U.S.A. to the Cayman Islands, and the Confidential Relationships (Preservation Law) 1976, as amended in 1979 and 1993.

The Financial Services Supervision Department (FSSD)³ is responsible for the licensing, and supervision of banks and other financial institutions. The FSSD monitors banks' compliance with anti-money laundering procedural requirements. All financial institutions must adhere to Basle minimum standards and FATF Recommendations. Non-compliance may lead to the suspension or revocation of a financial institution's licence. Branches of overseas banks which do not have a physical presence are supervised by the supervisor of the parent bank.

The FSSD has issued a Guidance Note on the prevention of money laundering to all licensed banks. The Bankers Association also has a Code of Conduct. Although the financial sector has implemented strict customer identification requirements, customer identification has not been reviewed retrospectively. Record retention is in practice within FATF standards, but the requirement should be formalised, including the retention of records after closing accounts.

The examiners concluded that the confidentiality laws do not inhibit compliance with the FATF recommendations. Compulsory reporting of suspicious transactions has been introduced by the The Proceeds of Criminal Conduct Law, 1996. The enactment of this legislation has strengthened the regulation of financial institutions and facilitates enforcement efforts.

The Cayman Islands is substantially in compliance with the FATF and CFATF recommendations and a timetable for new laws is being actively pursued. The financial industry is regulated to a high standard. The examiners were impressed with the general co-ordination between the Government, the financial sector and professionals. Their common interest in putting policies into practice has succeeded in making money laundering in the Cayman Islands a more hazardous activity. The adoption of a progressive attitude towards countering money laundering demonstrates that such policies are compatible with a developing offshore financial centre.

²The Proceeds of Criminal Conduct Law, 1996.

³The FSSD is now part of the Cayman Islands Monetary Authority which is responsible for all aspects of financial supervision.

Since the completion of the mutual evaluation process, new legislation has been enacted by the Cayman Islands, The Proceeds of Criminal Conduct Law, 1996, which criminalises the laundering of the proceeds of all serious crimes.

WORK PROGRAMME 1996 - 1997

The work programme proposed by Costa Rica for the term of its Chairmanship during 1996-1997 focuses on six substantive areas:

- A Review of Money Laundering Methods (Typology);
- A Stocktaking Review of the Recommendations;
- The Self-assessment Programme;
- The Mutual Evaluation Programme;
- Training and Technical Assistance; and,
- The Integration of Central American Members.

Each of these activities builds on the work already carried out and will enhance members' commitment to implement countermeasures. The Secretariat will continue to be hosted by Trinidad & Tobago.