



THE IMPORTANCE OF PUBLIC PRIVATE PARTNERSHIPS IN AML/CFT

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FINANCIAL CRIME



The financial system may be used by criminals and terrorists to conceal, move, and spend money. The financial system is crucial to criminal activity, both to its execution and to handling its proceeds. Monitoring the flow of funds in the financial system can be a critical element of the wider intelligence and investigative effort to stop crimes or terrorist attacks and prosecute perpetrators.

Authorities increasingly expect that the finance sector not only ensures compliance with financial crime regulation but that entities in the sector become critical contributors to investigative efforts.



Public-Private Partnerships (PPPs)



**FATF GUIDANCE PRIVATE SECTOR
INFORMATION SHARING p. 24**

- ✓ Information sharing between public and private sector stakeholders through PPPs increase the effectiveness of AML/CFT measures by facilitating a more comprehensive view of financial transactions and customers' behaviour.
- ✓ Through such partnerships, sharing often happens in a secured environment permitting further data mining, operational analysis and scanning by the private sector to fill potential intelligence gaps.
- ✓ These PPPs enable information sharing across supervisors, FIU, law enforcement, vetted participants from the private sector as well as international partners in some cases.



Public-Private Partnerships (PPPs)

Speech by FATF
President at 2020
Chairmanship OSCE-
Wide Counter-
Terrorism Conference
Dr. Marcus Pleyer, FATF
President on 15
September 2020

“I cannot emphasise enough the importance of public-private partnerships in combatting terrorist financing. Many of us in Europe, the Americas, and the Asia Pacific region have witnessed a number of high profile terrorist attacks in the last few years.

The establishment of trust and confidence between public and private sectors is therefore fundamental in this fight against terrorist financing. Public-private partnerships must be established before the need for a terrorist financing investigation arises.”

On April 28, 2022, Dr. Pleyer gave an address at the AML Intelligence PPPs Summit, stating that, “Public-private-cooperation plays a role in two ways for the FATF: First of all, in our own way of work, and secondly, in our messages to governments and the private sector.”



Why a PPP approach? (1)



AML/CFT consists of a plurality of different key elements ranging from CDD and SARs to FIU analyses and, ultimately, where applicable, criminal investigations.

Public-private information sharing in the context of AML/CFT may essentially be divided into two primary purposes: the furtherance of ongoing investigations and the improvement of the effectiveness of CDD.

SOURCE: B. Vogel and J. Maillart, “National and International Anti-Money Laundering Law: Developing the Architecture of Criminal Justice, Regulation and Data Protection”, 2020.



Why a PPP approach? (2)



To fulfill the double purpose of AML/CFT:

1. supporting LEAs in their criminal investigations into relevant offences and
2. supporting obliged entities in the prevention of ML/TF, to protect the financial system from criminal assets.

These two functions must be distinguished as it is key for determining the design of the PPP framework. Regarding the support of LEAs, the design of criminal procedure law is critical, while on the other hand, supporting obliged entities is about improving the performance of the regulatory framework.



Importance of PPPs in combating ML/TF (1)



Source: FATF Report Trade Based
Money Laundering: Trends and
Methods, 2020

- ✓ Share information and knowledge about existing ML/TF typologies.
- ✓ Identify new and emerging risks.
- ✓ Channel of exchanging financial intelligence between operational authorities and reporting entities.
- ✓ Increase communication between the involved sectors.
- ✓ The FATF Recommendations contemplate co-operation between the public and private sectors on AML/CFT matters, but they do not explicitly require jurisdictions to establish a PPP to meet this requirement.
- ✓ For example, competent authorities should provide guidance and feedback to FIs and DNFBPs in applying AML/CFT measures.



Importance of PPPs in combating ML/TF (2)

Sharing information is key to promoting financial transparency and protecting the integrity of the financial system. It provides financial institutions and relevant competent authorities with the intelligence, analysis and data necessary to prevent and combat money laundering and terrorist financing.

Similarly, financial institutions look to the public sector to share information on trend analysis, patterns of behaviour, targeted suspects or geographical vulnerabilities in order to better manage their risk exposure, monitor their transaction flows and provide a more useful input to law enforcement.





Importance of PPPs in combating ML/TF (3)

Public and private sector institutions can be source as well as target of information flow. The use of data in this manner highlights the importance of a continuous dialogue between the public and private sectors.

The reliance on shared information also underlines the increased focus of international efforts towards identifying potential barriers to information sharing which might impinge on the effectiveness of the system, and exploring possible policy and operational solutions to overcome them.

There is certainly no one-size-fit-all approach for Public-Private Partnerships, and any successful model will require commitment and resources, including priority, expertise and time, from both public and private partners.





Importance of PPPs in combating ML/TF (4)



“There is a unique dynamic between law enforcement, regulatory authorities, and the banks and financial institutions they need to work with to counter financial crime. Open dialogue and trust can be challenging to develop, and information-sharing is complicated.”

Source: Beck et al, “Financial Crimes Compliance: The Power of Partnerships,” 2021
<<https://www.adb.org/publications/financial-crimes-compliance-power-partnerships>> accessed 31 May 2022, p.2



Utilising a PPP approach (1)



Successful partnership models between regulators and financial institutions must work to effectively communicate the intent of regulations in a transparent manner.

An ideal partnership model would seek to work through the progress made by existing partnership models and look to industry-led models of self-regulation.

The Joint Money Laundering Steering Group (JMLSG) in the UK is a good example of such industry-led implementation of AML.



Utilising a PPP approach (2)



The JMLSG is unique to the UK, and brings together money laundering specialists from a consortium of financial institutions and associations.

These specialists translate the requirements of the regulators into practicable guidelines for the financial industry. The JMLSG example is also a model case for partnership as the revision of JMLSG guidance is done in consultation with UK legislators and regulators.

In this way, compliance with JMLSG guidance is tantamount to compliance with FSA and HM Treasury rules. Moreover, approval of JMLSG rules by HM Treasury's Money Laundering Advisory Committee (MLAC) provides the statutory link between the regulator and the consortium, and is taken into account in future legal proceedings. The organization represents a good example of intra-agency cooperation on regulatory compliance with working groups specialized on issue specific concerns. [1]

[1] Atlantic Council and Thomson Reuters, "Encouraging PPPs to Fight Financial Crime", 2012.



Key Public and Private Sector Stakeholders (1)



Public Sector Customs

- Collaborating with domestic law enforcement agencies (LEAs) and FIUs.
- Improves the collective capacity to identify ML/TF by linking suspicious activity with suspicious financial activities.
- Collaboration should include swift information sharing between the authorities, and co-ordination of the investigative and operational responses to ML/TF and related predicate offences.

Law Enforcement Agencies (LEAs)

- Investigation of predicate offences which can lead to investigations of international ML.

Prosecutors

- Required to prove that the laundered funds or assets are the proceeds of crime and that the defendant/s was aware of such.



Key Public and Private Sector Stakeholders (2)



PUBLIC SECTOR

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Key Public and Private Sector Stakeholders (3)



Financial Intelligence Units (FIUs)

Analyse data and information from reporting entities, administrative and law enforcement authorities, and international counterparts which can enable the detection, substantiation, or possible negation of a TBML scheme.

AML/CFT Supervisors

Due to their responsibility for ensuring compliance with AML/CFT requirements, supervisors have greater access to data and information on the structure and systems of FIs and DNFBPs that can be valuable to ML/TF investigations and prosecutions.

National Security Agencies

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Key Public and Private Sector Stakeholders (4)



Private Sector

FIs and DNFBPs are on the frontline of combatting ML, since they are either involved in moving value (e.g., by executing transactions on behalf of their clients) or they have unique knowledge about their clients' financial activities (e.g., accountants and lawyers).

Financial Institutions (FIs)

- Provision of leads to FIUs, LEAs and other authorities for detecting possible ML schemes, given their involvement in banking, their knowledge of customer behaviour, and their role as a financial intermediary.
- FIs may also identify suspicious activity and issue STRs and SARs in this regard.

Designated Non-Financial Businesses and Professions (DNFBPs)

They can identify and recognize companies used solely to hide the original form of the payment and other complex legal structures established for ML activities, particularly notaries, auditors, and accountants.



Challenges of utilising a Partnership approach

*P*ublic
*P*rivate
*P*artnership

A country's legal or regulatory framework may limit data-sharing, especially across borders;

- The (understandable) authority dynamic between regulators and those being regulated;

- Capacity constraints among intelligence and Law Enforcement Authorities (LEAs) in being able to focus on and investigate financial crime or Limited available resources to investigate on both Public and Private sector sides;

- Potential disconnect and gaps between regulatory and LE priorities; and

- A culture of confidentiality in the financial system extends beyond what is legally necessary and impedes dialogue and information or intelligence-sharing.



Overcoming Challenges utilising a PPP approach



According to Vogel, “Enhancing the role of public-private sharing will require legislators to address legal deficits of existing AML/CFT laws. Otherwise, public-private sharing could lead to an exacerbation of existing problems that would then sooner or later damage the AML/CFT system instead of improving it.”

B. Vogel in his article published in eucrim entitled, “Potentials and Limits of Public-Private Partnerships against Money Laundering and Terrorism Financing”, 2022



Thank you!



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