

## COMMON LAW MODEL ON ANTI-MONEY LAUNDERING (AML) AND COMBATING THE FINANCING OF TERRORISM (CFT) LAWS

### Paper by the Commonwealth Secretariat

1. In view of the changing global security scenario and novel strategies adopted by terrorists from time to time, the Commonwealth Secretariat, jointly with the UNODC, IMF and the World Bank, is currently drafting model legislative provisions on Money Laundering and the Financing of Terrorism. In October 2004 work began on drafting a model law for common law jurisdictions that reflects the revised Recommendations (40+9) of the Financial Action Task Force (FATF). In January 2005 a drafting group was formed consisting of legal, law enforcement, and financial sector experts from the participating institutions with assistance from legal practitioners in the United Kingdom.
2. A second group not involving the Commonwealth Secretariat has been drafting parallel civil law model legislative provisions. This drafting group consists of experts from the IMF, World Bank, UNODC, the Inter-American Drug Abuse Control Commission (CICAD) of the Organisation of American States and two European financial intelligence units.
3. Participants in the common law drafting group agreed to prepare a single joint model acceptable to the entire group, and that the draft be written in a comprehensive manner in plain English that could be adapted for use in a variety of common law jurisdictions. In addition, they agreed that the common and civil law models should be consistent with each other to the extent possible, given the differences in the two systems.
4. The first meeting of the drafting group was hosted by the Commonwealth Secretariat at Marlborough House in London in January 2005. The second and third meetings were hosted by the IMF at the Joint Vienna Institute in Vienna, Austria, in April and July 2005.
5. The draft AML/CFT model legislative provisions cover the following areas:
  - Customer Due Diligence (CDD)
  - Record-Keeping
  - Submission of Suspicious Transaction Reports (STRs)
  - Formation and powers of a Financial Intelligence Unit (FIU)
  - Inclusion of 'Designated Non-Financial Businesses and Professions (DNFBPs)' in the AML/CFT framework
6. In addition, the model legislative provisions would encompass provisions on two other related laws: the first is criminalising money laundering and the financing of terrorism. This includes:
  - investigative powers
  - forfeiture and confiscation of instrumentalities and proceeds of crime
  - freezing and restraint orders
  - receivership orders
  - civil forfeiture.
7. The second is mutual legal assistance, which includes foreign requests for restraining orders and confiscation orders and transmittal of confiscated assets.

8. It is expected that the common law AML/CFT drafting project will be completed by the end of calendar year 2005.

9. The model legislative provisions based on the common law tradition would be ideal for adaptation by Commonwealth countries and particularly helpful for smaller jurisdictions with limited resources. As Commonwealth countries are at various stages of development and have different socio-economic needs, the model legislative provisions would provide multiple variants so that the countries can adapt the provisions best suited to their requirement.