

THE COMMONWEALTH DRAFT MODEL LAW FOR THE PROHIBITION OF MONEY LAUNDERING

A Paper prepared by the Commonwealth Secretariat

BACKGROUND

1. Commonwealth Heads of Government at their 1993 Meeting expressed concern about the effects of money laundering, expressed their support for implementation of the 40 Recommendations of the Financial Action Task Force (FATF) and asked Law and Finance Ministers to further Commonwealth efforts to combat the laundering of the proceeds of all serious crime, thus going further than the precise scope of the FATF Recommendations. FATF is, however, reviewing the recommendations and is considering widening them to suggest the coverage of all serious crime.

2. Commonwealth Law Ministers at their 1993 Meeting expressed their desire that the issue of money laundering be addressed as a matter of urgency and their resolve, individually and collectively, to put in place comprehensive provisions criminalising money laundering in respect of the proceeds of all serious crimes, facilitating the disclosure by financial institutions of information giving rise to suspicion of money laundering activities, enabling confiscation of the proceeds of crime, making money laundering extraditable, and promoting international co-operation in the investigation and prosecution of money laundering and in confiscation proceedings.

COMMONWEALTH SECRETARIAT ACTION

3. Information available to the Commonwealth Secretariat suggested that while many Commonwealth countries had made significant progress in putting into place laws and regulatory regimes compatible with the FATF recommendations there were a number of countries whose capacity to address this issue was limited or whose laws relating to money laundering were narrower than those supported by Heads of Government in that they dealt only with laundering the proceeds of drug trafficking.

4. The Secretariat is aware that other model laws have been prepared, for example those

produced by the United Nations Drug Control Programme and the Organisation of American States. Those laws were designed primarily for civil law countries and, in the case of the United Nations model sought to implement the money laundering obligations imposed by the Vienna (drug trafficking) Convention. The United Nations model, for example, fails to deal with freezing and confiscating proceeds of money laundering, or with extradition and mutual assistance issues which are the subject of the FATF Recommendations. It was our view that there was no suitable model for common law countries needing assistance. The Secretariat is, of course, aware that some member countries do not require assistance in drafting legislation to combat money laundering and implement the forty Recommendations but at the same time it is recognised that other member countries would appreciate assistance to bring their laws up to date.

5. To meet the needs of countries seeking to take the action required by Heads of Government and Law Ministers a model law has been produced which addresses relevant Recommendations of the FATF - as endorsed by Heads of Government - in a way which will permit member countries to administer the law in accordance with their established procedures.

CONSIDERATION OF THE DRAFT MODEL LAW

6. The draft was submitted to Senior Officials of Law Ministries at their 1995 meeting and to Senior Officials of Finance Ministries at their special meeting convened to deal with the question of money laundering. In light of the comments made at both of those meetings the original draft was revised to reflect as many as possible of the views of member countries. The revised draft was further considered at a money laundering workshop for senior law and finance officials held in Vanuatu in July 1995. The Secretariat is conscious that the resulting draft does not address every concerns expressed but attempts have been made to reflect as many as possible of the suggested changes.

7. The proposed Commonwealth model law is drafted in such a way as to enable countries who choose to use it to either:

- (a) enact the law as a whole thereby placing all provisions relating to money laundering in one document (together with such subordinate instruments as may be required); or
- (b) take each part of the model and incorporate it into another relevant law, for example the criminal code, the banking legislation, mutual assistance in criminal matters and/or extradition legislation.

- (c) a note on the relationship between the model law and the Forty Recommendations labelled Annex C;
- (d) a note which details the amendments suggested and the action taken on those suggestions and which is labelled Annex D; and
- (e) a copy of the report of Commonwealth Finance Ministers on the subject of combating money laundering which is labelled Annex E.

If option (a) is adopted countries will find that there is some duplication which could be avoided by placing the duplicated provisions in a general part. The duplication results from an attempt to produce one document which can be used as either a whole law or a collection of provisions for insertion into individual laws.

8. At their 1995 meeting Heads of Government expressed the conviction that a common legislative approach to the problem of money laundering would facilitate international co-operation and invited member states to draw benefit from the Draft Model Law for the Prohibition of Money Laundering developed by the Secretariat.

9. Ministers may also wish to take note of the report on money laundering issued by Commonwealth Finance Ministers following their meeting in October 1995. In that report Finance Ministers recognise the value of close co-operation between Finance and Law Ministers and identified a need to consider appropriate ways of co-operating to deal with the commission of fiscal offences which generate substantial money laundering activity. In the absence of any established forum at which Commonwealth Law and Finance Ministers can meet to discuss the problems they share in working to combat money laundering, Ministers may wish to consider whether it would be desirable for them to recommend the creation, at national level, of multidisciplinary groups to consider policy and practical action in this area. They may also wish to advise the Secretariat or Commonwealth Finance Ministers of any future action they would see as helpful to the development of a combined approach to this issue.

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10. Five documents accompany this paper:

- (a) the model law labelled Annex A;
- (b) an explanatory memorandum which details its intended operation labelled Annex B;