

ORGANIZATION OF AMERICAN STATES



INTER-AMERICAN DRUG ABUSE CONTROL COMMISSION

cicad

THIRTY SECOND REGULAR SESSION
2-5 December, 2002
Mexico City, Mexico D.F.

OEA/Ser.L/XIV.2.32
CICAD/doc.1200/02
25 November 2002
Original: Spanish

**PROPOSED AMENDMENTS
BY THE GROUP OF EXPERTS
TO THE MODEL REGULATIONS
ON MONEY LAUNDERING CONTROL**

PROPOSAL

CICAD

INTER-AMERICAN DRUG ABUSE CONTROL COMMISSION

MODEL REGULATIONS
CONCERNING LAUNDERING
OFFENSES CONNECTED TO ILLICIT DRUG
TRAFFICKING AND OTHER SERIOUS OFFENSES

As amended by the CICAD Group of Experts at Santiago, Chile, October 1997, Washington, D.C. , May 1998 and Buenos Aires, Argentina, October 1998, and adopted by CICAD at its twenty-second regular session held in Lima, Peru, November, 1997 and at its twenty-fifth regular session held in Washington D.C. in May, 1999

Proposed amendments are expressed in boldface type



ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C.

Article 1. DEFINITIONS

The following definitions shall be applicable throughout the text of these Regulations except when another is expressly indicated:

“Chemical substances” means substances used in the illicit production, manufacturing, preparation or extraction of narcotic drugs, psychotropic substances or other substances having similar effects.

"Convention" means the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which was signed in Vienna, Austria, on December 20, 1988, and entered into force on November 11, 1990.

"Forfeiture" means the permanent deprivation of property by order of a court or other competent authority.

"Freezing" or "seizure" means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority.

"Illicit traffic" means the offenses set forth in the Convention and in these Regulations.

"Instrumentality" means something that is used or intended for use in any manner in **money laundering or a serious criminal activity.**

"Person" means any entity, natural or juridical, including among others, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, capable of acquiring rights or entering into obligations.

"Proceeds" means any property derived or obtained, directly or indirectly, **from a serious criminal activity.**

"Property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets.

“Serious criminal activity” includes illicit traffic; activities related to terrorism and the financing of terrorism, terrorist acts and terrorist organizations; illicit firearms trafficking; diversion of chemical substances; illicit traffic of human beings and human organ trafficking; prostitution; pornography; kidnapping; extortion; corruption; and, fraud.”

Article 2. LAUNDERING OFFENSES

1. A criminal offense is committed by any person who converts, transfers or transports property and knows, should have known, or is intentionally ignorant that such property is proceeds **or an instrumentality of a serious criminal activity.**
2. A criminal offense is committed by any person who acquires, possesses, uses or administers property and knows, should have known, or is intentionally ignorant that such property is proceeds **or an instrumentality of a serious criminal activity.**
3. A criminal offense is committed by any person who conceals, disguises or impedes the establishment of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property and knows, should have known, or is intentionally ignorant that such property is proceeds **or an instrumentality of a serious criminal activity.**
4. A criminal offense is committed by any person who participates in, associates with, conspires to commit, attempts to commit, aids and abets, facilitates and counsels, incites publicly or privately the commission of any of the offenses established in accordance with this Article, or who assists any person participating in such an offense or offenses to evade the legal consequences of his actions.
5. Knowledge, intent or purpose required as an element of any offense set forth in this Article **as well as the relationship of any property, proceeds or instrumentalities, to a serious criminal activity** may be inferred from objective, factual circumstances.
6. An offense **described** in this Article shall be **defined**, investigated, tried, judged and sentenced by a court or other competent authority as an **autonomous** offense distinct from **any** other.
7. **An offense is also committed by any person who through his negligence (“culpa”) has committed an act referred to in paragraphs 1 or 2, or in paragraph 3 in relation to impeding the establishment of the true nature, source, location**

disposition, movement, rights with respect to, or ownership of property.¹

Article 3. JURISDICTION

The offenses defined in Article 2 shall be investigated, tried, judged and sentenced by a court or other competent authority regardless of whether or not the illicit traffic or other serious offense occurred in another territorial jurisdiction, without prejudice to extradition when applicable in accordance with the law.

Article 4. PREVENTIVE MEASURES RELATING TO PROPERTY, PROCEEDS OR INSTRUMENTALITIES

In accordance with the law, the court or other competent authority shall issue, at any time, without prior notification or hearing, a freezing or seizure order, or any other preventive or provisional measure intended to preserve the availability of property, proceeds or instrumentalities connected to **money laundering or a serious criminal activity**, for its eventual forfeiture.

Article 5. FORFEITURE OF PROPERTY, PROCEEDS OR INSTRUMENTALITIES

1. When a person is convicted of a **money laundering offense or an offense included in the definition serious criminal activity**, the court shall order that the property, proceeds or instrumentalities connected to such an offense be forfeited and disposed of in accordance with the law.

2. When, as a result of any act or omission of the person convicted, any of the property, proceeds or instrumentalities described in the previous paragraph cannot be forfeited, the court shall order the forfeiture of any other property of the person convicted, for an equivalent value or shall order the person convicted to pay a fine of such value.

Article 6. BONA FIDE THIRD PARTIES

1. The measures and sanctions referred to in Articles 4 and 5 shall apply without prejudice to the rights of bona fide third parties.

2. In accordance with the law, proper notification shall be made so that all those claiming a legitimate legal interest in property, proceeds or instrumentalities may appear in support of their claims.

¹ This provision has been included as a separate offense in accordance with requirements of certain jurisdictions that apply continental-european criminal law.

3. A third party's lack of good faith may be inferred, at the discretion of the court or other competent authority, from the objective circumstances of the case.
4. In accordance with the law, the court or other competent authority shall return the property, proceeds or instrumentalities to the claimant, when it has been demonstrated to its satisfaction that:
 - a. the claimant has a legitimate legal interest in the property, proceeds or instrumentalities;
 - b. no participation, collusion or involvement with respect to illicit traffic or other serious offenses which are the object of the proceedings can be imputed to the claimant;
 - c. the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, proceeds or instrumentalities, or if he had knowledge, did not freely consent to its illegal use;
 - d. the claimant did not acquire any right in the property, proceeds or instrumentalities from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of avoiding the eventual subsequent forfeiture of the property, proceeds or instrumentalities, and;
 - e. the claimant did all that could reasonably be expected to prevent the illegal use of the property, proceeds or instrumentalities.

Article 7. DISPOSITION OF FORFEITED PROPERTY, PROCEEDS OR INSTRUMENTALITIES

Whenever property, proceeds or instrumentalities that are not required to be destroyed and that are not harmful to the public are forfeited under Article 5, the court or other competent authority may, in accordance with the law:

- a. retain them for official use, or transfer them to any government agency that participated directly or indirectly in their freezing, seizure, or forfeiture;
- b. sell them and transfer the proceeds from such sale to any government agency that participated directly or indirectly in their freezing, seizure, or forfeiture. It may also deposit the proceeds from the sale into the Special Fund provided for in the Inter-American Program of Action of Rio de Janeiro, or into other Funds to be used by the competent authorities in their fight against illicit traffic, prevention of the unlawful use of drugs, treatment,

rehabilitation or social reintegration of those affected by its use;

- c. transfer the property, proceeds or instrumentalities, or the proceeds from their sale, to any private entity dedicated to the prevention of the unlawful use of drugs, treatment, rehabilitation or social reintegration of those affected by its use;
- d. facilitate the sharing of the objects of the forfeiture or the proceeds from their sale with the country or countries that assisted or participated in the investigation or legal proceedings that resulted in the objects being forfeited, on a basis commensurate with their participation;
- e. transfer the object of the forfeiture or the proceeds from its sale to intergovernmental bodies specializing in the fight against illicit traffic, prevention of the unlawful use of drugs, treatment, rehabilitation or social reintegration of those affected by its use; or
- f. promote and facilitate the creation of a national forfeiture fund to administer the objects of forfeiture and to authorize their use or allocation to support programs for the administration of justice, training and for the fight against illicit drug trafficking, its prevention and prosecution, as well as for social programs related to education, health and other purposes as determined by each government.

Article 8. PROPERTY, PROCEEDS OR INSTRUMENTALITIES OF FOREIGN OFFENSES

The court or other competent authority may order, in accordance with the law, the freezing, seizure, or forfeiture of any property, proceeds or instrumentalities in its territorial jurisdiction when they are connected to **a money laundering offense or an offense included in the definition serious criminal activity** against the laws of another country, and when that offense would have been an offense if committed within its jurisdiction.

Article 9. FINANCIAL (INTELLIGENCE/ INVESTIGATION/ INFORMATION/ ANALYSIS) UNITS

In accordance with the law, each member state shall establish or designate a central agency responsible for receiving, requesting, analyzing and disseminating to the competent authorities, disclosures of information relating to financial transactions that are required to be reported pursuant to these Model Regulations that concern suspected proceeds of crime.

For the purposes of establishing or designating the agency referred to above, the

characteristics set out in the Annex to these Regulations shall be taken into account.”

Article 10. FINANCIAL INSTITUTIONS AND ACTIVITIES

1. For the purpose of these Regulations, financial institutions are, among others:
 - a. a commercial bank, trust company, savings and loan association, building and loan association, savings bank, industrial bank, credit union, or other thrift institution or establishment authorized to do business under the domestic banking laws, whether these be publicly or privately owned, or mixed;
 - b. any entity that performs international (“offshore”) financial services;
 - c. a broker or dealer in securities, or investments in or sales of futures;
 - d. a currency dealer or exchanger.

2. Likewise, those persons carrying out the following activities shall be considered to be financial institutions:
 - a. a systematic or substantial cashing of checks;
 - b. a systematic or substantial issuance, sale or redemption of traveler’s checks or money orders, or the issuance of credit and debit cards or other similar instruments;
 - c. a systematic or substantial transmitting of funds **and any other act that results in the transfer of funds**;
 - d. any other activity subject to supervision by the appropriate competent authority.

3. **Each of the financial institutions referred to in this Article shall be authorized, registered and supervised by the corresponding competent authorities of each country.”**

Article 11. IDENTIFICATION OF CLIENTS AND MAINTENANCE OF RECORDS

1. Financial institutions shall maintain accounts in the name of the account holder. They shall not open or keep anonymous accounts or accounts which are in fictitious or incorrect names.

2. Financial institutions shall record and verify by reliable means, the identity, representative capacity, domicile, legal capacity, occupation or business purpose of persons, as well as other identifying information on those persons, whether they be occasional or usual clients, through the use of documents such as identity documents, passports, birth certificates, driver's license, partnership contracts and incorporation papers, in addition to documents providing convincing evidence of their legal existence and the powers of their legal representatives, or any other official or private documents, when initiating or conducting business relations, especially when opening new accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, or performing cash transactions over an amount specified by the competent authority.

3. Financial institutions shall take reasonable measures to obtain, record and maintain current information about the true identity of the person on whose behalf an account is opened or a transaction is conducted, if there are any doubts that a client is acting on his/her own behalf, particularly in the case of a juridical person who is not conducting any commercial, financial, or industrial operations in the State where it has its headquarters or domicile.

4. Financial institutions shall maintain and keep current during the period in which business relations are in effect, and for at least five years after their conclusion, in readily recoverable form, the records of the information and documentation required in this Article.

5. Financial institutions shall maintain records on customer identification, account files, and business correspondence as determined by the competent authority, for at least five years after the account has been closed.

6. Financial institutions shall also maintain records to enable the reconstruction of financial transactions in excess of an amount specified by the competent authority, for at least five years after the conclusion of the transaction.

7. Countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related message through the payment chain.

Article 12 AVAILABILITY OF RECORDS

1. In accordance with the law, financial institutions shall comply promptly, and within the period of time to be established, with information requests from the competent authorities, especially the agency referred to in Article 9, concerning the records of information and documentation referred to in the previous Article, for use in criminal, civil, or administrative investigations, prosecutions, or proceedings, as the case may be, regarding

offenses of money laundering or the financing of terrorism², or violations of the provisions of these Regulations. Financial institutions shall not notify any person, other than a court, competent authority or other person authorized by law, that information has been requested by or furnished to a court or other competent authority.

2. In accordance with the law, the competent authorities, especially the agency referred to in Article 9, shall share with other national competent authorities said information, when it concerns **money laundering or the financing of terrorism**, or violations of the provisions of these Regulations. The competent authorities shall treat as confidential the information referred to in this Article, except insofar as such information is necessary for use in criminal, civil, or administrative investigations, prosecutions, or proceedings, as the case may be, regarding **offenses of money laundering, financing terrorism**, or violations of **other** provisions of these Regulations.

3. In accordance with the law, the competent authorities, especially the agency referred to in Article 9, may share such information with the competent authorities of other countries, in accordance with the law.

Article 13. RECORDING AND REPORTING OF CASH TRANSACTIONS

1. Each financial institution shall record, on a form designed by the competent authority, each cash transaction involving a domestic or foreign currency transaction exceeding an amount specified by the competent authority.

2. The form referred to in the previous paragraph shall include, at a minimum, the following data for each transaction:

- a. the identity, signature, and address of the person who conducts physically the transaction;
- b. the identity and address of the person in whose name the transaction is conducted;
- c. the identity and address of the beneficiary or the person on whose behalf the transaction is conducted, as applicable;
- d. the identity of the accounts affected by the transaction, if any;
- e. the type of transaction involved, such as deposit, withdrawal, exchange of

² Throughout these Regulations, the use of the expressions “ the financing of terrorism” or “terrorism financing” includes the financing of terrorist acts and of terrorist organizations.

currency, check cashing, purchase of certified or cashier's checks or money orders, or other payment or transfer by, through, or to such financial institution;

- f. the identity and location of the financial institution where the transaction occurred; and
- g. the date, time, and amount of the transaction.

3. This record shall be recorded, accurately and completely, by the financial institution on the day the transaction has occurred and shall be maintained for a period of five years from the date of the transaction.

4. Multiple cash transactions in domestic or foreign currency which, altogether, exceed a specified amount, shall be treated as a single transaction if they are undertaken by or on behalf of any one person during any one day or any other period established by the competent authority. In such a case, when a financial institution, its employees, officers or agents have knowledge of these transactions, they shall record these transactions on the form determined by the competent authority.

5. For transactions conducted on their own account between the financial institutions defined in Article 10(1)(a) that are subject to supervision by the domestic banking and financial authorities, recording on the form referred to in this Article shall not be required.

6. In accordance with the law, these records shall be available to the court or other competent authority, especially the agency referred to in Article 9, for use in criminal, civil or administrative investigations, prosecutions or proceedings, as the case may be, connected to **offenses of money laundering, financing terrorism**, or violations of **other** provisions of these Regulations.

7. When it deems advisable, the competent authority may establish that financial institutions file with it, within such time as the competent authorities may establish, the form referred to in paragraphs 1, 2 and 3 of this Article. This form shall serve as evidence or as an official report, and shall be used for the same purposes as referred to in paragraph 6 of this Article.

8. Financial institutions shall not notify any person, other than a court, competent authority or other person authorized by law, that information has been requested by or furnished to a court or other competent authority, especially the agency referred to in Article 9.

Article 14 REPORTING OF SUSPICIOUS FINANCIAL TRANSACTIONS

1. Financial institutions shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.
2. Upon suspicion that the transactions described in paragraph 1 of this Article could be related to **money laundering or the financing of terrorism**, financial institutions shall promptly report the suspicious transactions to the competent authorities, especially the agency referred to in Article 9.
3. Financial institutions shall not notify any person, other than a court, competent authority or other person authorized by law, that information has been requested by or furnished to a court or other competent authority, such as the agency referred to in Article 9.
4. When the report referred to in paragraph 2 of this Article is made in good faith, the financial institutions and their employees, staff, directors, owners or other representatives as authorized by law shall be exempted from criminal, civil and administrative liability for complying with this Article or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication.

Article 15 LIABILITY OF A FINANCIAL INSTITUTION

1. Financial institutions, or their employees, staff, directors, owners or other authorized representatives who, acting as such, participate in **money laundering or the financing of terrorism** shall be subject to **the most** severe sanctions.
2. Financial institutions shall be liable, in accordance with the law, for the actions of their employees, staff, directors, owners or other authorized representatives who, acting as such, participate in the commission of any **money laundering or terrorism financing** offense. Such liability may include, among other measures, the imposition of a fine, temporary suspension of business or charter, or suspension or revocation of the license to operate as a financial institution.
3. A criminal offense is committed by a financial institution or its employees, staff, director, owners or other authorized representatives who, acting as such, willfully fail to comply with the obligations in Articles 11 through 14 of these Regulations, or who willfully make a false or falsified record or report as referred to in the above-mentioned Articles.
4. Without prejudice to criminal and/or civil liabilities for offenses connected to illicit traffic or other serious offenses, financial institutions that fail to comply with the obligations described in Articles 11 through 14 and 16 of these Regulations, shall be subject to other sanctions, such as imposition of a fine, temporary suspension of business or charter, or

suspension or revocation of the license to operate as a financial institution.

Article 16 MANDATORY COMPLIANCE PROGRAMS IN FINANCIAL INSTITUTIONS

1. Financial institutions, pursuant to the regulation and supervision referred to in Article 19 of these Regulations shall adopt, develop and implement internal programs, policies, procedures and controls to guard and detect against **money laundering and the financing of terrorism**. Such programs shall include, at a minimum:

- a. the establishment of procedures to ensure high standards of integrity of their employees and a system to evaluate the personal, employment and financial history of these employees;
- b. on-going employee training programs, such as "know-your client" programs, and instructing employees in the responsibilities indicated in Articles 11 through 14 of these Regulations;
- c. audit mechanisms conducted in conformity with any applicable audit standards for the prevention and detection of money laundering **and terrorism financing**, to test transactions, to ensure financial institutions are following prescribed programs, rules, regulations and internal controls. The audit function may be conducted by either an external certified audit firm or the financial institution's internal auditor.

2. In cases where the auditor is internal, financial institutions shall ensure that he or she is independent and informs only the board of directors or a committee thereof.

3. Financial institutions shall also designate compliance officers at management level in charge of the application of the internal programs and procedures, including proper maintenance of records and reporting of suspicious transactions. These officers shall function as liaison with the competent authorities.

Article 17 PROVISIONS FOR OTHERS RESPONSIBLE

The competent authority **may** extend the application of the relevant provisions of these Regulations relating to financial institutions, **to those persons who perform commercial activities**, such as:

- a. the sale or transfer of real estate, weapons, precious metals, art, archaeological objects, jewelry, automobiles, boats, planes, or other collectible goods, or the providing of travel or entertainment-related services;

- b. casino or other gambling operations;
- c. the providing of all types of professional services including notaries and accountants;
- d. the providing of insurance, re-insurance and insurance brokerage;**
- e. investing and funding investments ;**
- f. those related to the international movement of goods and services, transfers of technology and movements of capital and other instruments; or**
- g. the funding of non-profit and non-governmental organizations; or**
- h. any other commercial activity that due the nature of its operations could be used for money laundering **and the financing of terrorism.**

Article 18. NOTIFICATION OF CROSS BORDER MOVEMENTS OF CURRENCY AND NEGOTIABLE BEARER INSTRUMENTS

1. In accordance with the law, member states shall require whoever transports or sends domestic or foreign currency or negotiable bearer instruments across national borders to notify the appropriate competent authority.

2. The notification referred to in the preceding paragraph shall include at a minimum, the following:

- a. the identity, signature and address of the person transporting or sending the currency or monetary instrument;
- b. the identity and address of the person for whom the transportation or sending of the currency or monetary instrument is conducted;
- c. the origin, destination and routing of the currency or monetary instrument;
- d. the amount and type of currency or monetary instrument being transported or sent.

3. A person who fails to notify or who files a false notification to the competent authority regarding the cross-border transportation or sending of currency or negotiable bearer instruments which exceed the prescribed value shall be subject to criminal, civil or administrative sanctions in accordance with the law.

Article 19 OBLIGATIONS OF THE COMPETENT AUTHORITIES

1. In accordance with the law, the competent authorities, and especially those with regulatory and supervisory power over financial institutions shall, among other obligations:

- a. grant, deny, suspend or cancel licenses or permits for the operation of financial institutions;
- b. adopt the necessary measures to prevent and/or avoid any person who is unsuitable from controlling, or participating, directly or indirectly, in the directorship, management or operation of a financial institution;
- c. examine and supervise financial institutions, and regulate and oversee effective compliance with the record keeping and reporting obligations specified in these Regulations;
- d. verify, through regular examinations, that the financial institutions have and apply the mandatory compliance programs referred to in Article 16 of these Regulations;
- e. provide other competent authorities with the information obtained from financial institutions in conformity with these Regulations, including that information which results from an examination of any financial institution;
- f. prescribe instructions or recommendations to assist financial institutions in detecting suspicious patterns of behavior in their clients. These guidelines shall be developed taking into account modern and secure techniques of money management and will serve as an educational tool for financial institutions' personnel;
- g. cooperate with other competent authorities and lend technical assistance in investigations, prosecutions or proceedings relating to **money laundering and financing of terrorism**; and
- h. develop accounting or auditing standards or criteria applicable to the communication of suspicious activities that shall take into account other existing and future pertinent national and international standards.

2. The competent authorities, and especially those with regulatory and supervisory power over financial institutions shall, in accordance with the law, report promptly to other competent authorities regarding any information received from financial institutions concerning suspicious transactions or activities that could be related to **money laundering**

or the financing of terrorism.

3. The competent authorities, and especially those with regulatory and supervisory power over financial institutions shall, in accordance with the law, cooperate closely with the competent authorities from other States in investigations, proceedings or prosecutions relating to **offenses of money laundering or the financing of terrorism**, and to violations of the laws and administrative regulations dealing with financial institutions.

Article 20 INTERNATIONAL COOPERATION

1. The court or other competent authority shall cooperate with the court or other competent authority of another State, taking the appropriate measures to provide assistance in matters concerning **money laundering and financing of terrorism offenses** in accordance with these Regulations, and within the limits of their respective legal systems.

2. The court or other competent authority may receive a request from the court or other competent authority of another State to identify, trace, freeze, seize or forfeit the property, proceeds, or instrumentalities connected to **money laundering or financing of terrorism offenses** and may take appropriate actions, including those contained in Articles 4 and 5 of these Regulations.

3. A final judicial order or judgment that provides for the forfeiture of property, proceeds or instrumentalities connected to **money laundering or financing of terrorist offenses**, issued by a court of another State, may be recognized as evidence that the property, proceeds or instrumentalities referred to by such order or judgement may be subject to forfeiture in accordance with the law.

4. The court or other competent authority may receive and take appropriate measures with respect to a request from a court or other competent authority from another State, for assistance related to a civil, criminal, or administrative investigation, prosecution or proceeding, as the case may be, involving **an offense of money laundering or the financing of terrorism**, or violations of any **other** provision of these Regulations. Such assistance may include providing original or certified copies of relevant documents and records, including those of financial institutions and government agencies; obtaining testimony in the requested State; facilitating the voluntary presence or availability in the requesting State of persons, including those in custody, to give testimony; locating or identifying persons; servicing of documents; examining objects and places; executing searches and seizures; providing information and evidentiary items; and provisional measures.

5. Assistance provided pursuant to this Article shall be undertaken in accordance with the law.

Article 21 BANK SECRECY OR CONFIDENTIALITY

The legal provisions referring to bank secrecy or confidentiality shall not be an impediment to compliance with these Regulations, when the information is requested by or shared with the court or other competent authority, in accordance with the law.

The term “bank secrecy or confidentiality” shall be applicable to those activities carried on by financial institutions defined by these Model Regulations and any other banking or non-banking financial activities as defined by the legal systems of each country.

RECOMMENDATIONS OF THE GROUP OF EXPERTS TO CICAD

The Group of Experts requests that CICAD consider and adopt the Model Regulations and present them to the next General Assembly of the OAS, for its possible adoption by the member states.

To facilitate the adoption of the Model Regulations, the Group of Experts recommends that CICAD:

1. Encourage all Member States to adopt and effectively implement these Model Regulations.
2. Periodically review these Model Regulations and, if necessary, amend them to ensure their continued applicability and effectiveness in the prevention and detection of money laundering **and terrorism financing**.
3. Provide the necessary technical collaboration to the member states which request it, for the adoption and implementation of the Model Regulations and assist in obtaining the financial resources needed for this purpose.
4. Convene periodic seminars, workshops and carry out typologies exercises in order to provide the competent authorities, the judiciary and law enforcement agencies of the member states with a forum to exchange experiences in the fight against **money laundering and the financing of terrorism**, diffuse information in this regard, and discuss new trends and techniques.
5. Establish and maintain a close working relationship with the United Nations and other international, regional and governmental bodies and private sector organizations.

On the basis of the Model Regulations the Group of Experts recommends that CICAD urge the member states of the OAS to consider:

1. Designating the domestic competent authorities with regulatory and supervisory

power over financial institutions and over those entities that carry out the economic activities referred to in Article 17 of the Model Regulations and transmitting their names to the General Secretariat of the OAS and to the member states;

2. Designating an authority or authorities, as may be necessary, competent to receive or process all the requests for international cooperation referred to in the Model Regulations and transmitting their names to the General Secretariat of the OAS and to the member states;
3. Responding promptly to any specific request for cooperation by the competent authorities of other member states made pursuant to the Model Regulations and advising, as soon as possible, on any impediment or obstacle to such requests;
4. Ensuring the establishment of national and/or international communications for the sharing of information on matters related to **money laundering and the financing of terrorism**, financial institutions and other entities performing economic activities referred to in Article 17 of these Model Regulations, and the identification, freezing, seizure or forfeiture of property, proceeds or instrumentalities;
5. Paying special attention to money laundering risks inherent in new or developing technologies such as, but not limited to, INTERNET banking and gaming, “smart cards”, “digital money” and other technologies that might favor anonymity and take measures, including the adoption of new systems, if needed, to prevent their use in money laundering.

Furthermore, the Group of Experts recommends that CICAD suggest to the member states of the OAS that they consider the possibility of:

1. Establishing more severe penal, civil and/or administrative sanctions for **money laundering and the financing of terrorism offenses**, when the person involved holds a public office and that offense is connected with the office in question;
2. Studying and examining the feasibility and convenience of forwarding to the other member states information that might be useful in the investigation of the offenses referred to in the Model Regulations, without the need for a prior request.

ANNEX TO THE MODEL REGULATIONS
RELATING TO
FINANCIAL INTELLIGENCE/ INVESTIGATION/ INFORMATION/ ANALYSIS UNITS

- A.) Objective, Denomination and Structure of FIUs**
- B.) Memorandum of Understanding between FIUs**

A.) Objective , Denomination and Structure of FIUs

The agency referred to in Article 9 shall reflect the following elements as determined by the Egmont Group, a group of countries whose members have in place or which intend to establish what that Group has denominated as Financial Intelligence Units (FIUs).

Objective

To receive and analyze information so that it can be utilized by the competent authorities.

Denomination

In view of individual national circumstances, these entities may be identified variously as: Financial Intelligence Units; Financial Investigation Units; Financial Information Units; or Financial Analysis Units.

Structure

Depending on where the agency is situated in the governmental structure of a country, the agency may assume one of the following models: a police model; a judicial model; a mixed police/judicial model; or an administrative model.”

B. Memorandum of Understanding Among Financial Intelligence/Information/Analysis Units

**Memorandum of Understanding
Between (first signatory Party) and (second signatory party)**

CONCERNING COOPERATION IN THE EXCHANGE OF FINANCIAL INTELLIGENCE RELATED TO MONEY LAUNDERING

Considering:

Law...(description of first party's law that serves as the basis to sign the Memorandum) and law (description of the second party's law that serves as the basis to sign the Memorandum) - both of which set out the guidelines for international cooperation on the subject of money laundering, by authorizing the exchange of financial information;

That the competent authorities of (first party) and of (second party), hereafter referred to as "the Authorities" or "the Parties", desire, in a spirit of cooperation and mutual interest, to facilitate the exchange of information in relation to money laundering and criminal activity connected with money-laundering.

The Parties have reached the following understanding:

1. The Authorities will cooperate in the compilation, development and analysis of information in their possession concerning financial transactions suspected of being related to money laundering or serious criminal activities connected thereto. To that end, the Authorities will exchange spontaneously or upon request, any available information that may be relevant to an investigation by the Authorities into financial transactions related to money laundering and the persons or companies involved.

2. The Authorities of one Party will not permit the use or release of any information or document obtained from the other Authorities for any purposes other than those stated in this Memorandum of Understanding (hereafter referred to as the "Memorandum"), without the prior consent of the disclosing Authority.

3. The information acquired by the Parties in application of this Memorandum shall be confidential. It shall be subject to official secrecy and enjoy the same confidentiality as provided by the legislation of the country of the receiving Authority for similar information from national sources.

4. The Authorities will jointly agree, consistent with the legislation of their respective countries, upon acceptable procedures of communication and will consult with each other for the purpose of implementing this Memorandum.

5. Communication between the Authorities shall take place in (first party's language) or (second party's language).

6. The Authorities are under no obligation to exchange information with one another if judicial proceedings have already been initiated concerning the same facts to which the request relates.

7. This Memorandum may be amended at any time by mutual consent of each of the Parties.

8. This Memorandum is revocable at any time.

9. This Memorandum will become effective upon the signature of the Authorities.

Signed at (place), in the (date) in (language of the first Party) and (language of second Party, if the languages of the Parties are different), both texts being agreed as authentic.

For the Competent Authority (of first party)

For the Competent Authority (of second party)

ANNEX TO THE MODEL REGULATIONS

RELATING TO TERRORIST FINANCING

- A.) Special Recommendations of the Financial Action Task Force on Money Laundering (FATF)**
- B.) Criminalization of Terrorism Financing pursuant to the Inter-American Convention Against Terrorism and other related international instruments**

A.) SPECIAL RECOMMENDATIONS ON TERRORIST FINANCING

I. Ratification and implementation of UN instruments

Each country should take immediate steps to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.

Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373.

II. Criminalizing the financing of terrorism and associated money laundering

Each country should criminalize the financing of terrorism, terrorist acts and terrorist organizations. Countries should ensure that such offences are designated as money laundering predicate offences.

III. Freezing and forfeiture of terrorist assets

Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organizations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.

Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organizations.

IV. Reporting suspicious transactions related to terrorism

If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations, they should be required to report promptly their suspicions to the competent authorities.

V. International co-operation

Each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organizations.

Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organizations, and should have procedures in place to extradite, where possible, such individuals.

VI. Alternative remittances

Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.

VII. Wire transfers

Countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related message through the payment chain.

Countries should take measures to ensure that financial institutions, including money remitters, conduct enhanced scrutiny of and monitor for suspicious activity funds transfers, which do not contain complete originator information (name, address and account number).

VIII. Non-profit organizations

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organizations are particularly vulnerable, and countries should ensure that they cannot be misused:

- i. By terrorist organizations posing as legitimate entities;
- ii. To exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- iii. To conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.

B.) CRIMINALIZATION OF TERRORISM FINANCING

Article 1

Any person commits the offence of financing terrorism if that person by any means, directly or indirectly, unlawfully and willfully, ~~to~~ provides or collects property with the intention that it will be used or in the knowledge that it is to be used, wholly or in part, to carry out any of the acts that constitute an offence described in the following provisions:

- (A) Any person who, on board an aircraft in flight, unlawfully, by force or threat thereof, or by any other form of intimidation, seizes or exercises control of that aircraft [or attempts to perform any such act³] commits an

³ It should be noted that each of the offenses described in the provisions of this Article includes, in relation to the

offence;

- (B) Any person commits an offence if he unlawfully and intentionally:**
- (a) Performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or**
 - (b) Destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or**
 - (c) Places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or**
 - (d) Destroys or damages air navigation facilities or interferes with their operation, or if any such act is likely to endanger the safety of aircraft in flight; or**
 - (e) Communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.**
- (C) Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon:**
- (a) Performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or**
 - (b) Destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport.**
- (D) The intentional commission of**
- (a) A murder, kidnapping or other attack upon the person or liberty of an internationally protected person;**
 - (b) A violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;**
 - (c) A threat to commit any such attack;**
- shall be made by each State Party a crime under its internal law.**

acts described above, attempts to commit the offense and participation as an accomplice in the commission of the offence.

(E) Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the “hostage”) in order to compel a third party, namely, a state, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage, commits the offense of taking of hostages (“hostage-taking”).

(F) The intentional commission of:

- (a) An act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal, or dispersal of nuclear material and which causes, or is likely to cause death or serious injury to any person or substantial damage to property;**
- (b) A theft or robbery of nuclear material;**
- (c) An embezzlement or fraudulent obtaining of nuclear material;**
- (d) An act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;**
- (e) A threat: (i) to use nuclear material to cause death or serious injury to any person or substantial property damage, or (ii) to commit an offense described in subparagraph b in order to compel an natural or legal person, international organization or state to do or to refrain from doing any act....**

shall be made a punishable offence by each State Party under its national law.

(G) (1). Any person commits an offense if that person unlawfully and intentionally:

- (a) Seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or**
- (b) Performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or**
- (c) Destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or**
- (d) Places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or**
- (e) Destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a shi; or**
- (f) Communicates information which he knows to be false, thereby**

endangering the safe navigation of a ship; or
(g) Injures or kills any person, in connection with the commission or attempted commission of any of the offenses set forth in subparagraphs a to f.

(2). Any person also commits an offense if that person:
Threatens, with or without a condition as is provided under national law aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offenses set forth in paragraph 1, sub paragraph b, c and e, if that threat is likely to endanger the safe navigation of the ship in question

(H) (1). Any person commits an offense if that person unlawfully and intentionally:

- (a) Seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or
- (b) Performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or
- (c) Destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
- (d) Places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform, or likely to endanger its safety; or
- (e) Injures or kills any person, in connection with the commission or attempted commission of any of the offenses set forth in subparagraphs a to d.

(2.)Any person also commits an offense if that person:
Threatens, with or without a condition as is provided for under national law aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offenses set forth in paragraph 1, sub paragraph b and c, if that threat is likely to endanger the safety of the fixed platform.

(I) (1) Any person commits an offence if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a state or government facility, a public transportation system or an infrastructure facility:

- (a) With intent to cause death, or serious bodily injury;
- (b) With intent to cause extensive destruction of such a place, facility, or system, where such destruction results in or is likely to resort in

major economic loss

- (3) Any person also commits an offense if that person:
- (b) Organizes or directs others to commit an offense as set forth in paragraph 1 or 2.

Article 2

A person also commits an offence by any other act intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act by its nature or context, is to intimidate a population or to compel a government or an international organization to do or to abstain from doing any act.

Article 3

For an act to constitute an offence set out in Articles 1 and 2, it shall not be necessary that the funds were actually used to carry out the offence.

Article 4

Any person also commits an offence if that person attempts to commit an offence as set out in Articles 1 and 2.

Article 5

Any person also commits an offence if that person:

- (a) Participates as an accomplice in an offence as set forth in Article 1, 2 or 4;
- (b) Organizes or directs others to commit an offence as set forth in Article 1, 2 or 4;
- (c) Contributes to the commission of one or more offences as set forth in Article 1, 2 or 4 by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group where such activity or purpose involves the commission of an offence as set forth in Articles 1 and 2; or

(ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in Articles 1 and 2.