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**THE FINANCIAL SYSTEM'S INTERNAL
EFFORTS TO PREVENT MONEY
LAUNDERING: The Brazilian and the
American Experience**

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The Financial System's Internal Effort to Prevent Money Laundering: the Brazilian and the American Experience

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1. Introduction

1.1. What is Money Laundering?

In the last two decades, some improvements in technology, financial system and banking have led to an “explosion” of financial crimes. The development of international markets, globalization, the growth of offshore services, e-banking, etc. helped to hide the illicit and the framework of institutions have been involved in these crimes.

As the organized crime has generated huge sums of money in drug traffic, weapon smuggling, financial crimes, corruption, terrorism, among other offenses, this "Dirty Money" needs to be “cleaned”. This process is basically known as Money Laundering.

According Nigel Morris, money laundering is the process by which criminals create the illusion that the money they are spending is actually theirs to spend.

The American Treasury Department regards that money is “laundered” to conceal the criminal activity associated with it, including the crimes that generate it, such as drug trafficking or illegal tax avoidance. Money laundering is always driven by criminal activities and occurs on a worldwide level. It is the support service that allows criminals to enjoy the fruits of their crimes.

In the concept of the United States` legislation, money laundering is done by “international criminal enterprises and challenges the legitimate authority of national governments, corrupts officials and professionals, endangers the financial and economic stability of nations, diminishes the efficiency of global interest rate markets, and routinely violates legal norms, property rights, and human rights”.

The Financial Action Task Force - FATF, the principal international organism that deals with this subject, explains money laundering as a threat to the efficient functioning of a financial system, a process used by criminals to disguise the illegal origin of their profit and to make it usable, without compromising themselves.

John Walker (1995) also defined money laundering as "the process by which illicit source moneys are introduced into an economy and used for legitimate purposes". The term money laundering can be applied to the proceeds of any sort of crime, so long as income accrues to the offender and some laundering process takes place.

The money laundering constitutes the dynamics that allows criminal activities to grow (Lilley, 2001).

According to the Brazilian Financial Intelligence Unit (COAF), money laundering is a set of commercial or financial transactions that try to incorporate resources, goods and services, originated in illicit acts, in the economy of each country. In simple terms, to wash resources is to make criminal products seem to have been bought legally.

All the different concepts converge to similar and/or complementary definitions, which consider money laundering a suspected act used for illicit purposes. There is also a consensus about its importance as an international crime.

International Monetary Fund estimates that the world's money laundering size could be somewhere between two and five percent of the world's gross domestic product. It is difficult to know the amount of money laundered yearly, however, a statistics of 1996 indicates that money laundering ranged between 600 billion and 1.5 trillion US Dollar (FATF homepage).

According to the United Nations it is difficult to identify the origin of the "dirty money" when it gets deep into the international banking system and it is also difficult to estimate the total amount of money that goes through the laundry cycle. "Estimates of the amount of money laundered globally in one year have ranged between \$500 billion and \$1 trillion. Though the margin between those figures is huge, even the lower estimate underlines the seriousness of the problem governments has pledged to address" (ODCCP/UN).

1.2. The Process of Money Laundering

This set of business or financial operations performed with the intention of introducing capital and assets originated by or related to criminal activities in the economy has to travel a long way before they take on the appearance of a legal financial transaction. The mechanisms used in a money laundering process, theoretically, include three independent stages that, frequently, occur at the same time, called: placement, layering and integration.

The initial or placement stage can be defined as the act of depositing the money from illegal activity into the financial system. At this step the resources are really close to their origin, criminals are more vulnerable, the regulators and authorities involved should improve efforts to fight against money laundering.

After the money has entered in the financial system, the second stage - called layering - consists of separating illicit proceeds from their source by creating layers of financial transactions to difficult or interrupts any trail. Layering consists in moving funds around the financial system and makes tracing proceeds more difficult.

Integration is the last stage in which the funds are formally incorporated in the legitimate economy. When it has been established successfully it, is more difficult to distinguish laundered funds to real money.

1.3. A Brief History

The term "money laundering" was originated in the twenty's, at the time of the famous American gangsters. In that period, several mechanisms were used to disguise the origins of the large amounts of money generated by the sale of alcohol and gambling, which were illegal.

According to Nigel Morris, one of the methods of hiding the source of the money was some type of legal gambling, but the money was in cash, often in small coins that would be suspicious if put into the bank. So, the gangsters usually created normal businesses to cover their

crimes: one of which was the slot machine, and another of which was laundry. After this, the term was born.

However, the practices of money laundering have been around for far longer. Sterling Seagraves (Morris, 2001) describes how in China, 4000 years before Christ, the merchants found ways to hide their wealth, moving it around the countries without it being identified and confiscated by rulers.

It does not matter the time, the criminals always are trying to hide the illegal origin of their money. Nowadays, it has gained more sophistication, with the new ascension of international organized crime involving great frameworks and technology, which has generated a great amount of money that needs to be legitimated.

But if the crime has increased, on the other hand new principles and practices appear to fight it. Consequently it is widely held belief that making it unprofitable for the criminal can reduce even simple theft. All the new initiatives to fight against money laundering are based in this premise, and the principal aim is to stop the crime by arresting their profits. So many countries are trying to establish international organizations and efforts to deal with this kind of crime.

In response to the concern about money laundering some initiatives were introduced. The first important international agreement signed in this area was the Convention of Vienna that occurs in 1988, in the scope of the United Nations, which objective was to promote the international cooperation in the treatment of the questions related to the narcotics' traffic. The article III of the Vienna Convention has been the basis of a lot of countries' legislation and was the opening approach to what is called Anti-Money Laundering – AML actions.

In 1989, at the OECD Economic Summit, another fundamental initiative that was established by the G-7 nations in Paris was the constitution of a multi-disciplinary body called Financial Action Task Force on Money Laundering - FATF/GAFI to enlarge a coordinated international reaction against the crime.

Actions such as law enforcement, international cooperation, regulation, policy-making, training, etc. have increased, putting money laundering as a fundamental issue around the world.

1.4. International Bodies and Organizations Initiatives

The following international bodies and organizations have, among their other principal functions, a specific anti-money laundering mission or activity. Some of them have established guidelines to avoid this crime.

The international standards for AML programs are the Forty Recommendations developed by the FATF, in 1990, and accepted worldwide. Some of the basic obligations contained in the Recommendations are:

- The criminalisation of the laundering of the proceeds of serious crimes (Recommendation 04) and the enactment of laws to seize and confiscate the proceeds of crime (Recommendation 07).
- Obligations for financial institutions to identify all clients, including any beneficial owners of property, and to keep appropriate records (Recommendations 10 to 12).
- A requirement for financial institutions to report suspicious transactions to the competent national authorities (Recommendation 15), and to implement a comprehensive range of internal control measures (Recommendation 19).
- Adequate systems for the control and supervision of financial institutions (Recommendations 26 to 29).
- The need to enter into international treaties or agreements and to pass national legislation which will allow countries to provide prompt and effective international co-operation at all levels (Recommendations 32 to 40).

The preliminary version by the FATF' Recommendations were revised in 1996, in the scope of spreading over the justice system, the law enforcement, the financial system and its regulation and international cooperation against money laundering.

This inter-governmental body put together the policy-making power of legal, financial and law enforcement experts from its members. Today 31 countries and territories are members after following minimum criteria in political commitment, legislation and proceeds.

Also participating in the FATF meetings and decisions are five regional bodies plus sixteen international organizations as observers, all committed to combat money laundering. The FATF-Style Regional Bodies are: Asia / Pacific Group on Money Laundering (APG); Caribbean Financial Action Task Force (CFATF); Council of Europe PC-R-EV Committee; Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG); and Financial Action Task Force on Money Laundering in South America (GAFISUD).

The sixteen international organizations that have, among other functions, a specific anti-money laundering mission or function are: African Development Bank; Asia Development Bank; The Commonwealth Secretariat; Egmont Group of Financial Intelligence Units; European Bank for Reconstruction and Development (EBRD); European Central Bank (ECB); Europol; Inter-American Development Bank (IDB); International Monetary Fund (IMF); Interpol; International Organization of Securities Commissions (IOSCO); Organization of American States - Inter-American Drug Abuse Control Commission (OAS/CICAD); Offshore Group of Banking Supervisors (OGBS); United Nations Office for Drug Control and Crime Prevention (UNODCCP); World Bank (IBRD); World Customs Organization (WCO).

One of the main roles of FATF is to observe members' anti-money laundering policies and make a mutual evaluation. In this process, a team examines all members, involving a series of steps to assemble all the relevant information and to provide an analytical assessment. The examiners make a report that remains confidential, but an executive summary thereof is prepared and included in the annual report of the FATF.

Another review of the recommendations was done in 2001 especially because of some changes in money laundering techniques and trends, weakness identified in the mutual evaluation process, and some international developments. In October/2001, the FATF also issued eight more recommendations to improve the detection, prevention and combat of terrorism financing.

FATF has also begun to “name and shame” jurisdictions known as non-cooperative countries and territories (NCCT) in treating money laundering. This initiative aims “to reduce the vulnerability of the financial system to money laundering by ensuring that all financial centers adopt and implement measures for the prevention, detection and punishment of money laundering according to internationally recognized standards”.

An informal international organism known as the Egmont Group must be distinguished that congregates the Financial Intelligence Units - FIUs of many countries. The FIUs are government agencies that specialize in anti-money laundering, which work with financial information. Since 1995, this core group has come together to find ways to cooperate, especially in the areas of data exchange, the sharing of expertise, training and assisting newer FIUs. In June/2002 there were 69 countries with operational Financial Intelligence Units.

In 1996, some international organizations (UN, FATF, Egmont Group, etc.) involved in the fight against money laundering agreed to produce a common Internet website through which information could be shared among national and international anti-money laundering agencies, called IMoLIN, the International Money Laundering Information Network.

Since the Vienna Convention, the United Nations is in the fight against organized crime too. The Office of Drug Control and Crime Prevention - ODCCP launched the Global Program Against Money Laundering (GPML), whose focus is on organized crime. United Nations helps Member States to introduce legislation, and to develop and maintain the mechanisms that combat this crime.

The GPML gives technical assistance to States or Jurisdictions at the national and/or regional level in the implementation of their anti-money laundering policies. It is also a center of research expertise on money laundering and anti-money laundering measures.

The International Monetary Fund (IMF) and the World Bank (IBRD) also fit in these issues. “The IMF has for some time emphasized that a sound financial system is a precondition for macroeconomic stability and sustainable economic growth, not to mention a healthy

international financial system. It therefore promotes sound financial sector policies and helps countries build the needed institutions to prevent financial crises”.

As part of this, in April 2001, the IMF' Executive Board approved a series of initiatives in this area. Then, they jointly prepared papers on prudential aspects of anti-money laundering and combating the finance of terrorism (AML/CFT). There are plans to work with the FATF and other Regional Bodies toward to develop a comprehensive methodology and assessment process.

The IMF and IBRD already have the Financial Sector Assessment Program (FSAP), an effort introduced in 1999, which aims to increase the effectiveness and to promote the soundness of financial systems in member countries. The assessments of observance of relevant financial sector standards and codes, gave rise to Reports on Observance of Standards and Codes (ROSCs). These two organisms intend to conduct the preparation of new ROSC focus on anti-money laundering.

Another international organism that is concerned with this issue, especially on banking supervision, is the Bank of International Settlements – BIS. One of its mandates is to act as a forum to promote discussion and facilitate decision-making processes among central banks and within the international financial community.

Inside BIS there is the Basel Committee that does not have legal force but formulates broad supervisory standards and guidelines, and also recommends statements of best practice in the supervisory techniques. The Basel Committee issued some papers orienting the supervisors and the banks in how to deal with the money laundering.

The first paper, of 1988, was *The Prevention of Criminal Use of the Banking System for the Purpose of Money-Laundering*, which stipulates the basic ethical principles and encourages banks to put in place procedures of customer identification, suspicious transactions monitoring and cooperation with law enforcement agencies.

Second, the 1997 *Core Principles for Effective Banking Supervision* stated a broader discussion of internal controls. The banks were oriented to adopt adequate policies, practices and

procedures; and supervisors were encouraged to adopt the FATF recommendations. Third, in 1999, the *Core Principles Methodology* lists a number of essential and additional criteria.

As the end result of the succession of the above three papers the Basle Committee published a document, in 2001, named *Customer Due Diligence for Banks* that issued minimum criteria for banks to adopt know your customer (KYC) programs, which reflect the evolution of the supervisory thinking over time.

Some international private banks took another initiative in this area in October 2000 that agreed to a set of global anti-money-laundering guidelines. It is called the Wolfsberg Group and its general guidelines includes “rules” about client acceptance, updating client files; practices to identify unusual or suspicious activities; monitoring; reporting; training. The principal members are: ABN Amro N.V.; Banco Santander Central Hispano, S.A.; Bank of Tokyo-Mitsubishi, Ltd.; Barclays Bank; Citigroup; Credit Suisse Group; Deutsche Bank AG; Goldman Sachs; HSBC; J.P. Morgan Chase; Société Générale; UBS AG.

All these international organizations and many others are pursuing a lot of efforts. Consequently more than 100 countries around the world have implemented a regulatory system to prevent and fight against money laundering.

1.5. The Financial System

Within the process of money laundering some sectors are more aimed at the criminals than others. The Banking System is a very important target for this global crime. As described before, to complete a money laundering cycle, the resources need to come into the financial system and to be formally joined to it.

“Due to the great variety and sophistication of financial products, the easiness of funds transference, the banking secrecy laws and the great number of daily processed financial transactions, banks have been one of the principal vehicles used by money launderers” (Romantini, 2002).

Banks should be aware of attracting and retaining legitimate funds, avoiding the “dirty funds” that can cause significant problems in the medium to long term. In this way, the money laundering prevention needs to be linked to sound financial procedures, regulation and supervision to keep the integrity of the entire financial sector.

“The money laundering could compromise the financial stability of a country. As for the potential negative macroeconomic consequences of unchecked money laundering, the IMF has cited prudential risks to bank soundness, contamination effects on legal financial transactions, and increased volatility of international capital flows and exchange rates due to unanticipated cross-border asset transfers” (FATF website).

The soundness of the banking and financial markets depend heavily on the perception that it functions within a framework of high legal, professional and ethical standards.

As said before, some international bodies and regulators have established principles and standards to which countries must comply with. A particular emphasis was placed on the core principles of banking supervision.

The Basel Committee on Banking Regulation and Supervisory Practices recognized the vulnerability of financial institutions to this kind of crime and there are orientations to the supervisors around the world about “the importance of ensuring that their banks have adequate controls and procedures in place so that they know the customers with whom they are dealing”.

BIS has been giving a special importance to Know Your Customer (KYC) standards that are closely associated with the fight against money laundering. An adequate due diligence is also been considered a key part of these controls to avoid banks’ reputational, operational, legal risks, which threaten the health of the banking institutions and the stability of the whole system.

In 1997, it prepared a document to improve the strength of financial systems called "Core Principles for Effective Banking Supervision" or Basel Core Principles. Among them, it is important to distinguish some that are basic to orient the prevention of money laundering.

- Principle 14: Banking supervisors must determine that banks have in place internal controls that are adequate for the nature and scale of their business.
- Principle 15: Banking supervisors must determine that banks have adequate policies, practices and procedures in place, including strict “know-your-customer” rules, that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements.
- Principle 16: An effective banking supervisory system should consist of some form of both on-site and off-site supervision.

Thus, the contribution of the financial sector and the supervisors’ activities could be based on compliance with the Basle Principles and adherence to FAFT recommendations.

Banks are expected to use efficient AML in order to create a risk management, a risk culture. Creating a risk culture basically involves: the identification of the bank’s major risks (to products from the environment); the planning and definition of risk tolerance levels for each area and overall; risk supervision and management; risk monitoring; evaluation of the manner in which risk is being assumed, measured, limited, controlled and reported. The intensity of an AML program should be tailored to the degree of each institution’s own risk.

Risk can be limited by implementing (designing) AML programs with basic factors such as customers’ identification, keeping records, monitoring accounts and the consequent risk, training, internal audit, cooperating with the enforcement agencies, etc. Banks and other financial institutions must constantly be aware to prevent money laundering, and the regulators recognized that a continuous evaluation of the process is necessary to verify the compliance and internal controls.

“The banks and their regulatory and supervisory authorities should work together in an effort to prevent the laundering of the proceeds of crime and to protect the reputation and integrity of the country’s financial system” (Commonwealth Secretariat, 2000).

The strength of a prudential supervision and reputation of the banks could be achieved through effective AML measures, mitigating the risks by the assessment of its AML programs quality and compliance to the legislation.

Consequently, the IMF and the World Bank have been promoting efforts that include AML issues to maintain the health and integrity of the international financial system and the prevention of crises. Therefore, since 2001, it has been developing a comprehensive methodology for assessing a country's AML/CFT regime.

According to Animat (2002) the IMF is working closely with FATF and the global community to set up efforts to fight money laundering. The assessment methodology "would form the basis for the go-ahead from the IMF and the World Bank to prepare related reports on standards and codes—documents that summarize the extent to which countries observe certain internationally recognized standards and codes, for example, the FATF' 40 recommendations on money laundering and the additional 8 CFT recommendations issued in October 2001.

The effectiveness of all the initiatives and programs depends on a system of measures and evaluations, which require a legal framework, definition of the responsibilities and the agencies involved, and the implementation of operational regulation and supervision.

It is fundamental "to provide guidance to individual financial institutions on how they can effectively protect themselves from the damaging impact of handling laundered money and fulfill their obligations in respect of AML legislation" (Commonwealth Secretariat, 2000).

All the countries, with the help of the international bodies, have the responsibility to set out the basis for financial sector policies and procedures, and provide local legislation and strategies to prevent money laundering.

In this context, the principal focus of the next chapters will be to describe what has been done in this area, both in Brazil and in the United States, keeping in mind that the success of an AML program will rest in sound and safe policies and practices done by the banks and the government' agencies.

2. The Experience of Brazil

2.1. Regulation

Brazil has been considered a target for money laundering due to its location in South America and to the international problem of narcotics traffic. Some regions of the country remain a particular concern for this crime, especially the border area with Colombia and the tri-border shared with Argentina and Paraguay.

The country has a large and modern financial sector, but until the 90's there was some lack of control and the financial system surveillance were considered weak, especially in the banking system.

Despite this, Brazil has participated in some international forums about money laundering since the 1980s. However, the first real action toward an AML concern was done when the country signed the agreement of Vienna Convention in 1988, ratified by the Congress in 1991.

The main effort in this area was the Law 9613 of 03 March 1998. This legislation defined the offence of money laundering, laid out the principal preventive measures and created the Brazilian financial intelligence unit (COAF), and dealt with international cooperation.

According to the Law, money laundering was established as an autonomous crime, but one linked to important predicate crimes, such as drug traffic, terrorism, smuggling or trafficking weapons, extortion through kidnapping, acts against public administration, acts against national financial system and acts committed by a criminal organization.

In a short time ? from 1998 to 2002 ? Brazil has not just issued a package of legislation about money laundering, but also developed a comprehensive AML program involving different agencies of the government and the private sector.

The most important Brazilian legislation for the financial (banking) sector is:

- Decree 2 799, of 8 October 1998 – Establishment of the Financial Activities Control Council (COAF);
- Order 330, of 18 December 1998 – Internal Regulation of the Financial Activities Control Council (COAF);
- Circular 2852 (BACEN) of 3 December 1998 – provides procedures to be followed in the prevention and combat of activities related to the crimes referred to in Law 9 613;
- Carta-Circular 2826 (BACEN) of 4 December 1998 – a list of transactions and situations that may suggest the occurrence of offences referred to money laundering, and provides procedures for the reporting to the Central Bank of Brazil and COAF;
- Circular SUSEP 89 of 08 April 1999 - situations that may suggest the occurrence of money laundering;
- Instruction CVM 301 of 16 April 1999 – the identification, report and record-keeping of money laundering suspicious transactions;
- Complementary Law 105, of 10 January 2001 – Banking secrecy of financial institutions transactions;
- Circular 3030 (BACEN) of 11 April 2001 – identification and register of check's deposits and resources transference;
- Carta-Circular 2965 (BACEN) of 04 June 2001 - to give to special attention to the financial transactions of residents with non-cooperative countries;
- Carta-Circular 2977(BACEN) of 18 September 2001 - the creation of the database PCAF500 in the Central Bank System - Sisbacen and gives instructions to report the suspicious transactions;
- Carta-Circular 2986 (BACEN) of 29 November 2001 - to give special attention to the financial transactions of residents with non-cooperative countries;
- Comunicado 9068 (BACEN) of 04 December 2001 - recommendations to the Financial Institutions on donations proceeding from foreign countries;
- Carta-Circular 2997 (BACEN) of 28 February 2002 - recommendation for intensified monitoring of financial transactions with NAURU;
- Law 10.467, of 11 June 2002 – add the Chapter II-A to the Title XI to the Decree 2848 – The Penal Code – about the device of the money laundering Law;

- Carta-Circular 3029 (BACEN) of 28 July 2002 - recommendations involving non-cooperatives countries;

“The efficiency and effectiveness of the Brazilian law will also depend on how efficient and effective is or will be the supervision of the financial institution and non-financial institutions” (Wolney, 1998).

Moreover, in the banking system, important approaches have been implemented such as customer identification; record keeping; suspicious transaction monitoring and reporting; and training, among others.

2.2. The Brazilian Structure

In Brazil, the Council for Financial Activities Control (COAF) that is the Financial Intelligence Unit (FIU) of the country deals with money laundering. It works as a collegiate decision body composed of a Chairperson appointed by the President of the Republic by indication of the Ministry of Finance, and eight Council Members, chosen among the effective staff of the Central Bank of Brazil (BACEN), the Securities and Exchange Commission (CVM), the Superintendence of Private Insurance (SUSEP), General Attorney Office for the national Treasury (PGFN), the Secretariat of Federal Revenue (SRF), the Intelligence Division of the Military Department of the Presidency (ABIN), the Federal Police Department (DPF), and the Foreign Relations Ministry.

These governmental institutions deal with different aspects of the crime. Among the principal subjects are: financial institutions; off-shore centers; stock exchange; insurance company; real estate sector; bingos and lotteries; etc.

Brazil already had defined the scope of its financial sector and the regulators and supervisors' role (Annex I). The Brazilian banking supervision follows the Basel Core Principles and the country also plays an important role in the international financial community.

In 1999, Brazil was indicated to participate as an observer of the FATF. After the country's first evaluation, in February of 2000, the country was following the minimum criteria and it was admitted as a full member in the Plenary Meetings of June 2000.

Brazil is also a member of GAFISUD - Group of Financial Action of South America. The Memorandum of Agreement and the Declaration of Politics of the GAFISUD had been signed in 08.12.2000, in Colombia. The creation of the GAFISUD will allow to the growth of the international cooperation in the region, facilitating the swap of information among the members.

In 2002, IMF and World Bank evaluated the country and the "Methodology for Assessing Legal, Institutional and Supervisory Aspects of Anti-Money Laundering and Combating the Financing of Terrorism" (AML/CFT Methodology) was used as the basis for this assessment.

The result was a draft as part of Financial Sector Assessment Program (FSAP) of Brazil, related to the review of legal, institutional and supervisory framework for combating money laundering and the financing of terrorism. This document was revised, including comments and information obtained from Brazilian regulatory authorities to change some aspects from the first version of the report. It provides a more accurate overview of Brazil's efforts and the commitment of the agencies in the fight against money laundering.

Council for Financial Activities Control – COAF

COAF was created in 1998, within the Ministry of Finance. It coordinates law enforcement investigations to prevent and detect money laundering crime. In 1999, COAF also integrated into the Group of Egmont.

The Council encourages anti-money laundering policy development, analyses the problems and responses, and promotes national and international cooperation. It also deals with the areas that do not have a regulator.

In this way, it had published Resolutions about different issues as: procedures for bingo and similar games; procedures for factorings; procedures for commodity exchanges and Brokers;

procedures for commerce of jewels, precious rocks and metals; procedures for real estate activities; procedures for works of art and antiques; among others.

One of the challenges of the COAF is to develop a complementary work among the government agencies to establish a general AML policy.

Central Bank of Brazil – BACEN

Within the National Financial System, the Central Bank has many responsibilities and its supervision is working to advance anti-money laundering, looking for the soundness of the financial market. In the Central Bank Board of Directors, the Area of Supervision – DIFIS is responsible for the prevention and combat of money laundering.

The macro objective of DIFIS is to ensure the regulation and supervision of the national financial system according to international patterns and procedures.

Before 1999 this subject had a decentralized treatment inside the Central Bank. There were some people dealing with it and different departments took some actions related to financial crimes but with a non-linked internal policy.

The DECIF was created in 17.11.1999, by the Vote BCB 413/99, with the purpose of improving the supervision of the financial system, distinguishing the activities from prudential supervision of the operational procedures and the verification of irregularities practiced in the financial Market.

In this issue, BACEN is also improving national and international cooperation. Some works were done jointly with other agencies and authorities of the Brazilian government. Internationally, the Central Bank has participated in the meetings of Mercosul in the SGT-4 (Sub-group 4 of Financial Subjects) – Sub-commission of money laundering. An agreement of cooperation among the Central Banks was approved and signed in December of 2000. It will make possible the interchange of information not protected by banking secrecy among the members of Mercosul.

2.3. The Brazilian Banking Supervision: the anti-money laundering (AML) focus

Department of Surveillance of Illegal Activities - DECIF

DECIF is acting in many fronts as the coordinator of the AML banking supervision. This work is one of the priorities of the supervision area, thus, has involved a lot of employees in the coordination and analysis of the reports and in the assessments.

The activities of this new department include: to make possible the dissemination of the AML information; to propose new legislation; to conduct punitive administrative lawsuits of irregularities practiced in the financial system; to help in the execution of studies, analytical statisticians and comparisons about the financial market; to assess the financial institutions' AML policies and procedures that were not being carried through before.

The main goal is to encourage AML policy development, monitor special transactions to ensure the health of the financial institutions, and also evaluate the institutions under its regulation focusing on the internal controls and compliance with the rules.

The Central Bank has been doing the financial institutions' assessments both with on-site and off-site techniques. As a principal off-site initiative, in the end of 2000, a questionnaire was distributed to 204 banks, to evaluate the steps already adopted by them about the Law 9613 and Circular 2852.

DECIF also developed a database/system – PCAF 500 - to receive the reports of suspicious transactions, according to the Circular 2852/98. It has been used to monitor the suspicious transactions by COAF (PCAF 400) and as a complementary tool to DECIF' off-site supervision. It can support the future on-site works in the banks, as well as in the accompaniment of the recommendations that was given to the institutions.

In May of 2000, DECIF initiated the on-site assessments of AML internal controls and compliance in the banking system. At that time, the focus was just the Brazilian banking system

that includes Banking Conglomerates, Commercial Banks, All-purpose Banks, Development Banks and Thrift Institutions.

First there was a pilot experience, using a new methodology in a conglomerate. At that time the method – developed by 03 employees of the BACEN - was not completely done, but was being increased gradually through the next evaluations. During the year of 2000 more 04 (four) were evaluated, which helped to establish the methodology of compliance and internal controls assessment - ACIC.

The methodology of on-site assessment consists of document analysis, interviews in all levels of the bank – directors, managers, branch’s employees, etc. – and research and tests in the bank’s databases.

An internal guide was also created – called PROG – to support the evaluator’s job. This on-site methodology involves an evaluation of anti-money laundering controls and internal policies, systems and procedures. It also considers the characteristics of the institution.

The PROG first step is planning the process. Then, the examiner must follow the main manual items that are: AML internal policy, organization/framework, procedures, tools, know your customer policy, training, and tests. The principal focus of the evaluation is the following.

1. Internal AML policies

When reviewing the money laundering policy the examiner should assess its adequacy and effectiveness relative to applicable laws and regulations and to the complexity and size of the institutions operations. The financial institution should have formal internal guidelines/manuals on anti money laundering activities. It should be accessible to all employees.

The board of directors should approve the formal internal guidelines/manual, which should be updated regularly. The document should include guidance on: “Know your customer” procedures; Due diligence procedures for new correspondent bank customers; Procedures to identify and report suspicious transactions; Record keeping procedures; Code of Ethics.

2. Organization

According to Circular 2852/98, all the financial institutions under the Central Bank supervision should designate a manager responsible for developing and implementing AML policies and reports. Within the financial institution there must also be an area or a specialist, who has full-time responsibility of AML practices. The institution should also implement a compliance system that will ensure that inquiries from regulators or others relating to money laundering receive the highest priority. When assessing the AML organization special attention should be paid to its framework/organization: appropriateness of level within organizational structure; reporting line to the Board of Directors; clarity and role of responsibilities; qualification and experience of AML staff.

3. Know your Customer - KYC

The institutions should adopt policies that determine the adequate identification of a habitual or a non-habitual customer, and further the monitoring of their operations with the objective of immediately detecting suspect activities. Institutions should have procedures in place to categorize customers, based upon risk and conduct closer monitoring of high-risk accounts, such as: Type of customer; Type of account; Type of transactions; Type of locality; etc.

Regardless of the proceeds of account opening – regulated by the BACEN' Resolution 2.025/93 – institutions should establish identification standards depending on the risk and the type of relationship with the customer.

Sound policies and procedures for determining the activity and financial capacity of the customer when opening the account, combined with an analysis of the financial capacity, are essential to ensure compliance and to protect the financial institution against money laundering and other financial crimes.

4. Procedures to detect, select, analyze and report transactions

According to the law 9613/98 institutions must report transactions that are considered suspicious for a given customer. In order to determine what constitutes an atypical transaction or group of transactions for a given customer, the institution should implement adequate controls and systems. It should also adopt prudential procedures for monitoring the financial activity of these accounts constantly.

Institutions should have procedures in place to categorize customers based on risk and conduct closer monitoring of high-risk accounts. They also have the obligation to provide reports to regulatory / law enforcement agencies as required by the legislation.

5. Record keeping

According to the legislation and regulation the financial institutions should maintain, for at least five years, all necessary records on transactions (both domestic and international) to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of criminal behavior.

They should keep records on customer identification (Resolution 2025/93), account files and business correspondence for at least five years after the account is closed. These documents should be available to the competent domestic authorities in the context of relevant criminal prosecutions and investigations.

6. Tools

The institutions should have reports or/and an information technology system to control and to prevent money laundering process, as well as to support preparation of the management reports.

7. Training

Institutions should ensure that all the staff, especially the relevant personnel that deal directly with the customers are trained in AML. The AML training should be done on a periodic basis. It is important to verify that there is a program to recycle knowledge (updating program), if the institution maintains records of the bank's training; and if the material used has quality. The Curriculum should touch on key regulatory requirements as the code of ethics, internal regulations, other applicable Laws and practical cases.

8. Tests

The examiner will do some tests to verify the consistence of the information received by the institution. It is important to analyze the standard of the reports done by the institution; the System of Suspicious Reports - PCAF 500; the existence of Monthly Absence of Declarations – DMA; the tools and systems developed by the institution; samples of transactions; customers profiles, etc. The institution must also provide a special database laid-out by the examiners.

Those are the standards for supervisors that are in the manual, but there are some other issues considered very important, which are examined in the interviews and will be included in the new version as:

- Internet banking accounts: The institution should have specific procedures in place for account opening through the Internet. The Resolution 2,817 of 2001 regulated it. There are three basic characteristics of the Internet that tend to increase the risk of money laundering: Ease of access; Depersonalization of contact between the customer and the institution; Rapidity of electronic transactions.
- Correspondent banking: There should be specific procedures in place regarding due diligence for new correspondent bank customers as well as requirements for ongoing documentation and on site visit.
- Audit: An Internal and External Audit must be done to attest to the integrity of the AML Program (to verify the performance of the policies and procedures against money

laundering crime; to test transactions; to ensure compliance; to evaluate the adequacy of training; to assess the accuracy of reporting and the bank's monitoring processes).

Other aspects as policy of "Know your Employee", foreign correspondent banking, private banking, were considered in the on-site evaluations too, but are not listed in the PROG manual yet.

The idea is always try to improve the assessments. In this direction, there is an external consultant and a BACEN' team working together to design and implement a rating system for the banking supervision, including AML. It is expect for the beginning of the next year, and will bring more directed coordination of the actions.

Results

The Central Bank' evaluations - ACIC had reached 104 banks, in 52 evaluations that had been done until September of 2002.

Among the largest fifty bank conglomerates and independent banking institutions operating in Brazil, according to accounting information available on the report's release date, whereby the banks are ranked, in decreasing order based on their amounts of "Total Assets Less Brokerage" more than 80% were evaluated about their AML policies and practices, and the reevaluations already have started.

Despite the success of the works carried out until now, just in the second semester of 2002 the DECIF' examiners visited other financial institutions – as brokers.

However, the banking sector, which was the principal target of Central Bank assessment, had achieved the goals. The regulations are good but some studies have been done to improve them. We believe that the internal manual, which is an important tool to the examiners, needs a new edition including all the items and procedures that already are being done but are not formalized.

It is also necessary to issue AML guidance/handbook for the financial institutions with the main items that are evaluated by the BACEN to clarify the objective of the assessment and to avoid a lack of information.

3. The Experience of the United States

3.1. Legislation and Regulation

Since 1970, the United States has conducted a program against money laundering. The first American legislation enacted to deal with money laundering, known as Bank Secrecy Act (BSA), went into effect in that year. This law created a series of reporting and record keeping requirements related to transactions involving currency or monetary instruments over \$10,000.

Until 2001, this was the main regulation of AML; it created the Currency Transaction Report (CTR) and the Suspicious Transaction Report (STR). The BSA also authorizes the Secretary of the Treasury (and in some places, the Secretary and the Federal Reserve Board jointly) to require banks and other financial institutions to retain records to assure that the details of financial transactions can be traced if investigators need to do so. The aim was to make possible a financial trail for investigators to follow.

Its strategy is based on aggressive prosecution of money laundering offences, efforts to prevent the use of financial institutions for laundering, with an emphasis on reporting of large currency transactions, and determined efforts to locate, seize and forfeit the proceeds of money laundering.

The country has imposed many other legal instruments and regulatory standards to deter money laundering. The most significant are:

- ? 1974 – constitutionally BSA upheld;
- ? 1986 – the Money Laundering Control Act;
- ? 1988 – the Anti-Drug Abuse Act;

- ? 1990 – section 2532 of the Crime Control Act (FinCEN was created);
- ? 1991 – section 206 of the Federal Deposit Insurance Corporation Improvement Act;
- ? 1992 – title XV of the Housing and Community Development Act;
- ? 1992 - Annunzio-Wylie ML Act;
- ? 1994 - BSA Advisory group created and money laundering suppression Act;
- ? 1995 – Funds Transfer Regulated;
- ? 1996 – Reporting Suspicious Activity (simplified reporting system into effect);
- ? 1997 – MSB regulations proposed ("Money Services Businesses" to be subject to new reporting requirements);
- ? 1999 – MSB Registration Final Rule Issued;

In 1980, the regulations were changed so that banks could no longer exempt non-bank financial institutions and foreign banks (including foreign subsidiaries) from the currency reporting requirements. In 1984, the BSA was amended to drastically increase penalties for non-compliance with the currency reporting requirements. Most offenses had their maximum jail term increased from one year to five years.

The most significant anti-money laundering legislation enacted was the Money laundering Control Act of 1986. This statute criminalized money laundering and strengthened the BSA in several ways. For example: banks were required to obtain statements from accountholders whose accounts were to be exempted; civil and criminal penalties were further increased. Persons committing willful violations faced a maximum jail term of 10 years.

In 1994, the Treasury created an Advisory Group to emphasize partnership with banks and others to establish policies and regulations to prevent and detect money laundering, understanding that financial institutions are the first line of defense against money launderers.

Since 1999, there has been a National Money Laundering Strategy, now in its fourth edition, which directs the government's resources against money laundering and financial crimes.

After the terrorist act of September 11th 2001 a new legislation—the US Patriot Act—was enacted in October 2001. This legislation established a framework for information sharing between enforcement agencies, regulators, and financial institutions; provided regulators with new powers with respect to terrorist financing; and strengthened and broadened AML reporting requirements.

To attack the financial underpinnings of crime the federal government released the *National Money Laundering Strategy of 2002*, which included the financing of terrorist groups.

Some sections of the Patriot Act help to ensure and facilitate cooperation with financial institutions, and between law enforcement agencies and the private sector, about potential money laundering.

The Patriot Act requires all financial institutions to have an AML program in place by April of 2002. Not just banks were supposed to comply with the new rules but other entities, i.e. stock exchange, security dealers, investment companies, etc. also have to adopt AML programs. The Treasury prescribed the minimum standards for these.

Despite the number of agencies involved in this field, the US still faces challenges and problems. Especially after the terrorist attack, the American government realized that is necessary to ensure regulatory and law enforcement resources and systems available. There is also a recently announced review by the US Treasury and Attorney General, which called for a principal commitment to “work cooperatively with the private sector, financial regulators, and international partners to detect, prevent, deter, and punish money laundering and the financing of terrorist groups” (*National Money Laundering Strategy 2002*).

The money laundering offence itself is notable for a very wide range of issues, which are specified in the American legislation. Regular reviews and updates are necessary to respond to changes in the money laundering threat.

3.2. The American Structure

Both the US authorities and the financial institutions are known as very committed to the fight against money laundering.

The efforts against money laundering in the United States involve several agencies: Department of Treasury; the federal bank' regulators: Office of the Comptroller of the Currency, Federal Reserve Board and Federal Deposit Insurance Corporation; Internal Revenue Service; Examination Division; Office of Thrift Supervision (savings and loans); National Credit Union Administration; Financial Crimes Enforcement Network – FinCEN.

The AML framework in the US applies to all deposit-taking institutions and other specified categories of activity that deal with large cash transactions (which is mandatory for all businesses whether or not in the financial sector).

These institutions have to report transactions, identify customers and also keep records as basic requirements. Many agencies work together to enhance their ability to identify money-laundering risk.

The American government has also signed and ratified the Vienna UN Convention of 1988 and is active in bilateral and multilateral initiatives in this field. The US is a member of the FATF, of the Caribbean Financial Action Task Force – COSUN and of the Asia / Pacific Group on Money Laundering (APG).

According to the FATF, the US is substantially in compliance with the forty Recommendations. The main area of weakness was the non-bank financial sector where application of AML measures is far from comprehensive. The FATF had already done two rounds of Mutual Evaluation that happened in June/1992 and in 1996-1997.

Financial Crimes Enforcement Network – FinCEN

The American Financial Intelligence Unit - FIU, created in 1990, within the US Department of the Treasury, supports and coordinates law enforcement investigations to prevent and detect money laundering and other financial crimes.

According to its Strategic Plan for 2000-2005 FinCEN' mission is "to support law enforcement investigative efforts and foster interagency and global cooperation against domestic and international financial crimes; and to provide US policymakers with strategic analyses of domestic and worldwide money laundering development, trends and patterns". (FinCEN Homepage)

FinCEN works through information collection, analysis and sharing, as well as technological assistance. It links law enforcement, financial and regulatory communities into a single information-sharing network, using BSA information reported by banks and other types of financial institutions. In addition, it plays key role in safeguarding the information and helps the financial trail for investigators to follow criminals and their assets.

FinCEN also supports implementation of Treasury's money laundering initiatives, policies, efforts with intergovernmental bodies and international cooperation, and provides training and technical assistance to other countries.

After the recent terrorist activity against the United States, FinCEN established an all-day hotline for financial institutions to voluntarily report to law enforcement suspicious transactions. The Patriot Act also gave to FinCEN access to information of cash reports of new businesses and non-financial trades that can improve its analysis and enforcement.

The American FIU is working hard to improve the prevention of and fight against money laundering and to increase the cooperation with the government agencies, international bodies and other FIUs.

3.3. The Banking Supervision: the anti-money laundering (AML) focus

In United States, differently from Brazil, the banking supervision is shared among the Federal Reserve (state chartered banks that are members of the Federal Reserve System and bank holding companies), the Office of the Comptroller of the Currency – OCC (national banks) and the Federal Deposit Insurance Corporation – FDIC (insured state banks that are not members of the Federal Reserve System).

Banks and their US affiliates must be in compliance with applicable US law. They must establish adequate controls and procedures to ensure continued compliance with the US legislation, including internal controls to detect money laundering and to avoid unsafe or unsound banking practices.

The most important aspects of the “new” American AML regime – described in Patriot Act – include requirements to banking sector as:

- New (review) AML compliance programs;
- Prevent the access of “shell banks” to the US financial system (section 313);
- Identification of foreign correspondent banks and their owners;
- Due diligence for correspondent accounts and private banking (section 312);
- Maintenance of concentration accounts (section 325);
- Minimum standards for customers’ identification (section 326).

In this area, The Federal Reserve (FED) and Office of the Comptroller of the Currency (OCC) are developing main actions of banking supervision. Therefore, they are important to describe.

Federal Reserve - FED

On December 23 of 1913, an Act of Congress created the Federal Reserve System, which serves as the nation’s central bank. The System consists of a seven member Board of Governors with headquarters in Washington, D.C., and twelve Reserve Banks located in major cities throughout the United States.

One of the Federal Reserve's duties is supervising and regulating banking institutions and protecting the credit rights of consumers. In this way, FED supervises the following entities and has the statutory authority to take formal enforcement actions against them. The institutions are: State member banks; Bank holding companies; Non-bank subsidiaries of bank holding companies; Edge and agreement corporations; Branches and agencies of foreign banking organizations operating in the United States and their parent banks; Officers, directors, employees, and certain other categories of individuals associated with the above banks, companies, and organizations (referred to as "institution-affiliated parties").

According to the FED, all AML compliance programs should establish the formal policies and procedures, the senior management commitment, the system of internal control, independent testing, and training. The banks also are required to report suspicious transactions and keep records.

Issued by the Board of Governors' Division of Banking Supervision and Regulation, Supervision and Regulation Letters, commonly known as SR Letters, address significant policy and procedural matters related to the Federal Reserve System's supervisory responsibilities. SR Letters are an important means of disseminating information to banking supervision staff at the Board and the Reserve Banks and, in some instances, to supervised banking organizations.

According to a variety of regulations and the National Money Laundering Strategy the FED has a longstanding commitment to combat money laundering. One of the principal documents is the Bank Secrecy Act Examination Manual, which ensured compliance with the Bank Secrecy Act and related requirements regarding the reporting of suspicious activity by domestic and foreign banking organizations supervised by the Federal Reserve.

This manual is actually under revision. The main idea is to improve the examination procedures and the reports of the examiners.

Other manuals have been issued (see the list below) to cover FED procedures designed to assist examiners evaluations. The main contents are rules and laws; reporting forms; exemption handbook; know your customer policy; wire transfers; databases; suspicious

activities; payable through accounts; foreign accounts; private banking; supervisory directives, other informational areas; work papers; etc.

The guides were designed to orient the financial institutions to establish the general requirements including reporting, record keeping and compliance programs.

Office of the Comptroller of the Currency - OCC

The OCC was established in 1863 as a bureau of the US Department of the Treasury. The Office of the Comptroller of the Currency charters, regulates, and supervises all national banks. It also supervises the federal branches and agencies of foreign banks.

The term “national bank” includes all banking units of the financial institution, including functionally regulated subsidiaries and financial subsidiaries under the Gramm-Leach-Bliley Act. This may include private banking, international banking, trust, discount brokerage, and other business units of the institution. It may also include other entities the OCC supervises, such as limited purpose banks (i.e., credit card banks and trust companies), federal agencies and branches of foreign banks operating in the United States, international banking facilities of US banks, and, to some extent, foreign branches of US banks.

The staff of examiners conducts on-site reviews of national banks and provides sustained supervision of bank operations. The examiners analyse the bank’s financial situation, internal controls, internal and external audit, and compliance with law. They also evaluate bank management’s ability to identify and control risk. The OCC also conducts targeted examinations based on law enforcement leads (i.e. General Attorney).

The principal objectives of OCC are: To ensure the safety and soundness of the national banking system; To foster competition by allowing banks to offer new products and services; To improve the efficiency and effectiveness of OCC supervision, including reducing regulatory burden; To ensure fair and equal access to financial services for all Americans. The agency also issues rules, legal interpretations, and corporate decisions concerning banking, bank investments, bank community development activities, and other aspects of bank operations.

The OCC has undertaken a number of anti-money laundering initiatives. In 1997, the OCC formed the National Anti-Money Laundering Group - NAMLG, an internal task force that has started several projects. It encouraged national banks to adopt policies and procedures according the Basle Supervisors' Committee Statement of Principles on Money Laundering.

There are some experienced examiners and other OCC experts who specialize in BSA compliance, anti-money laundering and fraud staff targeted examinations. The OCC's, specialists and other personnel have on-line access to primary FinCEN databases, which contain currency transaction reports, suspicious activity reports, other BSA information, and Federal Reserve cash flow data.

All banks are required by law and regulation to have an effective AML program. For national banks, that requirement is outlined in 12 CFR 21.21. The board of directors of each national bank must adopt a written compliance program that ensures ongoing compliance and helps prevent abuse of the bank, which should include strong senior management commitment to compliance.

The OCC further encourages national banks to adopt policies and procedures that incorporate the Basle Supervisors' Committee Statement of Principles on Money Laundering. Other procedures bankers can do to help are: Establish an Effective Know Your Customer Policy; Be Aware of Parties to Large-value Funds Transfers; File Currency Transaction Reports and Criminal Referrals.

These are the basic requirements in the principal OCC's manuals:

1. Internal BSA Compliance Programs

All national banks must develop, administer, and maintain a program that ensures and monitors compliance with the BSA and its implementing regulations, including record keeping and reporting requirements. Such a program can help protect a bank against possible criminal and civil penalties and asset forfeitures.

At a minimum, a bank's internal compliance program must be written, approved by the board of directors, and noted as such in the board meeting minutes. The program must include: a system of internal controls to ensure ongoing compliance; independent testing of compliance; daily coordination and monitoring of compliance by a designated person; and training for appropriate personnel.

2. Internal Controls

Senior management is responsible for ensuring an effective system of internal controls for the BSA, including suspicious activity reporting, and must demonstrate its commitment to compliance by:

- Establishing a comprehensive program and set of controls, including account opening, monitoring, and currency reporting procedures, that are approved by the board of directors and fully implemented by bank staff.
- Instituting a requirement that senior management be kept informed of compliance efforts, audit reports, identified compliance deficiencies, and corrective action taken. In other words, internal control systems must enable senior management to ensure ongoing compliance.
- Making BSA compliance a condition of employment.
- Incorporating compliance with the BSA and its implementing regulations into job descriptions and performance evaluations of bank personnel.

3. Independent Testing of Compliance

The bank's internal or external auditors should be able to: Attest to the overall integrity and effectiveness of management systems and controls, and BSA technical compliance; Test transactions in all areas of the bank with emphasis on high-risk areas, products, and services to ensure the bank is following prescribed regulations; Assess employees' knowledge of regulations and procedures; Assess adequacy, accuracy, and completeness of training programs; Assess adequacy of the bank's process for identifying suspicious activity.

Internal review or audit findings should be incorporated into a board and senior management report and reviewed promptly. Appropriate follow up should be ensured.

4. Compliance Officer

A national bank must designate a qualified bank employee as its BSA compliance officer, who has day-to-day responsibility for managing all aspects of the BSA compliance program and compliance with all BSA regulations. The BSA compliance officer may delegate certain BSA compliance duties to other employees, but not compliance responsibility. The bank's board of directors and senior management must ensure that the BSA compliance officer has sufficient authority and resources to administer effectively a comprehensive BSA compliance program.

5. Training

Banks must ensure that appropriate bank personnel are trained in all aspects of the regulatory requirements of the BSA and the bank's internal BSA compliance and anti-money laundering policies and procedures. Programs should provide personnel with guidance and direction in terms of bank policies and available resources. An effective training program includes provisions to ensure that:

- All bank personnel, including senior management, who have contact with customers (whether in person or by phone), who see customer transaction activity, or who handle cash in any way, receive appropriate training. Those employees include persons involved with branch administration; customer service; lending, private, or personal banking; correspondent banking (international and domestic); trust; discount brokerage; funds transfer; safe deposit/custody; and vault activities.
- Training is ongoing and incorporates current developments and changes to the BSA, anti-money laundering laws, and OCC and FinCEN regulations. New and different money laundering schemes involving customers and financial institutions should be addressed. It also should include examples of money laundering schemes and cases, tailored to the audience, and the ways in which such activities can be detected or resolved.

- Training focuses on the consequences of an employee's failure to comply with established policy and procedures (e.g., fines or termination).

The United States supervisors have issued other manuals and guides to instruct the institutions (banks) in how to implement a good AML policy and procedures. Some of them are:

- Money Laundering: A Banker's Guide to Avoiding Problems;
- 2002 National Money Laundering Strategy (July 29) From the Office of Public Affairs;
- Brochure "What Bankers Should Look For" (1989); OCC
- Money Laundering: A Banker's Guide to Avoiding Problem
- Comptroller's Handbook - September 2000

Results

After the 9/11 attacks, the American legislation and procedures require a lot of improvements. The idea was to avoid money laundering used to finance terrorism by a huge net of enforcement and an increase in the AML programs required.

So far, all the regulators have maintained records about the banks under its supervision and have been developing close assessments in the banking sector. Bankers must help the federal government in its anti-money laundering efforts. They must file all appropriate reports, keep records, enhance due diligence and follow all Treasury Department and other agencies guidance related to the Bank Secrecy Act.

An important issue is if these manuals/handbooks really can guide them toward the best practices in the prevention of money laundering. In this way, the American agencies have jointly prescribed regulation that requires and orients financial institutions to implement reasonable procedures to prevent and combat money laundering and the finance of terrorism.

4. Conclusion

As a result of this research some important points can be drawn for the AML banking supervisory policies. First, all the basic principles underlying both the Brazilian and the American regulations are settled in the international standards.

Second, both countries are improving their efforts to guarantee a sound and safe banking system, using regulation, on-site and off-site assessments, guidance, manuals among other mechanisms.

Third, for the examiner (supervisors) the use of a manual to drive the institution's evaluations has been important, but it is also fundamental experience and updated training. Between Brazil and United States the main orientations differ just in some items; in general it is pretty similar.

The US agencies place a high degree of importance to the guidelines. Not just on the examiner's manuals but also on the handbooks made for the banks. It is recognized that the establishment of policies and procedures of AML programs is a responsibility and a duty of the banking segment, but a general guidance has a major impact on the banking sector's ability to play the role required of it, improving enhancement of due diligence.

In this way, many countries have issued detailed guidance notes for the financial sector, produced within the context of local and national legislation and regulation, and economic circumstances as the United States.

On the other hand, Brazil has been taking a lot of actions and improving in its AML supervision, publishing a variety of legislation but not issuing manuals and handbooks in this subject.

“Legislation on its own is not sufficient to construct an effective regime for preventing money laundering” (Commonwealth Secretariat, 2000).

Therefore, we propose that Central Bank of Brazil must issue internal and external manuals about anti-money laundering procedures and practices. The main idea is to provide guidance on the essential elements of AML standards. In developing this guidance, the Central Bank of Brazil could design the general elements as the minimum standards for all banks and other financial institutions under its regulation. These standards would strengthen the financial institutions procedures, helping to avoid all the risks involved.

It is also important for the effective supervision of an AML program that the guides be reviewed on a regular basis to reflect changing circumstances and experiences.

Another fundamental issue is improvement of the internal cooperation, as much among government agencies as between the supervisors and the banking industry.

Finally, is important to realize that the main role of the banking supervisors in the prevention of money laundering is to keep a safe and sound financial system, evaluating the effectiveness of the AML programs done by the banks and other institutions. Sometimes it is required but is difficult to measure the direct consequences of these practices in the anti money laundering enforcement and criminals caught.

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Brazilian National Financial System

Regulation and Supervision Agencies		
C M N National Monetary Council	 Central Bank of Brazil	 Bancos Múltiplos com Carteira Comercial
		 Bancos Comerciais
		 Caixas Econômicas
		 Cooperativas de Crédito
		 Bancos Múltiplos sem Carteira Comercial
		 Bancos de Investimento
		 Bancos de Desenvolvimento
		 Sociedades de Crédito, Financiamento e Investimento
		 Sociedades de Crédito Imobiliário
		 Companhias Hipotecárias
		 Associações de Poupança e Empréstimo
		 Agências de Fomento
		 Sociedades de Crédito ao Microempreendedor
		 Bolsas de Mercadorias e de Futuros
		 Bolsas de Valores
		 Sociedades Corretoras de Títulos e Valores Mobiliários
		 Sociedades Distribuidoras de Títulos e Valores Mobiliários
		 Sociedades de Arrendamento Mercantil
		 Sociedades Corretoras de Câmbio
		 Representações de Instituições Financeiras Estrangeiras
		 Agentes Autônomos de Investimento
		Entidades Fechadas de Previdência Privada 
		 Entidades Abertas de Previdência Privada
		 Sociedades Seguradoras
		 Sociedades de Capitalização
		 Sociedades Administradoras de Seguro-Saúde
		 Fundos Mútuos
		 Clubes de Investimentos
		 Carteiras de Investidores Estrangeiros
		 Administradoras de Consórcio
	 Sistema Especial de Liquidação e de Custódia - SELIC	
	 Central de Custódia e de Liquidação Financeira de Títulos - CETIP	
	 Caixas de Liquidação e Custódia	