



# Money Laundering In Brazil and in the United States

Rosemeire Kiyoko Matsuda  
[Rosemeirekm@terra.com.br](mailto:Rosemeirekm@terra.com.br)  
Minerva Program, Fall 2007

Advisor: William C. Handorf, Phd.

|  |                            |
|--|----------------------------|
| <b>I – Introduction</b>  | <b>1</b>                   |
| <b>II – Money Laundering</b>   | <b>2</b>                   |
| A – Definitions and Explanation  |                            |
| B – The process  |                            |
| C – The size of the money laundering problem   |                            |
| D - Banking Privacy  |                            |
| <br>   |                            |
| <b>III – International Standard Setters</b>  | <b>9</b>                   |
| A - The United Nations   |                            |
| B - The Financial Action Task Force On Money Laundering - FATF                               |                            |
| C – Bank for International Settlements (BIS)   |                            |
| D – International Monetary Fund and World Bank   |                            |
| F- The Egmont Group of Financial Intelligence Units  |                            |
| <br>   |                            |
| <b>IV – Anti-money laundering efforts in the U.S. Banking System</b>                         | <b>19</b>                  |
| A) Alcapone  | G) Money Laundering Law    |
| B) Meyer Lansky  | H) Operation Polar Cap     |
| C) Bank Secrecy Act  | I) Annunzio-Wylie Law      |
| D) Operation Greenback   | J) Prevention of Terrorism |
| E) Operation Smurfing  | K) USA Patriotic Act       |
| F) Bank of Boston  | L) Ten Commandments        |
| <br>   |                            |
| <b>V – O Brasil no combate a lavagem de dinheiro</b>   | <b>28</b>                  |
| A – The Brazilian President enacted the Vienna Convention - 1997                             |                            |
| B – Law 9.613 of 03.03.1998 and COAF Establishment – 1998                                    |                            |
| C) COAF becomes a member of the Egmont Group – 1999  |                            |
| D) Brazil was accepted as an FATF member – 2000  |                            |
| E) Drug Trafficking CPI (legislative Investigation Committee) – 2000                         |                            |
| F) Complementary Law 105 (Banking Privacy Law) – 2001  |                            |
| G) Committee – Administrative Rule 98 – 2002   |                            |
| H) ENCLA – National Strategy Anti-Money Laundering – 2003                                    |                            |
| I ) GGI-LD – Managing Department of Integrated Prevention and Fight against Money Laundering |                            |
| J) International Acknowledgement   |                            |
| <br>   |                            |
| <b>VI – Conclusion</b>   | <b>38</b>                  |
| <b>References</b>  | <b>41</b>                  |

## **I – INTRODUCTION**

The rationale for this survey is the enhancement of the content of money that reaches the “business” involving money laundering in most countries currently.

This issue drawing more attention of the world because money laundering can potentially cause devastating economic, political and social consequences for countries, which are in the process of developing domestic economies and building strong financial institutions. Also, money laundering can impose important costs upon developing countries

Money laundering and the concealment of property and rights is a threat to the countries for the macroeconomic effects they can cause, such as a sudden capital migration, and also for the fact that they nourish criminal world that corrodes and demoralizes democratic institutions through crime.

The combat against these crimes has provoked a significant international cooperative effort that has gained relevance in the latter years as an important tool in the fight not only against corruption and the organized crime that torment the Country, but also against terrorism, which violent actions are still vivid in our memory.

The purpose of this paper is to define and analyze the money laundering from the view point of the International Standard Setters and academia.

The study is divided into four sections. The next section presents the Definitions and Explanation. Section 3 shows the International Standard Setters. Section 4 presents a brief effort of EUA against money laundering and the last Section 5 provides an overall assessment of the Anti-Money laundering measures in Brazil.

## **A - Definitions and Explanation**

Money laundering has been defined as the use of money derived from illegal activity by concealing the identity of the individuals who obtained the money and converted it to assets that appear to have come from a legitimate source. A simpler definition is the washing of dirty money to make it appear to be legitimate (POWIS, 1992).

United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the United Nations Convention Against Transnational Organized Crime (Palermo Convention) define Money Laundering as:

*“The conversion or transfer of property, knowing that such property is derived from any [drug trafficking] offense or offenses or from an act of participation in such offense or offenses, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offense or offenses to evade the legal consequences of his actions (SCHOTT, 2006).*

*The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offense or offenses or from an act of participation in such an offense or offenses, and;*

*The acquisition, possession or use of property, knowing at the time of receipt that such property was derived from an offense or offenses or from an act of participation in such offense...or offenses. (Vienna Convention, articles 3(b) and (c) (i); and Palermo Convention, article 6(i).*

The Financial Action Task Force on Money Laundering (FAT) which is recognized as the international standard setter for anti-money laundering efforts, defines “money laundering” as “the processing of... criminal proceeds to disguise their illegal origin” in order to “legitimize” the ill-gotten gains of crime (SCHOTT, 2006).

Marco Antonio de Barros’s definition follows Brazilian statutory laws that define the crime of money laundering as: “financial operation or commercial transaction that hides or

disguises the transitory or permanent incorporation of property, rights or values in the economy or financial system of Brazil, which are the direct or indirect result or product of the following offenses: (a) illegal trafficking of drugs or similar substances, (b) terrorism, (c) smuggling or trafficking of weapons, ammunition or material for its production, (d) extortion through kidnapping, (f) offenses against the Public Administration, (g) offenses against the National Financial System, (h) offenses practiced by criminal organizations.”

Money laundering predicate offense is the underlying criminal activity that generated proceeds, which when laundered, results in the offense of money laundering (SCHOTT,2006).

By its terms, the *Vienna Convention* limits predicate offenses to drug trafficking offenses. As a consequence, crimes unrelated to drug trafficking, such as, fraud, kidnapping and theft, for example, do not constitute money laundering offenses under the *Vienna Convention*. (SCHOTT, 2006).

Over the years, however, the international community has developed the view that predicate offenses for money laundering should go well beyond drug trafficking. Thus, FATF and other international instruments have expanded the *Vienna Conventions'* definition of predicate offenses to include other serious crimes. For example, the Palermo Convention requires all participant countries to apply that convention's money laundering offenses to “the widest range of predicate offenses” (The Palermo Convention) .

According to COAF (Brazilian unit of financial intelligence), money laundering is the procedure whereby criminals change the proceeds earned with illegal activities into assets with apparently legal source. (BRASIL, COAF, 1999:4).

## **B – THE PROCESS**

Ill-gotten gains are produced by a vast range of criminal activity - among them political corruption, illegal sales of weapons, and illicit trafficking in and exploitation of human beings. Regardless of the crime, money launderers typically fall into three stages: placement, layering and integration.

Through these processes, a criminal tries to transform the monetary proceeds derived from illicit activities into funds with an apparently legal source.

## **1 – PLACEMENT**

Among the stages of the money “laundering” process, PLACEMENT is the easiest to detect. In this stage are concentrated the main efforts to prevent money “laundering”, notwithstanding the importance attributed to the other stages.

Laundering is an activity that deals with a lot of cash generated by illicit activities such as, for instance, drug dealing on the streets. This form of funds is still closely associated with its illicit origins. The conversion of such petty cash into bigger notes, cashier’s checks or other negotiable papers is the first step to give those funds an appearance of legitimacy.

According to COAF, this stage is carried out through deposits, acquisition of securities or property. To hinder the identification of the money origin, criminals make use of more sophisticated and dynamic techniques every day, such as the use of business establishments that usually work with cash (restaurants, hotels, casinos, car washers) as a front. Launderers’ primary need is to remove the money from its place of acquisition to limit the danger of authorities detecting its generating activity. In general, criminals try to carry out this stage in countries that have more permissive rules or more liberal financial systems.

## **2 – LAYERING**

According to FATF and COAF (money laundering combat organizations), in this stage of the process launders create a complex network of financial or business transactions to distance the money from its illicit origin. The purpose is to hinder the accounting track of the illegal proceeds, breaking the chain of evidence in light of the possibility of an investigation about the money origin.

Funds may be moved through the buy and sell of securities or wire transfer of funds to banks around the world. In such events, criminals seek to transfer their assets through countries that do not cooperate with investigations due to their strict banking privacy laws.

Another technique that is used is to place the funds in an offshore entity secretly controlled by the launderer, followed by a “loan” made to him by himself. This technique works because it is difficult to determine who actually controls the offshore accounts in some countries (HIJAR, 2004).

Casinos and Bingos are sometimes used to absorb cash more easily. After being converted into chips, the funds seem to have been earned from gambling.

### **3 – INTEGRATION**

The third stage involves the integration of funds into the legitimate economy. This is accomplished through the purchase of assets, such as real estate, securities or other financial assets, or luxury goods (SCHOTT,2006).

COAF states that, in this stage, criminal organizations often invest in enterprises that facilitate furthermore their criminal activities.

Illicit funds can also be transferred through a series of complex international financial transactions. Launderers are very creative – when overseers detect one method, the criminals soon find another. (SCHOTT, 2006)

### **C – THE SIZE OF THE MONEY LAUNDERING PROBLEM**

The International Monetary Fund has estimated that the aggregate amount of funds laundered in the world could range between two and five per cent of the world's gross domestic product. Using the statistics, these percentages would approximate between US \$ 590 billion and US \$ 1.5 trillion.

The economic effects of the money laundering are felt in the private sector, in the financial markets, in the economic policy of a country and in the society as a whole, since the economic power yielded by criminals through money laundering has a corrupting effect on all the elements of the society. In extreme cases, it may result in the virtual takeover of a legitimate government (MC DOWELL APUD HIIJAR, 2004).<sup>1</sup>

The IMF's Interim committee – its highest decision – making authority - featured money laundering as one of the most serious issues facing the international financial community (CANDESSUS APUD HIJAR 2004)

---

<sup>1</sup> John McDowell, Senior Policy Adviser, and Gary Novis, Program Analyst, Bureau of International Narcotics and Law Enforcement Affairs, US Department of State

The United States Department of the Treasury financial crimes enforcement network, FINCEN advisory, March 1996 said: "With few exceptions criminals are motivated by one thing-profit. Greed drives the criminal, and the end result is that illegally gained money must be introduced into a nation's legitimate financial systems... Money laundering involves disguising assets so they can be used without the detection of the illegal activity that produced them. This process has devastating social and economic consequences. Money laundering provides the fuel for drug dealers, terrorists, arms dealers to operate and expand their operations... Left unchecked, money laundering can erode the integrity of our nation's and the world's financial institutions".

### **Money Laundering Damaging Consequences**

In a time of fast technological and globalizing development, money laundering can compromise national financial stability because it facilitates criminal activities that are highly damaging to society.

As regards, COAF states that money laundering is one of the most effective ways for criminals to safeguard and promote their covert interests.

FATF (1999) also sustains that money laundering is a fundamental activity to support organized crime. According to such organization, laundering allows the funds illicitly obtained to return to criminals with an appearance of legitimacy and be subsequently reinvested for the perpetration of new crimes and expansion of their operations.

To FATF, through money laundering operations the organized crime is able to infiltrate financial institutions or acquire control of extended economic sectors. In addition, laundering facilitates the offer of bribery to public and governing officials, thus increasing the economic and political influence of criminal organizations. Consequently, it contributes to weaken the social tissue, collective ethical standards and, finally, social democratic institutions.



MACDOWELL<sup>2</sup> identifies several categories of microeconomic and macroeconomic losses caused by money laundering, among them: Undermining the Legitimate Private Sector, Undermining the Integrity of Financial Markets, Loss of Control of Economic Policy, Economic Distortion and Instability, Risks to Privatization Efforts, Reputation Risk, Social Costs.

**Undermining the Legitimate Private Laundering:** One of the most serious microeconomic effects of money laundering is felt in the private sector. Money launderers often use front companies, which co-mingle the proceeds of illicit activity with legitimate funds, to hide the ill-gotten gains. In some cases, front companies are able to offer products at prices below what it costs the manufacturer to produce. Thus, front companies have a competitive advantage over legitimate firms that draw capital funds from financial markets. This situation can result in the crowding out of private sector business by criminal organizations.

**Undermining the Integrity of Financial Markets:** Financial institutions that rely on the proceeds of crime have additional challenges in adequately managing their assets, liabilities and operations. Large sums of laundered Money may arrive at a financial institution but then disappear suddenly, without notice, through wire transfers in response to non-market factors, such as law enforcement operations. This can result in liquidity problems and runs on banks.

**Loss of Control of Economic Policy:** In some emerging market countries, these illicit proceeds may dwarf government budgets, resulting in a loss of control of economic policy by governments. In short, money laundering and financial crime may result in inexplicable changes in money demand and increased volatility of international capital flows, interest, and exchange rates. The unpredictable nature of money laundering, coupled with the attendant loss of policy control, may make sound economic policy difficult to achieve.

**Economic Distortion and Instability:** The launders are not interested in profit generation from their investments but rather in protecting their proceeds. Thus they “invest” their funds in activities that are not necessarily economically beneficial to the country where the funds

---

<sup>2</sup> John Mc Dowell, Senior Policy Adviser, and Gary Novis, Program Analyst, Bureau of International Narcotics and Law Enforcement Affairs, U.S. Department of State. “The consequences of money laundering and financial crimes.”

are located. For example, entire industries, such as construction and hotels, have been financed because of the interests of money launderers. When these industries no longer suit the Money launderers, they abandon them, causing a collapse of these sectors and immense damage to economies that could ill afford these losses.

**Risks to Privatization Efforts:** Criminal organizations have the financial wherewithal to outbid legitimate purchasers for formerly state-owned enterprises. In the past, criminals have been able to purchase marinas, resorts, casinos, and banks to hide their illicit proceeds and further their criminal activities.

**Reputation Risk:** The negative reputation that results from these activities diminishes legitimate global opportunities and sustainable growth while attracting international criminal organizations with undesirable reputations and short-term goals. This can result in diminished development and economic growth.

**Social Costs:** Money Laundering is a process vital to making crime worthwhile. It allows drug traffickers, and other criminals to expand their operations. This drives up the cost of government due to the need for increased law enforcement and health care expenditures to combat the serious consequences that result.

## **D - BANKING PRIVACY**

To banks, privacy is a professional obligation and a right. The obligation not to expose its clients' financial information related to their business performance, and the right to resist to third parties' requests to protect its clients' interests. To clients, banking privacy is a privilege since their financial information is legally protected and cannot be invaded by interested third parties (HIIJAR apud PING).

The first banking privacy regulation was enacted in Switzerland as a result of a historical case. In the 1930s', the National Socialist German Workers' Party government prohibited German Jews from transferring funds outside Germany with the purpose of confiscating such assets. In view of the geographical proximity and non-official policy of confidentiality regarding bank deposits and transactions, Swiss banks were chosen by the German Jews to receive their funds (HIIJAR apud Moscarino).

In 1933, the National Socialist German Workers' Party government enacted a decree punishing with the death penalty whoever had wealth abroad. After the execution of three German Jews and pressure imposed on Swiss banks' employees by Gestapo agents, the Swiss government was persuaded to turn into a law the practice of keeping the confidentiality of clients' accounts.

The strictness of banking privacy laws varies from country to country. In some countries, banking privacy is even protected by criminal statutes, i.e., the violation of banking privacy subjects its offenders to criminal sanctions.

In Switzerland, for instance, both the breach of international secrecy and the result of such negligence are criminally punishable. As a result of its banking privacy policy, Switzerland is very attractive to foreign capitals.

Banking privacy is one of the incentives for the use of the financial system to “launder” money. Aware of this fact, FATF recommends that banking privacy laws should not inhibit the implementation of the Forty Recommendations.

### **III- INTERNATIONAL STANDARD SETTER**

That criminals need to hide the illicit source of their proceeds is no news. They are constantly developing new techniques to hide ill-gained money, increasing the complexity of their activities with sophisticated financial services. The globalization of such services has become an international problem.

Due to the magnitude of the problems connected to money laundering, counter-laundering measures have been developed both nationally and internationally.

In the national level, initiatives such as the creation of laws that criminalize money laundering and governmental agencies with specialized attributions against money laundering (see Section IV and V).

In the international level, we may quote the signature of agreements such as the Vienna

Convention and the Palermo Convention and the creation of intergovernmental organizations specialized in the money laundering prevention, such as FATF, Egmont Group of FIUs, the BIS and the IMF.

## **A - The United Nations**

The United Nations was founded in 1945; there are currently 191 member states of the UN from throughout the world. It was the first international organization to undertake significant action to fight money laundering on a truly world-wide basis.

Also, the UN has the ability to adopt international treaties or conventions that have the effect of law in a country once that country has signed, ratified and implemented the convention, depending upon the country's constitution and legal structure. In certain cases, the UN Security Council has the authority to bind all member countries through a Security Council Resolution, regardless of other action on the part of an individual country.

UN actively operates a program to fight money laundering; the Global Programme Against Money Laundering (GPML), which is headquartered in Vienna, Austria, is part of the UN Office of Drugs and Crime. (SCHOTT, 2006)

### **A.1 – The Vienna Convention**

In 1988, the UN adopted the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, in Austria. This Convention became worldly known as Vienna Convention.

The signatories of the Vienna Convention have committed to declare money laundering a crime in their statutory laws. For that reason, the Vienna Convention is considered a landmark in the prevention and combat of money laundering internationally.

The Vienna Convention is limited to drug trafficking offenses as predicate offenses and does not address the preventive aspects of money laundering. The convention came into force on November 11, 1990 (SCHOTT, 2006).

## **A.2 – The Palermo Convention**

The UN adopted The International Convention Against Transnational Organized Crime (2000) (Palermo convention) in order to expand the effort to fight international organized crime. This convention contains a broad range of provisions to fight organized crime and commits countries that ratify this convention to implement its provision through passage of domestic laws.

The Palermo Convention is important because its AML provisions adopt the same approach previously adopted by the Financial Action Task Force on Money Laundering (FATF) in its Forty Recommendations on Money Laundering.

## **A.3 – Global Programme against money laundering**

The UN Global Programme against Money Laundering (GPML) is within the UN Office of Drugs and Crime (ODC). The GPML is a research and assistance project with the goal of increasing the effectiveness of international action against money laundering by offering technical expertise, training and advice to member countries upon request. It focuses its efforts on the following areas: (SCHOTT, 2006).

- Raise the awareness level among key persons in UN member states;
- Help create legal frameworks with the support of model legislation for both common and civil law countries;
- Develop institutional capacity, in particular with the creation of financial intelligence units;
- Provide training for legal, judicial, law enforcement regulators and the private financial sectors;
- Promote a regional approach to address problems; develop and maintain strategic relationships with other organizations; and
- Maintain a database of information and undertake analysis of relevant information.

## **B - The Financial Action Task Force on Money Laundering- FATF**

Formed in 1989 by the Group-7 (Canada, France, Germany, Italy, Japan, United Kingdom, and United States). The FATF is an intergovernmental body whose purpose is to develop and promote an international response to combat Money laundering.

FATF is a policy-making body, which brings together legal, financial and law enforcement experts to achieve national legislation and regulatory AML and CFT reforms.

Currently, its membership consists of 31 countries (South Africa, Germany, Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Spain, United States, France, Greece, Hong Kong, Ireland, Iceland, Italy, Japan, New Zealand, Portugal, Russian Federation, Singapore, Sweden, Switzerland, Turkey) and territories and two regional organizations.

FATF three primary functions with regard to money laundering are:

1. Monitoring members' progress in implementing anti-money laundering measures by two processes: self assessments and mutual evaluations
2. Reviewing and reporting on laundering trends, techniques and counter-measures; and
3. Promoting the adoption and implementation of FATF anti-money laundering standards globally.

In 1990, FATF issued the Forty Recommendations, recognized worldwide as the money laundering combat standard.

### **B.1 - The Forty Recommendations**

FATF has adopted a set of 40 recommendations, The Forty Recommendations on Money Laundering, which constitute a comprehensive framework for AML and are designed for universal application by countries throughout the world. The Forty Recommendations set out principles for action; they permit a country flexibility in implementing the principles according to the country's own particular circumstances and constitutional requirements. Although not binding as law upon a country, The Forty Recommendations have been widely endorsed by the international community and relevant organizations as the international standard for AML (SCHOTT, 2006).

FATF members have entered into a political commitment to combat money laundering activities and have started to have their performance monitored and publicly assessed by the organization through intermittent reports.

In addition, FATF has stimulated the adoption of the 40 Recommendations by the non-member countries.

## **B.2 - FATF Recommendations to Financial Systems**

FATF's Forty Recommendations set forth minimum guidance for the constitution of Anti-Money Laundering National Systems. Among the measures suggested by FATF some regard specifically measures to be adopted within the scope of financial institutions. Some of them are describe below:

According to FATF, financial institutions should undertake Customer Due Diligence measures, which includes identifying and verifying the identity of its clients whenever: (a) a relationship is established with the client; (b) interim transactions in excess of USD/EUF 15.000 and suspicion of money laundering or terrorism funding (c) the financial institution has doubts about the veracity or adequacy of the information previously obtained regarding the client.

If the financial institution suspects that the transactions are related to money laundering or terrorism funding upon establishing a relationship with a client, then the institution should try to identify and verify the identities both of the client and the beneficiary, and notify the suspicious transaction to the financial intelligence unit (HIIJAr, 2004).

Financial institutions should develop programs against money laundering and terrorism funding. Such programs should include: (1) development of internal policies, procedures and controls, including the establishment of a compliance framework (Compliance Management Arrangement) and adequate investigation procedures to warrant high standards upon engaging an employee, (2) an employee training program (3) an audit procedure to test the system. For financial institutions, the compliance framework should include the appointment of a compliance officer in management level (FATF, Recommendation 15).

## **B. 3 – Monitoring Members' progress**

The monitoring the progress of members to comply with the requirements of The Forty Recommendations is facilitated by a two stage process: self assessments and mutual evaluations. In the self-assessment stage, each member responds to a standard questionnaire, on an annual basis, regarding its implementation of The Forty

Recommendations. In the mutual evaluation stage, each member is examined and assessed by experts from other member countries.

In the event that a country is unwilling to take appropriate steps to achieve compliance with The Forty Recommendations, FATF recommends that all financial institutions give special attention to business relations and transactions with persons, including companies and financial institutions, from such non-compliant countries and, where appropriate, report questionable transactions. Ultimately, if a member country does not take steps to achieve compliance, membership in the organization can be suspended (SCHOTT, 2006).

#### **B.4 – Non cooperative Countries/Territories**

The countries are assessed and classified by GAFI regarding their commitment to the prevention and combat against money laundering.

Several criteria were developed for such assessment based on the compliance with the Forty Recommendations. There are 25 items that address the existence of flaws in financial regulations, hindrances originated from other regulatory measures, obstacles to international cooperation, and insufficient funds to prevent and detect money laundering activities.

According to GAFI, the assertion of the fragilities listed in those 25 items indicates that the country does not prevent or combat money laundering adequately and, therefore, is considered “non-cooperative” and included in a so-called “black list”.

The most recent update of such list was made in June 2003 and nine countries were considered as “non-cooperative”: Egypt, Philippines, Guatemala, Cook Island, Indonesia, Myanmar, Nauru, Niger and Ukraine.

#### **C – Bank for International Settlements (BIS)**

The Bank for International Settlements (BIS) is the oldest international financial institution in the world, established in 1930 by the Conference of The Hague to settle the reparation payments imposed upon Germany after World War I. It is a publicly-held company which 33 shareholders include almost all European Central Banks, in addition to the Central



Banks of Australia, Canada, Japan and South Africa.

The main objectives of the BIS are to promote cooperation among central banks and conditions for the performance of international financial operations. And act as a manager or agent with regard to international financial adjustments attributed to it under agreement.

The BIS functions as the Secretariat for the Basel Committee on Banking Supervision (BCBS) that was formed in 1974 by the central bank governors of the Group of 10 countries.

- **Basel Committee on Banking Supervision (BCBS)**

The members of BCBS are: Belgium, Canada, Spain, United States, France, Germany, Holland, Italy, Japan, Luxembourg, United Kingdom, Sweden, Switzerland (BIS, 2004).

The committee has no formal international supervisory authority of force of law. Rather, it formulates broad supervisory standards and guidelines and recommends statements of best practices on a wide range of bank supervisory issues. These standards and guidelines are adopted with the expectation that the appropriate authorities within each country will take all necessary steps to implement them through detailed measures, statutory, regulatory or otherwise, that best suit that country's national system. Three of the Basel Committee's supervisory standards and guidelines concern money laundering issues. Namely:

**a – Statement of Principles on Money Laundering**

In 1998, the Basel Committee issued its Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering (Statement on Prevention). This was the first document produced by the BCBS regarding money laundering.

The Statement on Prevention outlines basic policies and procedures that bank managements should ensure are in place within their institutions to assist in suppressing money laundering through the banking system, both domestically and internationally. The statement notes that banks can be used "unwittingly" as intermediaries by criminals. Thus, the committee considers the first and most important safeguard against money laundering to be "the integrity of banks own managements and their vigilant determination to prevent their intuitions from becoming associated with criminals or being used as a channel for money laundering.

There are essentially four principles contained in the Statement on Prevention: proper customer identification. High ethical standards and compliance with laws, Cooperation with law enforcement authorities; and Policies and procedures to adhere to statement.

### **b – Core Principles of Banking**

In 1997, the Basel Committee issued its Core Principles for Effective Banking Supervision (Core Principles), which provides a comprehensive blueprint for an effective bank supervisory system and covers a wide range of topics. Of the total 25 Core Principles, one of them, Core Principle 15, deals with money laundering because tell about the necessity about prevent that criminals use the bank ; it provides:

*Banking supervisors must determine that banks have adequate policies, practices and procedures in place, including strict “know you customer” rules, that promote high ethical and professional standards in the financial sector and prevent the bank from being used; intentionally or unintentionally, by criminal elements.*

These “know your client” or “KYC” policies and procedures are a crucial part of an effective AML/CFT institutional framework for every country.

### **c – Customer Due Diligence**

In October of 2001, the Basel Committee issued an extensive paper on KYC principles entitled, Customer due diligence for banks. This paper was issued in response to noted deficiencies in KYC procedures on a world-wide basis. These KYC standards build upon and provide more specific information on the Statement on Prevention and Core Principle 15.

According to the Basel Committee, sound “know-your-customer” procedures “[...] help to protect banks’ reputation and the integrity of banking systems by reducing the likelihood of banks becoming a vehicle for or a victim of financial crime and suffering consequential reputational damage” (BIS 2001, a,p.3). Also, the Basel Committee intends that the standards of Customer Due Diligence” be consistent with the FATF recommendations.

## **D – International Monetary Fund and World Bank**

In 2000, the IMF and the World Bank produced a report reinforcing their roles in the combat against financial crimes and “money laundering” and the protection of the international financial system (IMF, World Bank, 2001).

This report affirms that the breadth and cross-cutting nature of the global agenda to curb money laundering calls for a cooperative approach among many different international institutions. The Bank and Fund’s work in financial sector areas have complemented anti-money laundering efforts, while remaining within their respective mandates and areas of expertise.

The Fund and the Bank can increase their participation in the global fight against financial abuse and money laundering by (i) publicizing both the need to put in place the necessary economic, financial, and legal systems designed to protect against money laundering and the role that the Bank and the Fund are playing in helping meet this need; (ii) recognizing the FATF 40 as a standard for anti-money laundering useful for Fund/Bank operational work; (iii) intensifying the focus on anti-money laundering elements in relevant supervisory principles, (iv) working more closely with the major international anti-money laundering groups, and (v) increasing the provision of technical assistance in this area.

The main contribution of the IMF and the World Bank in the fight against money laundering is their work to promote stronger legal, financial and economic systems and fight against the improper use of the financial system (IMF; World Bank, 2001).

The World Bank has cooperated with worldwide efforts to fight against the improper use of the financial system and money laundering by helping countries to identify and deal with their institutional and structural deficiencies that may contribute for the absence of market integrity and the improper use of the financial system.

Since 1997 with the Anti-corruption Program, the World Bank has supported more than 600 activities in circa 90 countries, whether funding them or not, with the purpose of stimulating the necessary institutional reforms to reduce corruption and strengthen governance.

The World Bank has focused its efforts on small developing economies, which are more susceptible to the improper use of their financial systems, including money laundering, and have to have support to implement their institutional and political bases and the necessary funds to reduce the risks originated from such improper use of the financial system.

The financial system assessment by the IMF and the World Bank, known as Financial Sector Assessment Program – FSAP, has the purpose of identifying the financial vulnerabilities and development requirements of the countries under evaluation. FSAP reduces the opportunities for financial offenses upon improving the financial supervision and the prerequisites for an effective supervision and regulation.

As regards money laundering, the recommendations that have resulted from FSAP works include the introduction of statutory laws that prevent bank accounts (non-identified), changes in the banking privacy laws, improvements in the “Know Your Client” procedures within the context of the Basel Principle 15; and implementation of new laws against money laundering.

## **E – The Egmont Group of Financial Intelligence Units**

As part of the global concern and pushed by international initiatives such as the GAF 40 Recommendations, as of 1990 several countries created governmental agencies responsible for fighting money laundering known as FIU - Financial Intelligence Unit.

In 1995, The Egmont Group was established with the purpose of promoting information exchange among the FIUs of different countries and supporting anti-money laundering national programs.

COAF – Council for Financial Activities Control is the Brazilian FIU and has been a member of the Egmont Group since 1999. (See Part V).

## **IV – ANTI-MONEY LAUNDERING EFFORTS IN THE U.S. BANKING SYSTEM**

A pioneer in many anti-money laundering activities, the U.S. experience was used to guide the establishment of other anti-money laundering national systems. Many of the problems faced by the U.S. anti-money laundering systems have been, or still are being faced by the systems of other countries.

### **A) Al Capone (1970)**

President Herbert Hoover was frustrated with the inability of the Chicago Police or the new FBI to file a suit against “Big AL”. Everybody knew he was a murderer, bootlegger and blackmailer, but they could not prove it. After all, he did not have to commit any crime because he hired others to do it for him.

He had stayed away from the criminal conduct that led him to gather an enormous wealth. However, he did not stay away from the proceeds of the crime, after all, that was the reason why he was in the business.

As we know from the television and the movies, The Untouchables were U.S. enforcement officials against crime, notwithstanding the great Al Capone did not go to prison for the crimes he organized but because he did not pay the taxes on his proceeds. The failure of not paying taxes on illicit revenue ended his career.

From that time on, the criminal gangs learned from experience. They hired their own accountants to create methods that might protect them from Al Capone’s destiny.

### **B) Meyer Lansky**

According to Stanley, his fame is due to lending money to Bugsy Siegel to create gambling facilities in Las Vegas. One of his purposes was to allow the opportunity to launder money of the criminal gangs. Casinos are still an excellent place to disguise illicit proceeds.

Lansky also opened a business in Cuba, which became the first offshore center. His success resulted in significant frustration to the federal crime repression. He never spent more than one week in jail and died of old age in Miami Beach in 1970.

This story and uncountable others demonstrate that the creativity of criminals and the importance of the criminal financial features. For each governmental act we may expect criminals to act swiftly and creatively.

### **C) Bank Secrecy Act (1970)**

The United States legalized the alcohol in 1933 and the organized crime turned to drugs. In the end of the 1960s', new criminal organizations called the attention of the public to the financial features of the drug business.

The U.S. was flooded by the currency originated from the illegality. Nobody buys drugs with check or credit card because both leave trails that may be followed by crime enforcement. Payment in cash has become the core of the national effort for crime enforcement and, in 1970, the Bank Secrecy Act was enacted (MORRIS, 2000).

The Bank Secrecy Act has a very weird name because, instead of requiring banking confidentiality, it established the liability for banks and other financial institutions to inform the federal government about all the transactions in cash over \$10.000 in the Currency Transaction Report (CTR).

Such reports have been the pillars of the U.S. programs of investigation and enforcement of the organized crime.

The purpose was to allow tracking money laundering activities since, as in many areas of the country people could bring suitcases filled with money and deposit them in accounts, unless a crime enforcement officer witnessed such transaction, no records of it were kept.

The North-American banks challenged the constitutionality of the BSA and such issue was decided only in 1974 when the U.S. Supreme Court decided that the notice requirements in the BSA did not infringe the provisions of the American Constitution. However, despite being repeatedly affirmed, some States still question it.

Even after the constitutionality of the BSA was affirmed by the U.S. Supreme Court, there

was a period of massive disobedience against the BSA report requirements by the banks (POWIS, 1993).

The disobedience was enhanced by the lack of concern and interest of the departments that controlled the banks with regard to BSA compliance issues. The matter was not a priority to such departments and, in practice, the banks were not compelled to compliance.

Consequently, in 1979 the Federal Reserve System carried out a study about currency circulation in the United States (WOLNEY, 2005). The analysis showed a significant growth development in Florida's monetary surplus originated from the illicit drug business.

The Treasury convinced the Justice Department to take part in a multi-agency task force to investigate the individuals that were responsible for such transactions. The task force, know as Operation Greenback, was formed in Miami in 1980.

#### **D) Operation Greenback – Miami ( 1980)**

Its mission was to investigate unusual deposits in cash in the south of Florida to determine whether the BSA was being infringed and whether there were connections between the money and drug trafficking organizations.

POWIS (1992) states that, until that time, the banks had been elusive in complying with BSA notice requirements. Federal bank inspectors did not verify the compliance with the law in that area.

Operation Greenback directed educational programs to bankers about BSA compliance. The agents entered in the banks to investigate and guide the management about the notice requirements. All the members of the bank community in Miami were formally informed that significant amounts of currency brought to the banks in petty cash might be originated from drug dealing.

The banks were notified of the possibility of being criminally prosecuted, in addition to the negative publicity. They started to comply with BSA notice requirements. They started to refuse large deposits in cash unrelated to the legitimate retail business.

## **The Financial Crimes Enforcement Network was established - 1991**

Hundreds and millions of notices created the necessity to institute an organization to analyze them on behalf of crime enforcement. Accordingly, the FCEN was established in 1991, and its most important responsibility is to analyze the notices.

The BSA tried to compel banks and other financial institutions to communicate to the U.S. Internal Revenue Service all the transactions in excess of \$1,000 in cash made by clients. Two years later, such limit was raised to \$10,000 and the notice requirement was extended to several types of companies, including commercial and non-banking establishments (HIIJAR, 2004).

### **E) Operation Smurfing (1982 a 1985 – Miami)**

In the early 1980s' launders noticed it would no longer be possible to move huge amounts of money in cash through banks without risking an investigation. The era of the large deposits in cash was coming to an end in the United States (POWIS, 1992).

So, launders found a new method to launder money. They developed between 1981 and 1982 in the south of Florida a transaction structure of several deposits in cash in amounts under \$10,000 that did not require a CTR to be sent.

This form of money laundering was later known as Smurfing, a term that is employed even nowadays. It refers to the cartoon lead by uncountable small blue men (cherubs).

There were at least 20 large smurfing organizations acting in Miami in 1983 and 1984, and hundreds of smurfing groups acting in other areas of the country. The reason for this success was the lack of any law that explicitly forbade the transaction structure to evade the BSA notice requirements.

The American banks acknowledged that such transaction were related to drug-money laundering. In many cases, the banks notified the law enforcement agencies of the occurrence of suspicious transactions involving the acquisition of cashier's checks and banker's orders in cash.



The surveillance efforts against the smurfing organizations increased and bank procedures raised the cost of smurfing activities so that, in 1985, the banking smurfing activities started to decrease. Nonetheless, smurfing moved from the banks to the post office agencies, convenience stores, travel agencies and other establishments where travelers' checks and banker's orders are sold.

In 1984, the BSA was amended to dramatically increase the penalties for non-compliance with the currency notice requirements. Several offenses that were misdemeanors became felonies with maximum penalty of up to five years.

ROBINSON (1995) states that, although 43 banks received a penalty of circa \$20 million in the U.S. for non-compliance with the notice requirements of currency operations, until 1985 notice requirements of currency operations continued to be disregarded. In 1985 the American government decided to investigate more than 60 banks in a short term, which resulted in several penalties and severe losses to the image of such institutions.

Among the investigations of the American government, we should highlight Bank of Boston that was accused of severe violations of the Bank Secrecy Act.

#### **F) Bank of Boston – 1985**

It was the direct result reached by a Public Prosecutor of Massachusetts in 1985 that, to end with an organized crime gang, discovered large transactions in cash made by the Bank of Boston for the group that were not notified. Offended by such indifference, he obtained a search warrant for the officials of that illustrious bank and called his friends of the media to bring their TV cameras and witness their arrest.

The Bank of Boston ended by having its image severely damaged and was fined in \$500,000. Seeing the officials leaving their offices at the Bank of Boston handcuffed stimulated new repressive measures around the country.

CTR notices increased twofold in the following years and that Public Prosecutor was later elected Massachusetts Governor twice.

### **G) Money Laundering Law – 1986**

In 1986 the law that established money laundering as a federal crime was enacted. The crime enforcement agencies were granted authority to seize criminal property and file civil lawsuits to confiscate them. If a person was detained for a drug felony, then such person would have the burden of the proof to prove that such property was not the result of criminal activities, otherwise it would be seized by the government.

### **H) Operation Polar Cap (1993 – Los Angeles)**

In 1989, through a surveillance operation called “Polar Cap” one of the major money laundering operations was uncovered in the United States (POWIS, 1992). It is believed that this scheme may have laundered \$1.2 billion in currency of the Colombian cocaine cartel in a over two years.

This scheme is different from the other laundering schemes discovered so far because it used real companies and businesses to make drug money appear as the profit of legal business activities.

Such scheme allowed drug money from Nova York, Houston and Los Angeles to be laundered through several gold and jewelry stores and go straight to the Cartel accounts in Panama and Montevideo.

The Operation Polar Cap called the attention to some flaws in the U.S. money laundering prevention system that took two important steps:

#### **a) FinCEN establishment**

In 1990, partly because of the U.S. Customs failure in identifying the currency movements uncovered by the Operation Polar Cap, the U.S. Treasury moved the Customs’ bank secrecy law database to an independent agency known as Financial Crime Enforcement Network (FinCEN).

#### **b) Suspicious Activity Report (SAR)**

The Department of the Treasury proposed a law that required, besides the notice of operations in cash, the notice of all the operations that were considered suspicious.

Such proposal was based on the Operation Polar Cap. During such operation it was discovered that, despite filing the CTRs for deposits in excess of \$10,000 as required by the BSA, only one out of ten banks (the Wells Fargo) informed the IRS about such activity as suspicious of making deposits of US\$ 10 million in cash in the accounts of five jewelry stores in Los Angeles.

It was quite clear that so far there was no legal provision for such type of notice, and the philosophy of most of the banks of the jewelry store center in Los Angeles was “see nothing, hear nothing” (POWIS,1992).

The proposal was approved and amendments to the BSA set forth the mandatory filing of a report called Suspicious Activity Report (SAR), whenever a bank employee suspects someone is laundering money or committing some offense (HIIJAR, 2004).

### **Money Service Companies**

Insofar as the banks have become more efficient in developing mandatory programs to identify money laundering, the criminal organizations have focused their attention on financial institutions that were not connected to banks, such as: remittance services, travelers' checks issuers, casinos, foreign exchange services, etc.

Such companies have been the core of investigative and regulatory attention in the latter years. The rules soon required the federal register of such organizations, as well as a filing order as the banks are supposed to do.

### **I) Annunzio-Wylie Law – 1992**

This law is famous for establishing what was known as the “death penalty” since it provides that in the event a bank is convicted for money laundering, the appropriate federal bank supervisor shall start a procedure to cancel its license or revoke its insurance depending on the main bank supervisor (HIIJAR, 2004).

### **J) Prevention of Terrorism -1996**

In 1996, the Prevention of Terrorism Act added terrorist crimes as acts related to money laundering violations. Criminal penalties include imprisonment up to 20 years and fines of

up to \$500 thousand or twofold the amount of the securities involved, whichever is the highest. Besides criminal penalties, offenders may face civil penalties up to the value of the property, funds or monetary interest involved in the transactions.

The techniques used to launder money are essentially the same as those used to conceal the sources, of, and uses for, terrorist financing. Funds used to support terrorism may originate from legitimate sources, criminal activities, or both. Nonetheless, disguising the source of terrorist financing, regardless of whether the source is of legitimate or illicit origin, is important. If the source can be concealed, it remains available for future terrorist financing activities. Similarly, it is important for terrorists to conceal the use of the funds so that the financing activity goes undetected. (SCHOTT, 2006).

### **K) USA Patriot Act (2002)**

Some months after the terrorist attacks of September 11, 2001, Congress legislates to write Public Law 107-56, The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, also known as the USA Patriot Act or just the "Patriot Act".

Through the USA Patriot Act, the United States allowed financial institutions to share with one another information on individuals, entities, organizations and countries regarding possible terrorist or money laundering activities (Certain provisions of the USA PATRIOT Act are designed to "sunset" or expire on December, 31, 2005)

The conclusion of the Justice Department's report sums up the role of this legislation: The USA PATRIOT Act has played a vital role in the Department of Justice's efforts to preserve America's system of ordered liberty for future generations. Since the Act was passed over two years ago, the Department of Justice has deployed its new authorities urgently in an effort to incapacitate terrorists before they can launch another attack, and, as demonstrated by the examples contained in this report, the Act's successes already are evident. The USA PATRIOT Act has facilitated the prosecution of terrorists and their supports across the nation. It has authorized law enforcement and intelligence officers to share information and coordinate with one another. It has provided intelligence and law enforcement officials with the tools they need to fight terrorism in a digital age. It has

assisted in curtailing the flow of funds to terrorists and terrorist organizations. And it has helped the Department to combat serious criminal conduct, such as child abduction and child pornography. For all of these reasons, the USA PATRIOT Act has made Americans safer over the course of the past two-and-half years, and the department of Justice fully expects that the Act will continue to enhance the security of the American people in the future.

### **L) Ten Commandments**

The experience in the United States and other countries has shown that there are some basic rules that may help governments in developing effective anti-money laundering programs, listed as follows: (STANLEY)

- 1 – Set forth money laundering as a crime
- 2 – Establish liabilities on financial institutions and other potential money laundering facilitators.
- 3 – Develop governmental knowledge (expertise)
- 4 – Create a Financial Information Unit
- 5 – Analyze governmental approaches distributed by categories
- 6 – Develop systems that warrant immediate and accurate information exchange
- 7 – Create laws and procedures that allow freezing, seizing and confiscating property with criminal origin
- 8 – Recognize that an ounce (milligram) of prevention is worth a pound (kilo) of repression
- 9 – Be willing to learn from others' experiences
- 10 – Adapt, adjust and examine

Stanley stresses that such commandments should be in consonance with the FATF recommendations to establish an environment that may be successful. He believes that the best lessons will come only from experience, and close communication among all the involved national parties and a sincere exchange of experiences among nations.

## **V – BRAZIL IN THE ANTI-MONEY LAUNDERING FIGHT**

In a context of strong international pressure for measures related to drug trafficking fight, the President of the Republic<sup>3</sup> Collor de Mello and the Brazilian Congress<sup>4</sup> approved the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances also known as the Vienna Convention<sup>5</sup>.

### **A) 1991 – The Brazilian President enacted the Vienna Convention**

In 1991, the Brazilian legal framework related to money laundering prevention started to be built with the enactment of the Vienna Convention. Brazil commit therein to criminalize money laundering originated from drug trafficking and to create the Brazilian FIU.

### **B) 1998 – Law 9.613 of 03.03.1998 and COAF Establishment**

In 1998, the main Brazilian anti-money laundering law was enacted. In brief, such law established a set of preventive rules and obligations to be followed by specific economic sectors against money laundering, and also established COAF – Council for Financial Activities Control, the Brazilian Financial Intelligence Unit – FIU.

The legal definition of the crime of money laundering is set forth in section1:

***Article 1** of the MLA Money laundering as follows:*

**Section 1-** *To conceal or disguise the true nature, origin, location, disposition, movement or ownership of assets, rights and valuables that result directly or indirectly from the following crimes:*

*I- illicit trafficking in narcotic substances or similar drugs;*

*II- terrorism and financing of terrorism;*

*III- smuggling or trafficking in weapons, munitions or materials used for their production;*

*IV- extortion through kidnapping;*

*V- acts against the Public Administration, including direct or indirect demands of benefits on behalf of oneself or others, as a condition or price for the performance or the omission of any administrative act;*

*VI- against the Brazilian financial system;*

*VII- acts committed by a criminal organization;*

*VII- practiced by a private agent against a foreign public administration.*

---

<sup>3</sup> Decree 154 of June 26, 1999.

<sup>4</sup> Legislative Decree 162 of June 14, 1991.

<sup>5</sup> Convention approved by the United Nations.

This is a second-generation legislation because it did not limit to establish the crime of illicit trafficking of narcotic substances as the only money laundering precedent (first generation), but set forth other crimes that it reputed especially severe.

The United States, Belgium, France, Switzerland, Mexico and Italy have adopted third-generation legislations that provide that any criminal conduct that may generate funds shall be considered as a precedent crime for money laundering purposes.

The regulation of the Law is incumbent on the existing supervision and surveillance agencies in their respective areas of jurisdiction as follows:

|  |  |
|--|--|
| Brazilian Central Bank – BACEN   | Financial Institutions                               |
|  | Buy and sell of foreign currency and gold            |
|  | Consortium administrators                            |
|  | Leasing companies                                    |
| <i>Comissão de Valores Mobiliários</i> – CVM (Brazilian equivalent to SEC) | Stock and Securities Exchanges                       |
|  | Futures and Commodities Exchange                     |
| Complementary Social Security Superintendence – SPC                        | Privately-held Social Security Entities              |
| Superintendence of Private Insurance – SUSEP                               | Insurance, capitalization and private pension plans  |
| Council for Financial Activities Control – COAF                            | Commodities Exchange                                 |
|  | Credit Cards   |
|  | Wire or magnetic means to transfer funds             |
|  | Factoring companies                                  |
|  | Lotteries  |
|  | Real Estate promotion or buy and sell of real estate |
|  | Bingos   |
|  | Jewelry, precious stone and precious metal business  |
|  | Art objects and antiques                             |

### **- Circular 2852/98 of BACEN (Brazilian Central Bank)**

The provisions of Law 9.613/98 were regulated by the Brazilian Central Bank upon the publication of the Circular 2852/98 that set forth the following obligations to financial institutions:

- maintain an updated clients' reference file;
- maintain internal controls and records that allow to verify the compatibility among the related fund moves, economic activities and financial capacity;
- maintain a record of operations involving domestic or foreign currency, bonds and securities, metals or any other asset that may be converted into money;
- notify BACEN about transactions with amount equivalent or in excess of R\$ 10,000.00 (ten thousand Reals) without the individuals acknowledging it;
- financial institutions and entities shall implement internal control procedures to detect operations that may characterize evidence of the crimes provided in the abovementioned Law 9.613/98 by promoting adequate training to their employees.
- financial institutions shall indicate a director or manager to the Brazilian Central Bank to be incumbent on the implementation and follow-up of the compliance with the measures set forth in the Circular.

### **INTERNAL CONTROLS - Resolution 2554/98 of the Brazilian Central Bank**

The Brazilian Central Bank published the Resolution 2554/98 as a consequence of the determination for financial institutions to develop and implement internal control procedures to detect operations that may characterize evidence of money laundering.

Resolution 2.554/98 set forth the implementation of internal controls directed to their financial information, operational and management systems, and also to the systematic follow-up of the compliance with applicable laws and regulations. The resolution established that internal audit should be part of the internal control systems as well.

Such BACEN Resolution is in consonance with the Fundamental Principles for the Efficient Supervision of Banking Activities that recommend in Principle 14 that "Bank supervisors should determine the banks to keep internal controls appropriate to the nature and scale of their business ..." (WOLNEY, 2005).

Wolney states that internal and external audit may have a significant role in the prevention



and fight against money laundering through the assessment of the preventive procedures adopted by the financial institutions. Contingent deficiencies, upon being identified and corrected, allow the institution to mitigate reputational and legal risks.

The importance of audit participation in money laundering prevention is stressed even in articles of the Basel Committee.

The Committee states that the internal controls of financial institutions should be complemented by an internal audit that may assess such controls independently, and external audit should gather conditions to inform about the effectiveness of such process. (WOLNEY, 2005).

### **C) 1999 – COAF becomes a member of the Egmont Group**

In 1999, COAF (Council for Financial Activities Control) becomes a member of the Egmont Group (see Section III).

### **D) 2000 – Brazil was accepted as an FATF member**

In 2000, Brazil was accepted as an actual FATF member, after its anti-money laundering system was analyzed in FATF's plenary meeting.

The report indicated that, out of the FATF's 41 Recommendations at that time, the country complied with 39 "fully" and 2 "partially", and regarding that feature it was ahead several other countries such as Canada, England, Japan and the United States.<sup>6</sup>

### **E) 2000 – Drug Trafficking CPI (Legislative Investigation Committee)**

The Drug Trafficking Legislative Investigation Committee ended in 2000 verified the use of several natural and legal entities in suspicious operations aimed at laundering illicit funds in Brazil.

According to the CPI report, increased flows of money "without origin" were being channeled to the domestic system via current accounts opened in the names of front companies, some with alleged headquarters abroad that were managed by puppets thus allowing their true owners to remain anonymous. (TORGAN apud WOLNEY, 2005).

---

<sup>6</sup> See Romantini's paper (2003) about the efficiency of the Brazilian anti-money laundering system compared to the international perception.

According to the congresspersons “it is evident the complicity of certain Banks in accepting irregular current accounts or financial investments based on suspicious funds that are indirectly used as an important means to move and launder money originated from the organized crime, including drug trafficking.”

And the report continues “Although Law 9.613/98 had already established the crime of money laundering and set forth stricter banking rules, banking privacy still has to be mitigated, thus extending the roster of legitimates that should give rise to its breach...”.

The report stresses that “The Brazil of the turn of the century is a country menaced by the organized crime. And we should keep our eyes wide open upon judging drug dealers, money launders and the financial institutions in agreement with them. Bankers [...] can no longer close their eyes and open their safes to receive dirty money”.

#### **F) 2001 – Complementary Law 105 (Banking Privacy Law)**

Complementary Law 105 of 2001 that provides about Banking Privacy revoked Law 4.595/64 that provided about the confidentiality of financial institutions, and introduced significant amendments.

According to Romantini, at the time of the first FATF assessment in Brazil, previous to Brazil's admission as a FATF member, Brazilian banking privacy laws were considered as hindrances to the effectiveness of the anti-money laundering system.

Upon acknowledging the problem, the Brazilian Government, through Complementary Law 105 of 01/10/2001, amended the legislation related to the privacy of banking information, allowing COAF to receive the information contained in notices of suspicious operations delivered by the banks to the Brazilian Central Bank in full.

In 2003 COAF was granted the authority to request from Public Agencies bank and financial reference file information regarding persons involved in suspicious activities through Law 9.613/98 as amended by Law 10.701/03.

## **G) 2002 – Committee – Administrative Rule 98**

The Administrative Rule CJF 98 of September 4, 2002 established a “Committee appointed to investigate issues related to money laundering crimes”.

The Committee was appointed as the result of a survey “A critical analysis of the Law of Money Laundering Crimes” carried out by the Center for Legal Studies of the Federal Courts Council.

This survey was aimed at investigating the applicability of Law 9613/98 with the different degrees of public authority and identify contingent amendments that might be necessary to its applicability and to the effective judgment of the crimes it established.

The results of the survey indicated that the percentage of money laundering crimes that reach the federal courts is meaningless. This Committee is composed of Federal Judges, members of the Federal Attorney-General’s Office, Federal Police, COAF, Febraban (Brazilian Federation of Banks) and auditors of the Internal Revenue Service.

The Committee suggested the following measures to improve the control on money laundering crimes (Wolney, 2005):

- National reference file of current account holders: create a national reference file of current account holders to speed the procedures of request of breach of confidentiality.
- delivery of documentation by the banks: standardize banking network procedures with regard to the manner of addressing Judiciary requests, and extend the filing term of documents and operation records (the current is five years).
- Regulation and surveillance of the activities of factorings and trust companies & services providers – be stricter: propose to the Brazilian Central Bank the issuance of instructions regarding the functioning of trust companies and services providers.
- requests originated from the Judiciary to the Brazilian Central Bank: upon tracking requests to the Brazilian Central Bank, request, in first place, bank statements so that relevant entries may be selected to speed the judicial procedure.
- Financial and legal consultants: propose that lawyers, notaries, accountants and auditors acting as financial intermediaries or financial and legal consultants that create operations, be liable to communicate suspicious operations.

Legislation 1: analyze the possibility of including among the persons subject to Law 9.613/98 the entities responsible for the register of corporate acts, value moving

companies, non-profit organizations and NGOs, external audit companies.

Legislation 2: include the crimes against tax law, crimes against the capital market and terrorism funding among the preceding crimes; impose high bail sums for money laundering crimes, conditioning the payment of such bail to the proof of lawful origin of the funds to be used.

#### **H) 2003 – ENCLA – National Strategy Anti- Money Laundering**

In December 2003, the main authorities responsible for the fight against money laundering in the Government, Judiciary and Attorney-General's Office convened for the first time to develop a joint strategy anti-money laundering called **A new National System of Prevention and Fight against Money Laundering**.

This anti-money laundering system is based on the principle of permanent articulation of the public bodies in all three levels of action: strategic, intelligence and operational.

In the **strategic** level, the Managing Department of Integrated Prevention and Fight against Money Laundering (GGI-LD) was created to be responsible for the definition of public policies and the macro objectives of the area. GGI-LD will be assisted by the Ministry of Justice.

In the **intelligence** area, the Council for Financial Activities Control – COAF established by Law 9.613/98 was maintained and advised to be more active in defining intelligent actions.

The **operations** of prevention and fight against money laundering are within the jurisdiction of the respective agencies and should be integrated, on a case-by-case basis, with the creation of specific task forces.

For 2004, ENCLA indicated five strategic objectives detailed in 34 targets with defined term and responsible:

**Objective 1** – Coordinate the strategic and operational action of Brazilian public agencies and agents in the fight against money laundering.

**Objective 2** – Improve the use of databases and public reference files in the fight against money laundering and the organized crime.

**Objective 3** – Objectively assess and increase the efficiency of the National System Anti-Money Laundering, Recovery of Assets and International Legal Cooperation.

**Objective 4** – Extend international cooperation to fight against criminal activities and recover assets illegally produced.

**Objective 5** – Develop a Brazilian anti-money laundering culture.

**Objective 6** – Prevent money laundering.

#### **I) 2004 – Managing Department of Integrated Prevention and Fight against Money Laundering (GGI-LD)**

GGI-LD is an ENCLA creation and will be assisted by the Department of Recovery of Assets and International Legal Cooperation of the Ministry of Justice. GGI-LD's objective is to be the final responsible for the definition of public policies and macro-objectives in the area of prevention and fight against money laundering in Brazil.

#### **J) INTERNATIONAL ACKNOWLEDGEMENT**

Brazil's situation in actions directed to preventing money laundering are acknowledged worldwide despite some deficiencies that still remain.

The Brazilian model presents an apparent paradox: on the one hand, there is external acknowledgement for the institutional progress of the country, above the average where other countries are concerned; on the other hand, the concrete results of the Brazilian system are practically inexistent. This conclusion that is very worrying is part of the master's degree paper presented by Gerson Luis Romantini at the Institute of Economy of Unicamp.

According to Romantini, between 1998, the year of enactment of the "Brazilian anti-money laundering law", and October 2002, 18,610 notices of suspicious operations were delivered to the Council for Financial Activities Control – COAF, an agency subject to the Ministry of Finance. In the same period, only 666 police investigations were started and 149 persons were charged. Until October 2002, however, nobody had been arrested and not even one cent of the approximately US\$ 17 billion annually laundered had been

recovered.

As regards, according to international surveys Brazil ranks 20th among the major money launders worldwide (JORNAL DA UNICAMP, 2004).

The items assessed by Romantini were:

- a. criminalization of money laundering originated from drug trafficking;
- b. criminalization of money laundering originated from other crimes;
- c. records of large transactions in cash;
- d. record maintenance;
- e. notice of suspicious transactions – optional;
- f. notice of suspicious transactions – mandatory;
- g. Financial Intelligence Unit;
- h. Identification and confiscation of assets;
- i. Agreements to share assets ;
- j. Cooperation with national investigative agencies;
- k. Cooperation with international investigative agencies;
- l. International currency transportation;
- m. Agreements of mutual assistance;
- n. Non-banking institutions;
- o. Mitigation of banking privacy;
- p. Offshore services preclusion; and
- q. The Vienna Convention.

On the other hand, the US. State Department reiterates such positive perception upon showing that the results achieved by Brazil places it among the nine countries that obtained top score, i.e., Brazil meets all the items assessed. The total number of countries assessed was 181 (ROMANTINI, 2004).

In addition to Brazil, the following countries received top score in the assessment: Australia, Colombia, Spain, France, Italy, Mexico, New Zealand and Norway.

In his paper, Romantini states that “Brazil is exemplar in establishing institutions to face that type of crime. The problem is that they do not work”. COAF is responsible for such deficiency.

COAF has the “disciplinary” attribution of applying administrative penalties, and receiving,

examining and identifying suspicious occurrences of illicit activities connected to money laundering. What happens is that the agency has sent to the Police or the Public Prosecutor an inexpressive number of suspicious cases according to the study (JORNAL DA UNICAMP, 2005).

In keeping with the author, that is caused mainly due to COAF's lack of infrastructure. Although it has many responsibilities, including being in contact and cooperating with FIUs of other countries, in February 2002 the Council had only 18 employees. "In addition, such staff is composed of employees assigned from other administrative units, which does not warrant the development of a functional body committed with the agency in the long term. It also poses problems of technical qualification and even of continuity of its activities", he explained.

Romantini's concern and the paradox he detected are reinforced by the data disclosed by the Department of Fight against Currency Exchange and Financial Offenses (Decif) of the Brazilian Central Bank. (WOLNEY, 2005)

These data show that COAF received about 14 thousand notices of suspicious operations from the Brazilian Central Bank, of which 566 were delivered to the Public Prosecutor for the inception of a procedure. (KLINKE, 2004, p.19) However, until the beginning of 2004 only one person had been rendered a final judgment. (STRECK, 2004 apud WOLNEY)

The table below shows the notices COAF received and which, upon being analyzed, were sent to several other agencies to continue the investigation:

| <b>YEAR</b>                                       | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b>  | <b>2007</b>  | <b>TOTAL</b> |
|---|-------------|-------------|-------------|--------------|--------------|--------------|
| Police Officers                                   | 122         | 203         | 326         | 424          | 560          | 1.635        |
| Attorney-General's Office                         | 167         | 408         | 322         | 458          | 652          | 2.007        |
| Governmental Agencies                             | 45          | 145         | 152         | 153          | 148          | 643          |
| Judiciary   | 62          | 107         | 113         | 195          | 198          | 675          |
| UIFs  | 66          | 74          | 74          | 104          | 70           | 388          |
| Foreign authority                                 | 9           | 1           | 11          | 1            | 0            | 22           |
| <b>TOTAL</b>                                      | <b>471</b>  | <b>938</b>  | <b>998</b>  | <b>1.335</b> | <b>1.628</b> | <b>5.370</b> |
| No. of persons involved in money laundering cases | 1.993       | 1.510       | 9.540       | 11.106       | ----         | 23.369       |

Source: 2003/2004/2006 Activity Report (COAF)

## VI – CONCLUSION

Crimes such as drug trafficking, corruption and extortion by kidnapping have in common the purpose of earning financial gains.

In general, the funds obtained through such activities are significantly high. However, to enjoy that money criminals have to conceal their origin and render it apparently legitimate. For that end, they resort to a series of operations that are known as money laundering.

Money laundering consists in a series of operations that have the purpose of incorporating in the economy the funds, property and services originated from or associated to illicit activities. Through laundering, dirty money becomes clean. Consequently, money laundering configures as the final stage of the criminal activity.

The process used to launder money is theoretically divided in three stages: placement, concealment and integration.

The criminal funds create an artificial and speculative market without any commitment to growth and development while they move through the economy. Moreover, they constitute a parallel power that feeds up crime, affronts the constituted powers and threatens the democratic order.

As it respects no boundaries, money laundering is a worldwide phenomenon that characterizes as a transnational crime. For that reason, in the last decades international concern with the prevention and fight against money laundering has increased.

International organizations such as GAFI – *Groupe d'Action Financière Internationale* have developed and promoted policies to fight against money laundering globally. These organizations also exchange information among its members.

The United States, a pioneer in several money laundering activities has more than twenty crime enforcement agencies in national level and eight different financial regulating services (MORRIS, 2000).

In Brazil, money laundering was set forth as a crime by Law 9.613/98, subsequently



amended by Law 10.467 of 06.11.2002 and Law 10.701 of 07.09.2003.

Such law described the crime, instituted liabilities to prevent the use of the Financial System for money laundering and created the Council for Financial Activities Control – COAF, an agency aimed at applying administrative penalties, and receiving, examining and identifying suspicious occurrences of illicit activities connected to money laundering.

The regulation of the Law and application of penalties is incumbent on the existing supervision and surveillance agencies – BACEN, CVM, SUSEP, SPC – in their respective jurisdictions, and for the economic sectors without a supervising/regulating agency, it is incumbent on the Council for Financial Activities Control – COAF.

The research allows to suggest two recommendations for the effective combat against money laundering in Brazil:

**1- The need to develop and implement an Internal Audit Program to assess the prevention and fight against money laundering in financial institutions (MIRIAM)**

Since an internal audit constitutes an independent assessment that assists Senior Management with the purpose of warranting that the objectives of the institution may be reached, and upon the presence of the risks associated with the non-compliance with Law 9613/98, the assessment of actions adopted by the company to prevent and combat against money laundering should be part of the internal audit tasks in financial institutions.

It is fundamental for Senior Management to count on the conclusions of internal audit regarding the assessment of the process of prevention and combat against money laundering to acknowledge whether there are internal controls – and whether they are sufficient and appropriate – to minimize the possibility that the non-compliance with legal provisions jeopardizes the results or the scope of the objectives of the institution.

Accordingly, it is fundamental that internal audit performs structured works that allow the presentation of conclusions and suggestions to Senior Management about the risks associated to the non-compliance with legal liabilities related to money laundering prevention and combat which, if materialized, may threaten scope of the objectives of the institution.

In addition to contributing to minimize legal and image risks connected to the money laundering prevention and combat, a consistent and grounded internal audit contributes to grant the institution, both internally and before the market, an image of untarnished company that preserves high ethical standards and is characterized by the compliance with the law.

## **2 – Make existing anti-money laundering agencies more efficient**

### **a) need to increase the number of employees**

COAF has the disciplinary attribution of applying administrative penalties, and receiving, examining and identifying suspicious occurrences of illicit activities connected to money laundering. The fact is that the agency had only 12 analysts according to the 2006 report.

The need to increase the number of employees making it compatible with the amount and responsibility of the work to be developed was recognized by the Union Audit Court (TCU) and the Mixed Legislative Investigation Committee for the Post Office.

### **b) speediness in the crime assessment procedure**

Make money laundering assessment procedures speedier since current criminal procedures take years to punish a criminal.

### **c) Constant training and information exchange**

Money laundering criminals constantly improve their activities and, therefore, it is fundamental for the persons that work with money laundering (judges, public prosecutors, police officers, BACEN agents and financial institution employees) to be trained and exchange information to be successful in their jobs.

### **d) punishment of criminals**

Learning from the American experience, the punishment of criminals, as well as involved financial institutions have had positive and significant results.

With regard to financial institutions, it should be stressed that penalties with high values and the publicity of the name of the institution that was even involuntarily involved in the money laundering crime may cause financial institutions to be committed in the fight against money launders.

## REFERENCES

**Anjos, Wolney Jose dos.** Assessment of internal and external audits regarding money laundering preventive procedures of commercial banks authorized to do Foreign Exchange operations. São Paulo 2005 Dissertation (Master Degree in Accounting Sciences). Department of Accounting and Actuary of the School of Economy, Administration and Accounting of the University of São Paulo.

**Baker, Raymond,** Capitalism's Achilles Heel, Dirty Money and How to Renew the Free-Market System, John Wiley & Sons, Inc., 2005.

**Barros, Marco Antonio de .** - Lavagem de dinheiro – implicações penais, processuais e administrativas. São Paulo: Oliveira Mendes, 1998, p.45

**Hijar, Tiago Hijjar.** Prevenção a lavagem de dinheiro no sistema bancário brasileiro cinco anos após a Lei 9.613/98. São Paulo 2004. Dissertação (mestrado em Administração) Departamento de Administração da Faculdade de Economia, Administração e Contabilidade da Universidade de São Paulo.

**Liley, Peter,** Dirty Dealing – The Untold Truth About Global Money Laundering, Kogan Page, London, 2000.

**Madinger, John,** Money Laundering – A Guide for Criminal Investigators, Taylor & Francis, 2006.

**McDowell, John** – The consequences of Money laundering and financial crimes. Economic Perspective. Publicação Eletrônica do Departamento dos US , v.6, n.2, p.7, maio/2001.

**Morris, Stanley E.** – Consultor Financeiro Internacional e Ex-Diretor do Financial Crimes Enforcement Network – FINCEM . Seminário Internacional sobre Lavagem de Dinheiro, Conselho de Justiça Federal – Brasília - 2000.

**Neves, Miriam,** Prevention and Combating the Money Laundering in Financial Institutions -2003.

**Powis E., Robert.** The money launderers. Probus Publishing Company – Chicago, Illinois – Cambridge, England, 1992.

**Romantini, Gerson L.** The institutional development of the money laundering combat in Brazil as of Law 9613/98. Campinas, 2003. Dissertation (Master in Economy) – Post Graduation Program in Economy, Institute of Economy, State University of Campinas.

**Schott, Paul Allan** – “Reference Guide to Anti-money Laundering and Combating the Financing of Terrorism” – The World Bank, 2006.

**Stessens, Guy,** Money Laundering – A New International Law Enforcement Model – Cambridge Studies in international and Comparative Law, Cambridge University Press, 2005.

**Tanzi, Vito** – Money Laundering and International Financial System. IMF, Working Paper, 1996.

BIS(1998) Prevention of Criminal Use of Banking for the Purpose of Money Laundering. Basel Committee on Banking Supervision – Bank for International Settlements. Disponível em <http://www.bis.org/publ/bcns137.pdf> Acesso em 08/10/2007

COAF. 2003 Activity report. Disponível em: < <http://www.fazenda.gov.br/coaf>> Acesso em 08/10/2007

FATF. Financial Action Task Force on Money Laundering, disponível em [www.fatf.gafi.org/FATDocs\\_en.htm](http://www.fatf.gafi.org/FATDocs_en.htm)

<http://www.mj.gov.br/drci> (Ministério da Justiça).

IMF(1998). “Money laundering – The Importance of International Countermeasures”, discurso proferido por Michel Camdessus, Diretor do Fundo Monetário Internacional na Plenária do Financial Action Task Force on Money Laundering. Disponível em [:http://imf.org/external/np/speeches/1998/021098.HTML](http://imf.org/external/np/speeches/1998/021098.HTML) Acesso em 08/10/2007  
[www.IMF.org](http://www.IMF.org) - Monetary Fund and World Bank – enhancing Contributions to combating Money Laundering: Policy Paper, April 26, 2007

The Palermo Convention, <http://www.undcp.org/adhoc/palermo/convmain.html>.