

AML/CFT Guidelines No. 2: Overview of the FIU



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1.0 ESTABLISHING THE FIU

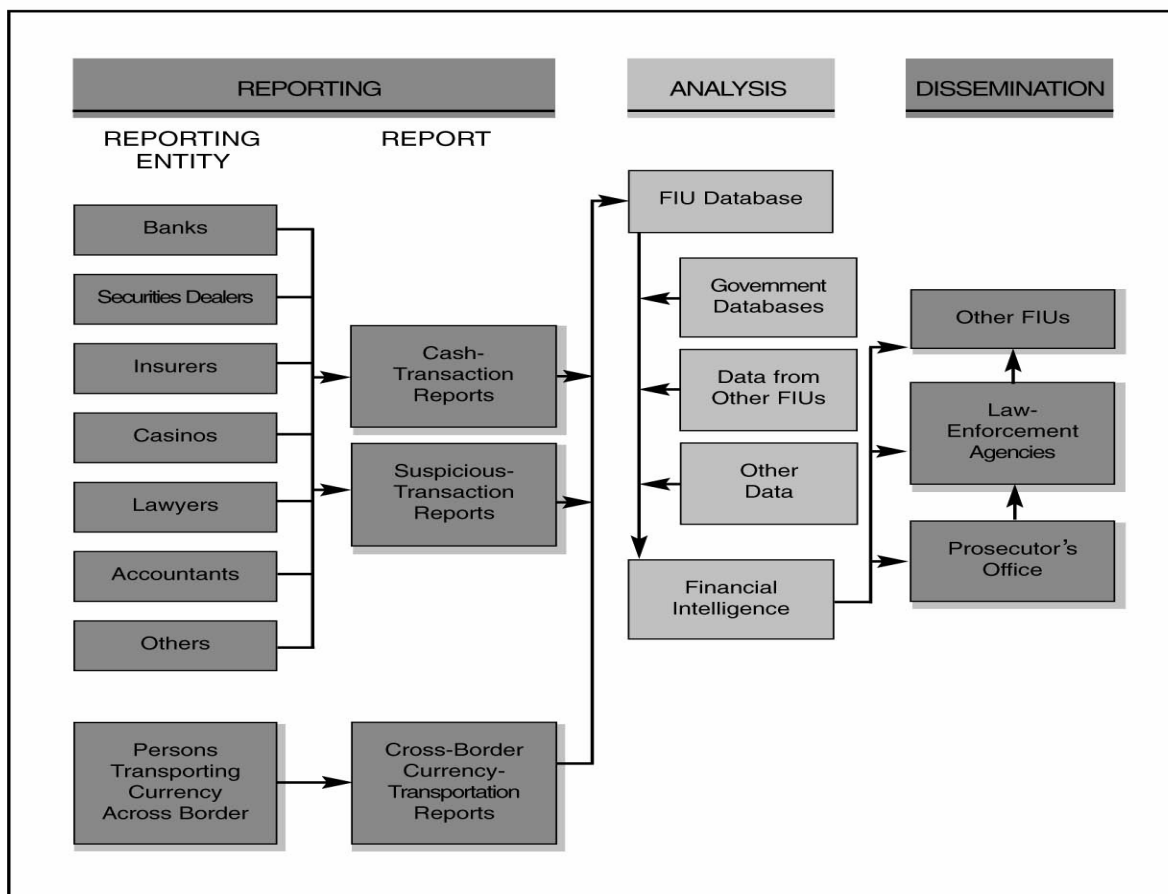
1.1 Introduction

The objective of Liberia's AML/CFT laws and regulations is to help detect and deter money laundering and the financing of terrorist activities. It is also to facilitate investigations and prosecutions of money laundering and terrorist financing offences. This includes the establishment of the Financial Intelligence Unit (FIU).

This guideline is for information purposes only. It is not a legal instrument and does not intend to provide legal advice or replace the legal instruments. The FIU is not responsible for the accuracy or reliability of the information contained in references made throughout this guideline.

The FIU is an agency that receives reports of suspicious transactions from FIs and other persons and entities, analyze them, and disseminate the resulting intelligence to law enforcement agencies and foreign FIUs to combat ML.

Figure 1.1 Typical Information Flow of an FIU:



1.2 Steps in Establishing the FIU

1.2.1 Key Decisions

Political support is necessary to ensure the success of the FIU. Such support is needed not only to secure the adoption of the law establishing the FIU but also, on a continuing basis, to ensure that the FIU receives sufficient budgetary resources to achieve its objectives.

The analysis of the issues that a country faces in terms of financial crime and the role the FIU will play in meeting the country's criminal policy objectives will make it possible to sketch the FIU's broad outlines, status, and functions. Among the key elements of this outline are:

- a) the basic objectives to be pursued by the FIU;
- b) the authority and functions necessary to achieve its objectives;
- c) any functions the FIU will be required to exercise in addition to the core functions (such as, for example, the supervision of reporting entities' compliance with reporting or other obligations, and the freezing of transactions);
- d) the means to ensure the operational autonomy and the accountability of the FIU;
- e) the basic transaction reporting requirements: who reports and what is reported (for example, suspicious transactions, cash transactions, cross border movements of cash);
- f) the general size of the FIU (after a start-up period) in terms of budget or staff, in relation to the expected flow of information to and from the FIU and any additional responsibilities assigned to the FIU;
- g) the role of the FIU in relation to other national agencies and government bodies and to other FIUs, including the exchange of information; and
- h) the location of the FIU in the administration, its autonomy and accountability, and the means to make it operational.

After these key issues have been decided, an executive team may be formed to start the process of establishing the FIU. At this stage, drafting of the law may be initiated, incorporating the decisions on the above topics.

1.2.2 Consultations with Private Sector

It is productive to discuss the proposed FIU and the AML/CFT draft laws with the representatives of the segments of the private sector that will provide most of the information to the FIU, especially the financial sector, for the following reasons:

- a) consulting the private sector offers the government an opportunity to build confidence in the proposed agency;
- b) such consultations should facilitate understanding of the new obligations to be imposed on the financial and other sectors, and thus facilitate discussion in parliament;
- c) the consultations may help the FIU in developing requirements for reporting transactions that can realistically be expected to be followed by the reporting entities; and
- d) the advance consultations will serve to make the reporting entities aware of their future obligations and the related need to develop the necessary programs to fulfill their obligations.

Early consultations with the private sector will also provide an opportunity for the authorities to highlight the benefits of the new system to financial and other institutions that will have to begin reporting transactions to the FIU. The benefits include:

- a) reduction in the risks of the sector being negatively affected by instances of fraud, money laundering, and other financial crimes perpetrated through their institutions; and
- b) the fact that the framework would be based on international standards reflecting worldwide practice that would protect the financial and economic environment of the country.

1.2.3 Financing the FIU

FIU needs resources commensurate with its size and the amount of data it receives, processes, and disseminates. This is a function of the size and variety of financial and nonfinancial entities that will provide reports to the FIU, the scope of the reporting obligation, and other responsibilities that may be assigned to the FIU.

The location of the FIU in a ministry or government agency may reduce some of its operational costs. For example, if personnel management and building maintenance costs are either absorbed centrally or shared with others parts of the same ministry or agency. Some costs specific to the FIU, however, such as those for specially trained staff or high-level computing facilities, may be substantial and should be factored into the preparation of the FIU budget.

Most FIUs are financed directly from the state budget. For example, most administrative-type FIUs that are part of a Ministry of Finance have their own budget within the budget of that Ministry (for example, the United States' FinCEN). Law enforcement-type FIUs are usually financed by the Police, the Ministry of Justice/Interior, or the Prosecution Service.

Some FIUs are co-financed by different state authorities or ministries. For example, the MOT in the Netherlands and the MOT in the Netherlands Antilles receive their financing under an arrangement between the Netherlands' Ministry of Finance and the Ministry of Justice. A small number of FIUs are partly or wholly financed by the central bank or the financial sector supervisory agency of the country. Some FIUs are placed directly under the government, outside the budget of any other agency, and are financed as a separate budgetary unit.

The FIU may be indirectly financed by the contributions, levies, and fines imposed on the supervised institutions. The reporting institutions may also contribute directly to the financing of the FIU's operations. The main advantage of this arrangement is that the FIU is shielded from the political vagaries of budget making, which contributes to the FIU's independence.

In countries where the FIU's budget comes from the financial sector supervisory agency, the FIU may be indirectly financed by the contributions, levies, and fines imposed on the supervised institutions. In Belgium, the reporting institutions contribute directly to the financing of the FIU's operations. The Belgian FIU's operational expenses are paid without any contribution from the federal budget. The main advantage of this arrangement is that the FIU is shielded from the political vagaries of budget making, which contributes to the FIU's independence. It is noteworthy, however, that no other country has adopted this approach. It may be that the idea of financing the operations of a public agency with funds levied directly from the private sector entities subject to its jurisdiction

does not fit well in the public finance framework of most countries or that this arrangement does not necessarily guarantee that the FIU will receive a sufficient amount of resources over time.

The reporting institutions and professionals must absorb their own costs of implementing the AML/CFT laws, including the costs of setting up systems for detecting and reporting suspicious and other transactions.

1.2.4 Types of FIUs

There are four types of FIU: the administrative-type FIU, the law enforcement-type FIU, the judicial- or prosecutorial-type FIU, and the “mixed” or “hybrid” FIU.

1.2.4(a) *Administrative-type FIU*

Administrative-type FIU is usually part of the structure, or under the supervision of, an administration or an agency other than the law-enforcement or judicial authority. It sometimes constitutes a separate agency, placed under the substantive supervision of a ministry or administration (“autonomous” FIU) or not placed under such supervision (“independent” FIU).

Box 1.2.4(a) Advantages and disadvantages of an Administrative-type FIU

Advantages

- a) built on an existing infrastructure, so there is no need to set up a new agency;
- b) maximum law-enforcement use can be made of financial disclosure information;
- c) quicker law-enforcement reaction to indications of money laundering and other serious crimes;
- d) information can be exchanged using the extensive network of international criminal information exchange networks (such as Interpol); and
- e) easy access to criminal intelligence and to the intelligence community at large.

Disadvantages

- a) tends to be more focused on investigations than on prevention measures;
- b) law-enforcement agencies are not a natural interlocutor for financial institutions; mutual trust must be established, which may take some time, and law-enforcement agencies may lack the financial expertise required to carry out such a dialogue;
- c) the FIU usually does not receive data on currency transactions above a fixed amount;
- d) gaining access to the financial organizations’ data (other than the reported transactions) usually requires the launching of a formal investigation;
- e) reporting institutions may be reluctant to disclose information to law enforcement if they know it could be used in the investigation of any crime (not just money laundering and the financing of terrorism); and
- f) reporting institutions may be reluctant to disclose information to law enforcement on transactions that are no more than “suspicious.”

Often, financial institutions facing a problematic transaction or relationship do not have hard evidence of the fact that such a transaction involves criminal activity or that the customer involved is part of a criminal operation or organization. They will therefore be reluctant to disclose it directly to a law-enforcement agency, out of a concern that their suspicion may become an accusation that could be based on a wrong interpretation of facts. The role of the FIU is then to substantiate the

suspicion and send the case to the authorities in charge of criminal investigations and prosecutions only if the suspicion is substantiated.

By making an administrative authority a “buffer” between the financial institutions and law-enforcement sectors, authorities can more easily enlist the cooperation of reporting institutions, which are often conscious of the drawbacks vis-à-vis their clients of having direct institutionalized links with law-enforcement agencies. Administrative-type FIUs are often preferred by the banking sector. They may also appeal to other institutions and professionals that have been added to the list of reporting entities for the same reasons.

1.2.4(b) Law Enforcement-type FIU

The emphasis on the law enforcement aspects of the FIU led to the creation of the FIU as part of a law enforcement agency, since this is the easiest way to establish a body with appropriate law enforcement powers without having to design from scratch a new entity and a new legal and administrative framework.

Box 1.2.4(b) Advantages and disadvantages of an Law Enforcement-Type FIU

Advantages

- f) built on an existing infrastructure, so there is no need to set up a new agency;
- g) maximum law-enforcement use can be made of financial disclosure information;
- h) quicker law-enforcement reaction to indications of money laundering and other serious crimes;
- i) information can be exchanged using the extensive network of international criminal information exchange networks (such as Interpol); and
- j) easy access to criminal intelligence and to the intelligence community at large.

Disadvantages

- g) tends to be more focused on investigations than on prevention measures;
- h) law-enforcement agencies are not a natural interlocutor for financial institutions; mutual trust must be established, which may take some time, and law-enforcement agencies may lack the financial expertise required to carry out such a dialogue;
- i) the FIU usually does not receive data on currency transactions above a fixed amount;
- j) gaining access to the financial organizations’ data (other than the reported transactions) usually requires the launching of a formal investigation;
- k) reporting institutions may be reluctant to disclose information to law enforcement if they know it could be used in the investigation of any crime (not just money laundering and the financing of terrorism); and
- l) reporting institutions may be reluctant to disclose information to law enforcement on transactions that are no more than “suspicious.”

Also, a law enforcement-type FIU will normally have the law enforcement powers of the law-enforcement agency itself (without specific legislative authority being required), including the power to freeze transactions and seize assets (with the same degree of judicial supervision as applies to other law-enforcement powers in the country). This is likely to facilitate the timely exercise of law-enforcement powers when this is needed.

1.2.4(c) *Judicial or Prosecutorial-type FIUs*

This type of FIU is established within the judicial branch of the state and most frequently under the prosecutor's jurisdiction. Instances of such an arrangement are found in countries with a continental law tradition, where the public prosecutors are part of the judicial system and have authority over the investigatory bodies, allowing the former to direct and supervise criminal investigations.

Box 1.2.4(c) Advantages and disadvantages of a Judicial or Prosecutorial-Type FIU

Advantages

- a) usually have a higher degree of independence from political interference;
- b) disclosure information is brought directly to the agency authorized to investigate or prosecute; and
- c) allows the judiciary's powers (e.g., seizing funds, freezing accounts, conducting interrogations, detaining people, conducting searches) to immediately be brought into play.

Disadvantages

- a) generally has the same disadvantages as are listed in the first five bullets of Box 3 on law-enforcement-type FIUs; and
- b) may have difficulty exchanging information with non-judicial or prosecutorial FIUs.

Disclosures of suspicious financial activity are usually received by the prosecutor's office, which may open an investigation if suspicion is confirmed by the first inquiries carried out under its supervision. The judiciary's powers (e.g., seizing funds, freezing accounts, conducting interrogations, detaining suspects, and conducting searches) can then be brought into play without delay. Judicial and prosecutorial FIUs can work well in countries where banking secrecy laws are so strong that a direct link with the judicial or prosecutorial authorities is needed to ensure the cooperation of financial institutions. The principal advantage of this type of arrangement is that disclosed information is passed from the financial sector directly to an agency located in the judiciary for analysis and processing.

“Hybrid” FIUs

The Hybrid-type FIU contains different combinations of the other types of FIUs. Some FIUs combine the features of administrative-type and law-enforcement-type FIUs, while others combine the powers of the customs office with those of the police. For some countries, this is the result of joining two agencies that had been involved in combating money laundering into one.

Some administrative-type FIUs, combine staff from various regulatory and law enforcement agencies to work in the FIU while continuing to exercise the powers of their agency of origin.

1.3 International Considerations

1.3.1 The FATF Recommendations

The FATF Recommendations:

- a) mentions FIU as a “competent authorities” for receiving suspicious or currency transactions above a certain limit; giving instructions to financial institutions; having a computerized database, compliance control and supervision powers, and regulatory powers; issuing guidelines; and carrying out international information exchange.
- b) Sets the rules governing suspicious transaction reports such as the immunity enjoyed by those who make reports to the FIU in good faith and the rule against “tipping off.”
- c) broadens the scope of the reporting obligation to include transactions suspected of being related to terrorist financing.

The issuance of the revised 40 FATF Recommendations in June 2003 marks an important milestone in the evolution of the FATF’s approach to FIUs. Largely on the basis of the work of the Egmont Group, the recommendations, now explicitly mentions the FIU as the recipient of reports of suspicious transactions and specify that countries should establish FIUs with adequate financial, human, and technical resources; as well as the ability to provide “the widest possible range of international cooperation to their foreign counterparts” and that “exchanges should be permitted without unduly restrictive conditions”.

Box 1.3.1 Egmont Group of Financial Intelligence Units

In 1995, a group of FIUs meeting at the Egmont Arenberg Palace in Brussels decided, in view of the benefits inherent in the development of a FIU network, to establish an informal group for the stimulation of international cooperation. Now known as the Egmont Group, these FIUs meet regularly to find ways to cooperate, especially with regard to information exchange, training, and the sharing of expertise.

Countries must go through a formal procedure established by the Egmont Group in order to be recognized as meeting the Egmont definition of an FIU. The Egmont Group as a whole meets once a year. Since the Egmont Group is not a formal organization, it has no permanent secretariat. Administrative functions are shared on a rotating basis. Aside from the Egmont support position, working groups and the newly established Egmont Committee are used to conduct common business.

FIUs, at a minimum, receive, analyze, and disclose information on suspicious or unusual financial transactions provided by financial institutions to competent authorities. Although every FIU operates under different guidelines, most FIUs, under certain provisions, can exchange information with foreign counterpart FIUs. In addition, many FIUs can provide other government administrative data and public record information to their counterparts, which can also be very helpful to investigators. One of the main goals of the Egmont Group is to create a global network by promoting international cooperation among FIUs.

The ongoing development and establishment of FIUs exemplify how countries around the world continue to intensify their efforts to focus on research, analysis, and information exchange in order to combat money laundering, terrorist financing, and other financial crimes.

Source: Adapted from “The Egmont Group FIUs,” at http://www.egmontgroup.org/about_egmont.pdf.

1.3.2 International Conventions

In the last few years, a number of international conventions have recognized the usefulness of FIUs in modern anti-money-laundering systems and have encouraged the states that are parties to these conventions to establish FIUs. These are (in the order in which they were opened for signature):

- a) The Convention for the Suppression of the Financing of Terrorism (1999) which requires the criminalization of the financing of terrorism;
- b) The United Nations Convention Against Transnational Organized Crime (2001) which requires the criminalization of participation in organized international criminal groups, corruption, money laundering, and obstruction of justice; and
- c) The United Nations Convention against Corruption (2003) which requires the criminalization of various forms of corruption, money laundering, concealment of the proceeds of crime, and obstruction of justice.

One common element in the three conventions is that each one requires Countries that are parties to criminalize money laundering and to adopt measures to prevent it. The preventive measures are, in large part, inspired by the FATF recommendations and include references to the reporting of suspicious transactions to competent authorities.

In the two most recent conventions, the references to the FIU are explicit. For example, the United Nations Convention Against Transnational Organized Crime requires states that are parties to “ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering ... have the ability to cooperate and exchange information at the national and international levels ... and to that end, shall consider the establishment of a financial intelligence unit to serve as a national center for the collection, analysis and dissemination of information regarding potential money-laundering.”

1.3.3 Core Principles of Financial Sector Supervision

International standards regarding the prudential regulation or supervision of financial institutions include AML/CFT compliance among the aspects of financial institutions that are subject to the powers of the regulators or supervisors.

FATF Recommendations state, as a general matter, that financial institutions should be subject to adequate regulation and supervision and that they effectively implement the FATF Recommendations.

For financial institutions subject to prudential supervision based on the Basel Committee, IOSCO, or IAIS standards, the AML/CFT regulatory and supervisory measures that are applied to financial institutions as a matter of prudential regulation are also applied as a matter of implementation of the FATF standards. The three groups of supervisors coordinate their own efforts to combat money laundering and terrorist financing, using the FATF common standards as the basis of their work. This system of cross-references minimizes the possibility of conflicts between the anti-money-laundering standards applied by prudential regulators and supervisors and those set out in the FATF Recommendations.

1.3.4 Model Laws

Although they do not constitute norms or standards, model laws prepared by experts may help authorities wishing to tap international experience on the establishment of FIUs. Among relevant model laws are:

- a) The United Nations Model Bill on Money Laundering, Proceeds of Crime and Terrorist Financing (2003) (for common law countries);
- b) The United Nations Model Legislation on Laundering, Confiscation and International Cooperation in Relation to the Proceeds of Crime (1999) (for civil law countries),
- c) The Commonwealth Model Law for the Prohibition of Money Laundering (1996) (for common law countries); and
- d) The OAS (Organization of American States) Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Other Serious Offenses (December 2002).

All of these model laws put the FIU at the center of the suspicious transaction reporting system and contain useful suggested provisions on the functions and powers of the FIU.

It may be noted in this connection that, in general, the model laws suggest legal provisions for a wide range of functions that may be exercised by the FIU but do not provide guidance as to which functions should be given to an FIU in a particular case; nor do they provide guidance on the linkages that need to be established between the FIU and other agencies. Thus, although they provide useful guidance to the drafters of legislation and regulations, model laws do not replace a careful consideration of a country's own characteristics, objectives, and resources through its political and technical decision-making process.

1.4 Institutional Autonomy and Accountability

FIU needs to be given enough operational autonomy to allow it to carry out its assigned tasks without undue interference.

The core functions of an FIU call for objectivity in decision making, the timely processing of incoming information, and strict protection of confidential data. As the exchange of information between FIUs is based in large part on trust, building an FIU that inspires trust from its counterparts is key to effective cooperation. To ensure that these requirements are met on an ongoing basis, FIUs need to be given enough operational autonomy to allow them to carry out their assigned tasks without undue interference.

FIU is accountable for the way in which it carries out its mission. At the same time, as government agencies, FIUs are accountable for the way in which they carry out their mission. The means by which FIUs account for their actions and the person or body to which they are formally accountable will vary from country to country. Accountability mechanisms, however, need to ensure that the special powers entrusted to the FIU are not abused and that the public resources put at its disposal are used efficiently for the intended purposes.

A number of factors enter into the definition of the autonomy and accountability of the FIU:

- a) the placement of the FIU in the national administration and, in particular, whether it is established as part of an existing government ministry or agency, or outside any existing structure;
- b) the law may also protect the independence of the FIU by defining the manner in which its head is appointed and replaced. Specific reporting arrangements may be set out.

These factors are often intertwined, and decisions about the degree of autonomy and accountability of an FIU should take all of them into account. In addition to these legal factors, other factors may affect the autonomy of the FIU, such as the local conditions related to the relations between the political power and the administration, and the actual budgetary resources provided to the FIU.

1.4.1 Placement in Administration

An FIU that is not part of a pre-existing government structure is likely to enjoy a greater degree of operational autonomy than would a department within a ministry. Also, an FIU placed in an independent government agency, such as the central bank, is likely to be more independent of the government than one placed in a ministry.

Even among the FIUs established within an existing government structure, however, there are variations as to the degree of autonomy each FIU enjoys. Some FIUs are established as departments of a ministry or agency.

1.4.2 Appointment and Dismissal of FIU Head

The laws of many countries contain special provisions that tend to protect the autonomy of the head of the FIU. In some cases, the appointment is given more solemnity by being made by the President of the Country on the recommendation of the concerned minister or ministers.

The autonomy of the head of the FIU may also be enhanced by provisions limiting the power of the appointing authority to remove him or her from office.

A restrictive set of conditions on the removal of the head from of the FIU helps to strengthen the person's independence by preventing other officials from exerting undue influence or interference.

1.4.3 Oversight of FIUs

Some laws set out an oversight body, thus excluding direction from a Minister that would constitute improper interference.

The most usual vehicle through which the FIU enables the responsible authority to exercise its supervisory function is by issuing a periodic report on its activities. Most laws on FIUs provide that the FIU issue such a report on an annual basis, but the structure and contents of the report is left to the FIU. Most FIUs provide a narrative account of the past year's activities, as well as statistical data on reports received, files sent for investigation or prosecution, and exchanges with foreign FIUs.

1.5 Organization and Staffing

1.5.1 Internal Organization

The internal organization of an FIU varies depending on the functions entrusted to it and on its size.

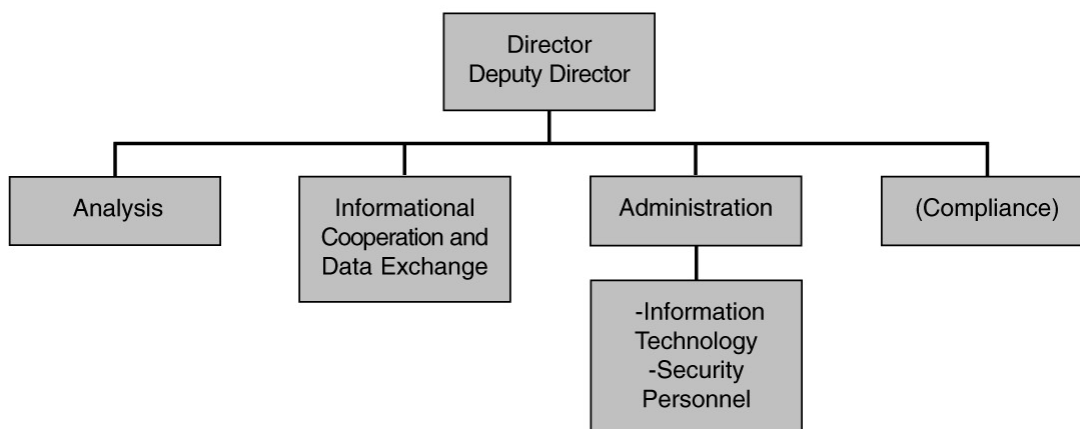
Most FIUs will have a section dedicated to the receipt and analysis of transaction reports, since this is a core function of all FIUs.

Exchange of information may be dealt with in the same section or become the responsibility of a separate section if the volume of exchanges warrants it.

Administrative matters are entrusted to a separate section.

An administrative-type FIU that is responsible for supervising the compliance of reporting entities with AML/CFT requirements (a function that requires additional resources) will normally have a section dealing with supervision. Beyond this, organizational arrangements vary.

Figure 1.5.1 Typical FIU Organization Chart



It should be emphasized that such a structure is shown strictly as an example to illustrate the links between the functions entrusted to the FIU and the possible organization of the corresponding tasks inside the FIU—other arrangements are certainly possible. Also, in very small FIUs, such a formal organization may not be necessary.

The department responsible for receiving and analyzing reports (the analysis department) is the key department in an FIU, since it receives suspicious transaction and other reports and analyzes them. The analysis department may also communicate with the compliance officers or other authorized representatives of reporting entities on individual cases. Staff of the analysis department usually manage the internal databases on suspicious transactions and on freezing orders issued (if applicable), unless the information technology function becomes so important as to be made the responsibility of a separate department. Staff of this department may be authorized to request information from other FIUs or may initiate the requests if they are sent by the international

cooperation department. The department may also prepare typologies for purposes of training and sharing of information on trends in criminality.

A department for international cooperation and information exchange usually covers multilateral and bilateral cooperation matters. Typically, the international cooperation department maintains a database on information exchanged with other agencies and FIUs that is shared with the analysis department. The international cooperation department may be authorized to communicate directly with counterpart FIUs and other foreign bodies dealing with money laundering in individual cases.

FIUs with regulatory or supervisory responsibilities often establish a separate department to carry out these functions. This department monitors compliance with AML/CFT requirements and initiates the sanctions mechanism in cases of serious failures to report transactions. If the FIU has the power to apply administrative sanctions, the department would be responsible for this as well. This department also cooperates with primary supervisory bodies of the reporting institutions and exchanges information with them (if legally possible) on compliance matters. The department also works with professional associations in improving sector compliance and offers training to improve reporting.

In many FIUs, sophisticated data storage, retrieval, and analysis technologies are employed, and the maintenance of the supporting computing infrastructure becomes a vital component of their operations. A group of highly skilled information technology (IT) staff is needed for this purpose. In some FIUs, these staffs are located in the analysis department, where most of the computing is done, although the IT staffs serve the entire FIU. In other FIUs, a separate department is established to denote the importance of information technology to the FIU as a whole and facilitate the work of the organization.

1.5.2 Staffing

Human resource is usually part of administration and an organization chart describes the tasks and required qualifications for each position.

FIU needs expertise in a wide range of fields such as Auditors, Economists, Bankers, Lawyers, Law Enforcement Officers, Information Technology Engineers, Securities Brokers, Insurance Specialists and Gaming Specialists, etc.

Security is of paramount importance in an FIU, and thorough background checks (involving a review of criminal, financial, and personal records) must be performed on candidates for employment.

In some cases, the staff of the FIU can be composed of experts seconded by administrations or departments concerned with financial crime (such as justice, police, finance and customs departments, and supervisory authorities).

1.5.3 Liability of Staff and Confidentiality of Information

The nature of the work of an FIU often leads to inclusion in the legislation of strict rules regarding the confidentiality of the information handled by its staff and immunity from liability for disclosure of the information to authorized persons (such as the prosecutor's office or a foreign FIU).

Some countries may also have rules barring the use of suspicious transaction reports in court proceedings and shielding FIU staff from compulsory testimony in court cases.

Most FIUs have internal confidentiality regulations that describe in detail the procedures for handling the information and data available in the FIU. Controls over the uses made of FIU information is exercised on a regular basis.

1.5.4 Security Issues

Along with confidentiality of information, security issues are most important in an FIU. Staff are informed (and often reminded) of the security procedures they must follow.

The premises of the FIUs are protected (by alarms and security officers). Access of visitors is limited. Special protection is often arranged for the rooms where data on suspicious transactions and other FIU databases are located.

The separation of the FIU's databases from the outer electronic world is an important element in maintaining the security and confidentiality of FIU information. The computer system should consist of an internal network with limited connection to the outside. Special software for data protection is installed, and message-encrypting systems are used in all exchanges of sensitive data with the outside.

Box 1.5.4 Typical challenges of an FIU in small economies

The challenges in establishing and maintaining FIU in developing countries like Liberia is a daunting task for the following reasons:

- a) Finding suitable staff skilled in financial investigations, forensic accounting, and other AML/CFT tasks are less likely to be locally available, and it may not be easy to attract such persons from elsewhere.
- b) Since the conventional banking system does not cover as much of the population, the FIU needs to focus some of its efforts on the informal banking or funds-transfer networks.
- c) The FIU may find it is not easy to obtain financial intelligence and information from other FIUs because it may be less well known outside of West Africa. Not being a member of the Egmont Group may raise concerns among other FIUs as to the safeguards available to protect the confidentiality of data held by our FIU.
- d) The establishment and operation of an FIU involves a level of financial commitment that is proportionately much greater for developing countries like Liberia than for other economies. Operating an FIU entails costs in terms of staffing, training, equipment, and securing facilities.

2.0 CORE FUNCTIONS OF THE FIU

The core function of an FIU is to serve as a national center for the **collection, analysis, and dissemination** of information regarding money laundering and the financing of terrorism.

These three functions are the core functions shared by all FIUs recognized by the Egmont Group. The definition of FIUs based on their core functions was first formalized by the Egmont Group in 1996. Similar definitions, also based on the three core functions, have now been incorporated in the revised FATF Recommendations of June 2003⁴⁰ and in two global conventions.

Given their different status and history, it is not surprising that in some countries the FIU is entrusted with additional functions. For example, some FIUs monitor the compliance of certain entities with AML/CFT rules and standards. Other FIUs have the power to block reported suspicious transactions for a limited time. The FATF recommendations set a standard that countries should establish an FIU with the three core functions and contains other provisions that relate to the exercise of these functions. In contrast, no international norm or standard deals with the noncore functions of FIUs. In this chapter, the core functions will be discussed in some detail, while some of the most significant noncore functions exercised by FIUs will be described in Section 3.0.

2.1 Receiving Transaction Reports

The basic definition of the reporting obligation has the below aspects:

- a) which persons and entities are to be obligated to report;
- b) what is to be reported;
- c) the form and contents of reports;
- d) rules relating to the reporting organizations; and
- e) means of enhancing the flow and quality of reports (including sanctions).

2.1.1 Who Must Report?

Financial Institutions: Banks, Insurance, Securities, Micro-Finance, Money and Value Transfer Services (Exchange Bureau, Western Union, Money Gram, Mobile Money, etc.)

Designated Non-Financial Businesses and Professions: Casinos; Real Estate Agents; Dealers in high-value goods, such as precious stones or metals, or works of art, auctioneers, dealers in automobiles (including used cars), boats, and antiques, etc.; Lawyers, Notaries, and Other Independent Professionals and Accountants in certain defined circumstances; and Trust and Company Service Providers.

Lawyers, notaries, and accountants as well as trust and company service providers are seen as gatekeepers.

Lawyers, notaries, other independent legal professionals, and accountants are required to provide suspicious transaction reports only when, on behalf of a client or for a client, they engage in a financial transaction related to the following activities:

- a) buying and selling of real estate,
- b) managing of client money or other assets,

- c) management of bank, savings or securities accounts,
- d) organization of contributions for the creation,
- e) operation or management of companies, and creation,
- f) operation or management of legal persons or arrangements, and
- g) buying and selling of business entities.”

“In essence..., independent legal professionals are brought into the fight against money laundering when they are involved in particularly vulnerable lines of business.”

2.1.2 What Is to Be Reported?

- a) Suspicious transaction and/or activities: pursuant to §67.5, Section 2 of the FIU Act, reporting entities are obligated to file STR to the FIU where there exist any reasonable grounds including facts and circumstances that indicates a transaction may be unusual or suspicious
- b) Transactions related to terrorism financing: pursuant to stipulations in regulation, reporting entities are obligated to report transactions of persons and organizations on the UN List of terrorists and terrorist groups to the FIU without delays.
- c) Transactions above a specified amount: Pursuant to §67.5, Section 3 of the FIU Act, reporting entities are obligated CTR to the FIU in accordance with currency transaction threshold stipulated in regulation.
- d) Cross-border transportation of currency and BNIs: pursuant to stipulations in regulation, Customs and other LEAs are obligated to request travelers to declare currency and bearer negotiable instruments above threshold and to report to the FIU suspicious or unusual movement of currency and bearer negotiable instruments across the borders of Liberia.

Refer to AML/CFT Guidelines No. 4 for details.

2.1.3 Data from Other FIUs

One of the most important functions of an FIU is the unfettered exchange of financial data and intelligence with other FIUs.

An FIU may receive financial information from foreign FIUs upon its request, or spontaneously, in the event that a foreign FIU receives financial information, or develops intelligence that it believes may be of interest to the FIU.

The receiving FIU will need to analyze the information in the same manner as it analyzes similar information and determine whether the information leads to intelligence concerning illicit activity.

2.1.4 Rules Related to Reporting Entities

2.1.4(a) Confidentiality of customer information

The restrictions on the power of financial institutions to disclose customer information must be overcome in order to allow the anti-money-laundering reporting system to function. This is usually done through specific provisions in the laws establishing the reporting obligation. The duty to provide information should cover not only the provision of suspicious transaction reports and other

reports but also the institution's duty to respond to further requests for information from the FIU, including requests for relevant documents.

The 2003 FATF Recommendations contain a general provision to the effect that "Countries should ensure that financial institutions' secrecy laws do not inhibit the implementation of the FATF Recommendations."

2.1.4(b) Rules against "tipping off"

To avoid suspect funds being transferred out of the reporting institution and to avoid prejudicing investigations by making suspects aware of them, it is important that reporting institutions not inform account holders and customers of the suspicious transaction reports they provide to the FIU. Such a provision is found in many AML laws and is set out in FATF Recommendation 14.

2.1.4(c) Immunity of reporting entity and its staff for reports made in good faith

A corollary of the obligation to report suspicious transactions is that a person who makes such a report in good faith should be immune from liability for the legal consequences of having made the disclosure. The FATF Recommendations have made this a standard since 1990.

There are two aspects to this immunity. First, the law requiring the suspicious transaction reports should make it clear that those making the reports are exempt from legal requirements of professional secrecy and confidentiality. Second, persons making the required reports in good faith should also be protected against potential liability to the persons named in the reports, who, if they were to learn of the disclosure, might attempt to recover damages from the persons who made the reports.

2.1.5 Form and Contents of Reports to FIU

In most countries, the power to decide on the form and contents of reports is delegated to the FIU. In many countries, the reports must be in writing, but provision is also made for making oral reports (for example, by telephone) in the event of an emergency. A written confirmation is usually required after an oral report has been sent. The FIU usually provides a uniform format for reports covering each particular type of institution.

In some countries, reports may be filed electronically. Electronic filing includes not only the automated production of batches of reports sent by electronic means, as many large financial institutions do for reports on high value currency transactions, but also the ability of reporting persons and entities to file reports by filling out an on-screen form provided by the FIU. In a number of economically advanced countries, the vast majority of reports are filed electronically.

In many of the economically less advanced countries, however, the infrastructure necessary to support the wide use of information technology may not be available. In these countries, reports are routinely filed on paper forms; and, if the FIU has the capability, the reports can then be indexed electronically or entered into a local secure database.

In most cases, the information required for suspicious transaction reports includes not only the particulars of the transaction or of the customer but also a statement of the reason or reasons why the transaction is considered suspicious or of the facts that made it suspicious.

2.1.6 Improving Flow and Quality of Reports

To obtain compliance with the AML/CFT reporting obligations, there needs to be in place a set of measures intended to foster improvements in the flow and quality of reports without resort to sanctions, such as awareness raising and training. These awareness-raising and training actions of the FIU or other supervisory agency will be particularly useful when the FIU is being established, when the building of trust between the staff of the reporting entities and the FIU is important. Similarly, these actions can be taken when new sectors become subject to the reporting requirements.

Remedies also have to be in place; however, to ensure that all concerned institutions understand the mandatory nature of the reporting obligation and to be exercised against deficient institutions once other actions have been tried without producing the desired results. The use of sanctions in appropriate cases also serves to make clear to the whole reporting community the determination of the FIU (or other supervising agency) to arrive at satisfactory reporting levels.

2.1.6(a) Outreach actions

Before sanctions are levied on delinquent entities, a number of other actions may be taken to enhance the quality and flow of reports. One possible approach is to assess the reporting practices of sectors so as to be able to direct training and other outreach activities to the sectors most in need of them. For this purpose, the FIU may analyze basic data on each reporting entity in a sector, the volume of transactions, the market share, the nature of the business, and other factors to arrive at a general estimate of the number of reports each entity could be expected to generate. Then the reporting practice of each sector is monitored; and if the numbers of reports “expected” and received do not match, different actions may be envisaged.

Training programs may be directed at the institutions in the sectors which show the greatest need for improvement. Training may also be directed at sectors that are being added to the list of reporting institutions. The immediate objective of the participation of the FIU staff in training of the targeted sectors would be to foster improved reporting, but it could also be seen as the start of the bilateral relationship between the FIU and the entities in the sector. The quality of reports received from each sector may also be analyzed. Findings may be reported back to the reporting entities in each sector on either an aggregated basis in sector-wide meetings or individually.

Another tool, used by some FIUs, is to request from reporting entities (based upon a legal requirement) that they report periodically to the FIU on their work on AML/CFT, including statistical data on reports sent to the FIU. The FIU can then check whether the data reported and the reports actually received match. If they do not, the FIU or the supervisory body should go back to the reporting entity and request an explanation for any discrepancy. This system promotes the use of efficient systems by reporting entities to monitor their reporting activities.

2.1.6(b) Administrative sanctions

After an outreach program has been in place for a certain length of time, the FIU needs to consider the case of entities that fall below the level of reporting of the sector as a whole. In this regard, the difference between failures to report “cash” or other transactions above a set amount and failures to report suspicious transactions should be noted. For the former (or any other reporting obligation based on an objective criterion), there is a factual test to determine whether a transaction should have been reported; for suspicious transactions, a subjective judgment, based on all facts of the case, is involved. Hence, the usefulness of internal guidelines on the detection of suspicious transactions.

Where there is a low level of suspicious transaction reports, the examination of a sampling of transactions may reveal to what extent transactions that should have been reported were not. Assuming a high level of unreported transactions is found, the FIU may try to determine whether the reporting entities have followed the applicable guidelines on the detection of suspicious transactions. In this context, individual decisions not to report certain transactions are less important than the pattern they reveal. The decisions not to report should be reviewed along with the analysis that was conducted to determine whether these decisions form part of a pattern of not reporting.

An array of administrative sanctions may be set out in the legislation to deal with non-compliant entities, and the application of the sanction varies according to the gravity of the offense. A typical set of graduated administrative sanctions would include warnings, reprimands, fines of different amounts, and ultimately cancellation of the noncompliant entity’s authorization to operate. Publication of these sanctions (where this is allowed or required) may contribute to making the reporting community aware that the reporting obligations are enforced.

The procedure to apply administrative sanctions varies from country to country. The FIU or other supervisory authority usually has the power to issue the first level of sanction, such as warnings. In some countries, the FIU is also empowered to levy other administrative sanctions. In other countries, the FIU can only initiate the sanction process by referring cases to a supervisory authority or an administrative court.

2.1.6(c) Criminal sanctions

In some countries, breaches of their reporting obligations under the AML law on the part of individuals and corporations constitute violations of the criminal law. Although in both administrative and criminal proceedings, fines can be the penalty imposed upon conviction, there is a very significant difference between administrative and criminal proceedings. First, in the case of criminal sanctions, if the criminal law so provides, failure to report may lead to imprisonment in addition to fines or as an alternative to fines. In any case, criminal convictions leave a permanent mark on the record of an individual, and, under the “fit-and-proper” test in force in many countries, may result in the person being barred from managing a financial institution or becoming a member of the board of directors of such an entity. In addition, criminal proceedings often bring with them considerable negative publicity for the firm and the individual, which may have negative commercial consequences. It may also be noted that criminal convictions may be more difficult to obtain under the same set of facts, since the criteria for conviction (i.e., proof beyond a reasonable doubt) is higher than the one usually applied in administrative proceedings (i.e., preponderance of evidence).

For all these reasons, making breaches of reporting obligations and of similar obligations subject to criminal sanctions should be considered with care. Some countries have criminalized many types of conduct in breach of the reporting entities' AML/CFT obligations. In other countries, attempts have been made to limit the conduct subject to criminal sanctions to cases where circumstances are such that the breach can be seen as the result of gross negligence.

2.2 Analyzing Reports

The second element of the core functions of an FIU, as defined by the Egmont Group, is the analysis of reports received from reporting entities. The purpose of the analysis is to establish whether the data contained in the reports, substantiated as necessary by the FIU, provide a sufficient basis to warrant transmitting the file for further investigation or for prosecution (as the case may be). It should be noted, however, that in practice, the line that separates the analysis performed by the FIU from the investigations performed by the law-enforcement authorities may not be drawn in the same way in all countries and may also vary, depending on the type of FIU involved.

The number of reports FIUs receive varies considerably from country to country. In some cases, the volume of reports may be too large for the FIU to be able to analyze all of them in a timely fashion. In such cases, the FIU may use internal criteria to prioritize reports and deal only with the most important ones. In most circumstances, suspicious transaction reports and communications from other FIUs receive higher priority than reports based on the amount of the transaction. Reports that are not immediately analyzed, however, may prove valuable later in the analysis of priority reports and provide useful data in performing operational or strategic analysis. Many FIUs store this "sleeping data" for later use and report using it after some months or years, when new reports are received and matched with this stored data.

The analytical process starts with the receipt of a report, continues with the collection of additional related information, goes through different forms of analysis, and ends with either a detailed file concerning a money-laundering (or financing of terrorism) case that is forwarded to the law enforcement authorities or prosecutors or the reaching of a conclusion that no suspicious activity was found. After the analysis is performed, the primary report that triggered it may represent a small part of the file.

As soon as the data received exceed a certain volume, electronic means of storing it and analyzing it are required. Otherwise, retrieving the data and analyzing it become too time-consuming and the analysis may not be as thorough. The ability to quickly analyze data is vital for a system of countering the laundering of the proceeds of crime, and computerized databases and analytical tools are an important element in achieving this goal. Nevertheless, it is important to keep in mind that electronic databases and software can only facilitate the work of analysts, not replace it.

For purposes of presentation, it is useful to distinguish between different levels of intelligence produced in an FIU. Three levels are generally identified: tactical, operational and strategic. Each has its uses, and none is intrinsically more valuable than the others. The three levels of analysis are complementary, and it is beneficial for an FIU to undertake all three.

2.2.1 Tactical Analysis

Tactical analysis is the process of collecting the data needed to build up a case establishing wrongdoing and the accompanying facts that clarify the reasons behind the commission of a criminal offense. Tactical analysis produces tactical information. Although tactical analysis may be performed on all incoming reports, it is likely that suspicious transaction reports will provide the most directly useful leads, and the description that follows is based on the analysis of such reports.

Tactical analysis includes the matching of data received from reporting institutions with data held by the FIU or accessible to it, including lists of names, addresses, phone numbers, and data in the other reports forwarded by the reporting institutions. Some reporting institutions may produce the simplest form of tactical information themselves, by adding to their reports related information on the reported client or transaction that they have in their databases.

Upon receipt of a suspicious transaction report, the analyst will look for additional information on the subject, the company, the transactions, or other elements involved in a particular case to provide the basis for further analysis. The main sources of such additional information are briefly described below.

2.2.1(a) *The FIU's own data*

The analyst will check the data in the report against information in the FIU's internal sources, such as data from earlier suspicious transaction reports, cash transaction reports, and cross-border-transfer reports (if applicable). For this purpose, the newly received data are broken down into components that are checked against the sources previously mentioned. When a component is matched with existing data, this information is added to the compiled data on the case. After additional data are collected, one may start using the term "case," which may relate to many individual transactions.

2.2.1(b) *Publicly available sources*

The information will be checked against data in publicly available sources, such as company registers and company status or business reports and credit reports issued by private companies, audit companies, and accounting bodies. Even telephone registries are sometimes good sources of information.

2.2.1(c) *Government-held databases*

Checks will also be performed on data held in governmental databases. Such data would usually include tax records, company-formation records, police records, immigration and customs records, vehicle registries, and supervisory findings. It is vital that these data be available as quickly as possible, and on a real-time basis as much as possible. Ideally, an FIU would be able to access these databases directly through electronic means, based on a law, a regulation, or an agreement between the agencies concerned. Some of the data might, in fact, be part of an FIU's internal database.

2.2.1(d) *Additional information from original reporting entities and other entities*

If necessary, the analyst may go back to the primary information source—that is, the financial and nonfinancial institutions that provided the initial reports, if this is permitted, to request additional information from them (if necessary). It is also very useful if the FIU is authorized to seek information from other institutions subject to the AML/CFT reporting obligations that may have been involved in related transactions or business of the suspicious customer, even if they have not provided reports on them.

2.2.1(e) *Other FIUs*

After completing the initial checking of the new data against these national sources, and establishing grounds of suspicion for money laundering or related offenses, the FIU may, when international elements are involved, request additional information from foreign FIUs or other counterparts.

2.2.2 Operational Analysis

Operational analysis consists of using tactical information to formulate different hypotheses on the possible activities of the suspect to produce operational intelligence. Operational analysis supports the investigative process. It uses all sources of information available to the FIU to produce activity patterns, new targets, relationships among the subject and his or her accomplices, investigative leads, criminal profiles, and—where possible—indications of possible future behavior. One of the techniques of operational analysis used in some FIUs is financial profiling. This provides the analyst with methods for developing indicators of concealed income of an individual, a group of individuals, or an organization. It is an effective indirect method of gathering, organizing, and presenting evidence related to the financial status of subjects. The relevance of the profile is to show that the target cannot demonstrate a legitimate source for the difference between his or her outflow of cash and his income. The tracing of a person's assets may also provide leads linking the subject with predicate offenses.

Through operational analysis, the information received by the FIU is developed into operational intelligence, which can be transmitted to law enforcement agencies or prosecutors for further action. In order to ensure that its tactical and operational analyses are relevant, the FIU should monitor the extent to which its work contributes to successful prosecutions.

2.2.3 Strategic Analysis

Strategic analysis is the process of developing knowledge (“strategic intelligence”) to be used in shaping the work of the FIU in the future. The main characteristic of strategic intelligence is that it is not related to individual cases, but rather to new issues and trends. The scope of any strategic analysis may be narrow or wide, as required. It may consist of the identification of evolving criminal patterns in a particular group or the provision of broad insights into emerging patterns of criminality at the national level to support the development of a strategic plan for the FIU.

Strategic intelligence is that which developed after all available information is has been collected and analyzed. It requires a wider range of data than operational analysis, as well as experienced analysts. The data come from reports provided by the reporting entities, the FIU's own operational

intelligence and tactical information, public sources, and law-enforcement and other government agencies. The analyst may conclude from the data that, for example, an unusual pattern or volume of transactions is emerging in a certain financial sector or in a certain region. Such findings may form the basis for further actions of the FIU or the law-enforcement agencies. At a broader level, strategic intelligence may suggest the need to impose reporting and other AML/CFT obligations on new entities. Depending on the circumstances, strategic intelligence may be shared with other law-enforcement agencies, as well as with the government agencies charged with the development or coordination of anti-money-laundering policy.

2.3 Disseminating Reports

The third core function of an FIU is the dissemination of the information it has received and the sharing of the results of its analysis. The ability of an FIU to quickly share reliable financial intelligence and related information with domestic and foreign authorities is critical to the success of its mission. Since funds move quickly in and out of financial institutions and across national boundaries, FIUs must be able to provide, as rapidly as possible, financial information to competent authorities for purposes of criminal law-enforcement work. The ability of FIUs to share valid information quickly affects not only the effectiveness of a country's internal AML/CFT regime but also its ability to cooperate internationally.

There are three aspects to the dissemination function of FIUs. The first two are related to exchanges of information inside a country, and the third is related to international exchanges. The first concerns the duty of the FIU to transmit information to the competent authorities for further investigation or prosecution whenever its analysis reveals money laundering or other criminal activity. The second concerns the exchange of information between the FIU and domestic agencies other than the ones to which files are transmitted for further investigation or prosecution. The third is the international exchange of information, mainly, but not exclusively, from FIU to FIU.

2.3.1 Transmitting Reports for Investigation or Prosecution

When an FIU concludes its analysis of a suspicious transaction or series of transactions with a finding that they reveal criminal activity, it is the duty of the FIU to transmit the results of its analysis to the competent authorities for further investigation or prosecution. The decision as to which authority will receive the information depends on the legal system of the country involved. In some systems, the information is transmitted to the police, so they may carry out the investigations that will result in a file ready to be transmitted to the prosecuting authorities for prosecution. In other systems, the file is transmitted directly to the prosecuting authorities, which will order further investigations, if necessary, and, if the evidence is sufficient, will initiate the prosecution.

The law governing the FIU normally specifies the scope of the obligation to send a file for investigation or prosecution, which varies from country to country. In most systems, the scope is fairly narrow, in accordance with the “specialty principle, under which the information furnished to the FIU by financial and other institutions, can be used only for a specifically defined purpose, such as combating money laundering.

2.3.2 Sharing Information with Other Domestic Agencies

In addition to transmitting files for investigation or prosecution, FIUs may also be in a position to assist other agencies in the country to accomplish their mission by providing them with useful financial information. Among the main potential recipients of FIU intelligence are financial sector regulators and supervisors. The ability of the FIU to provide this assistance depends on the laws that govern the use the FIU can make of the information it obtains. Box 9 sets out the agencies with which an FIU may share information.

Box 2.3.2 Sharing Information with Other Domestic Agencies

FIUs provide information to domestic agencies, and receive information from them, as follows:

- Banks, money remitters, and other financial institutions provide suspicious transaction reports; they may provide other reports, and receive feedback from, the FIU.
- Financial regulators may report to the FIU financial information, including suspicious transactions found in the course of their supervision of financial institutions, and may receive financial intelligence and information on breaches of anti-money-laundering laws on the part of entities subject to their jurisdiction from the FIU.
- Police and prosecutors provide law-enforcement information to the FIU and receive financial intelligence (in police FIUs, the FIU function and the law-enforcement function are integrated in a single agency) from the FIU.
- Other government agencies (e.g., company registrars and motor vehicle-registration offices) provide raw data to the FIU.
- Tax authorities, anti-corruption agencies, customs and excise agencies, and intelligence agencies may, if legislation allows, receive financial intelligence from the FIU and provide information to the FIU.

In most systems, the law determines the agencies with which the FIU may share information and the uses the receiving agency or agencies may make of the information. The law governing the FIU may state that the FIU will provide financial information, for the purpose of prosecution, to the prosecutor's office and, in addition, will exchange information with specified financial regulators and supervisors. Once another agency has received information from the FIU, the law governing the agency will normally specify what uses the agency may make of the information. In particular, these laws (for example, the laws governing the conduct of financial regulators) will normally contain strict confidentiality requirements similar to those applying to the FIU and its staff. As a result, the receiving agency will be able to share the received information only to the extent permitted by law.

In contrast to transmittal of files to prosecutors or investigative agencies, which concern criminal matters, transmittals to financial supervisors or regulators and other government agencies may involve statistics, administrative matters, or civil cases. For example, a financial regulator or supervisor investigating a subject for misconduct that does not constitute a crime but for which an administrative sanction or civil penalty may apply, may need financial intelligence held by the FIU to support its case.

In determining the agencies that will be authorized to receive financial information from the FIU, legislators must weigh the privacy rights of individuals against the needs of domestic agencies for

timely financial information. Legislators must ensure that their national FIU is authorized to share information with the relevant institutions or agencies engaged in the fight against money laundering and terrorist financing. At the same time, they will impose safeguards to protect the sensitive financial information that an FIU acquires from being disclosed to unauthorized persons.

As, over time, financial institutions report more and more financial disclosures to FIUs, and the consumers of financial intelligence expand their requests for information from FIUs, FIUs have to equip themselves to meet the increased demand for their services. Since the resources of the FIU may not increase at the same rate as the demand for its services, FIUs may need to find effective ways to share information with appropriate domestic authorities.

In many countries, the FIU exchanges information with other local agencies on the basis of the legislation and regulations authorizing such exchanges. In some countries, FIUs have used memoranda of understanding or similar documents to make more detailed arrangements for exchanging information authorized by law with other agencies with which they exchange information on a regular basis. These memoranda of understanding set out the terms under which the FIU will entertain requests, the conditions for using FIU information, and any other conditions upon which the parties agree. These written arrangements are an excellent way to ensure that the parties understand the rules for exchanging and using financial intelligence, even though they are unenforceable at law. Box 10 outlines the steps involved in requesting financial information from a FIU.

Box 2.3.2(b) Requesting information from the FIU

Requesting financial information from an FIU involves the following steps:

Step 1. A domestic agency (i.e., a financial supervisor or law-enforcement agency) or a foreign FIU makes a request for financial information to support a case involving money laundering, terrorist financing, or related crimes.

Step 2. The requested FIU determines whether the request satisfies legal, policy, and operational requirements. If so, the FIU searches its databases and files for information responsive to the request.

Step 3. If necessary and appropriate, the FIU seeks information from other government agencies and financial institutions to respond to the request.

Step 4. The FIU analyzes the information and prepares a report to share with the requesting agency or FIU and determines the conditions under which the requesting agency or FIU may use and disseminate the information contained in the report.

2.3.3 International Information Sharing

Comprehensive and effective AML/CFT regimes must allow for FIU-to-FIU information exchanges that support international cooperation. At the international level, FIUs share financial intelligence with other FIUs to support the analysis of STRs and intelligence gathering. With FIU-

to-FIU information sharing, FIUs, domestic law-enforcement agencies and other domestic “consumers” of financial intelligence are able to seek and obtain information promptly from foreign governments to deter, detect, and prosecute money laundering, terrorist financing, and related crimes. The international FIU-to-FIU network facilitates the rapid exchange of financial intelligence across borders—a process that usually occurs faster through FIUs than through other government information-sharing channels. It should be noted that although information exchanged between FIUs facilitates the development of financial intelligence, it cannot be used as evidence in criminal proceeding without the express consent of the providing FIU. Countries usually provide evidence to be used in criminal cases through mutual-judicial-assistance procedures, which tend to be time consuming. However, FIU-to-FIU exchanges of information should not be used as a substitute for them.

The Egmont Group has stressed the importance of the unfettered sharing of information between FIUs. See the manual on “Principles of Information Sharing and International Cooperation between FIUs”. Legislation governing the exchange of information between FIUs should allow such exchanges to take place without impediments.

Most international exchanges of financial intelligence are organized in a “symmetrical” way: each agency communicates with its counterparts of the same type abroad. In addition, some FIUs have the authority to exchange financial intelligence with foreign law enforcement agencies. Some FIUs are authorized to share financial intelligence with international organizations, which would include Interpol, Europol, or the European Union’s Anti-Fraud Office (OLAF).

2.3.3(a) *Legal basis for exchanges of information between FIUs*

An FIU’s ability to share information with its counterparts and other agencies in foreign governments is determined by law or statute. Many countries authorize their FIU to exchange information with other FIUs to combat money laundering and related crimes. Following the terrorist attacks of September 11, 2001, more and more countries have authorized their FIUs to share information related to not only money laundering but also terrorist financing. For member countries of the European Union, the Decision of October 17, 2000 sets out detailed rules concerning the exchange of information between members’ FIUs.

Most countries provide their FIU with authority to exchange information with other FIUs of any type. Given the importance of information sharing among FIUs, and the work of the Egmont Group in this respect, the trend is toward enhancing FIUs’ ability to cooperate with their counterparts that abide by international FIU information-exchange principles. Indeed, a large number of FIUs members of the Egmont Group have undertaken to exchange information with other FIUs in accordance with the Egmont Group’s model memorandum of understanding—that is, free exchange of information for purposes of analysis at the FIU level and no dissemination or further use of the information for any purpose without the previous consent of the supplying FIU and protection of the confidentiality of the information.

Some FIUs are authorized by law to exchange information with other FIUs without the need for an agreement between them. In other countries, as a matter of law or policy, the FIU exchanges information with other FIUs with which it has entered into a Memorandum of Understanding (MOU). MOUs set out the terms and conditions under which they share financial intelligence and

other financial information with other FIUs. A typical MOU identifies the parties, the type of information eligible for information sharing, the limits on the use of any shared information, and restrictions on re-dissemination of shared information. The Egmont Group developed a model MOU for FIU-to-FIU information sharing.

MOUs are designed to support information exchange. While an MOU is unenforceable in a court of law, it carries with it a moral obligation to live up to the terms of the arrangement. If a party disagrees on the interpretation or application of the MOU by the other party, the parties typically will attempt to resolve the problem among them. If, after discussion, they are unsuccessful, they may choose to mediate the issue with the help of a third party, amend the terms of the MOU, or terminate the MOU. Since an FIU's reputation is paramount to its ability to participate effectively in the FIU network, an FIU that is known to breach the terms of information sharing will have difficulty finding FIUs willing to share their sensitive financial information with it.

Historically, a few countries have required that there be a formal agreement with another country before the respective FIUs could share financial intelligence. Countries that require a formal agreement to be authorized by the ministry of foreign affairs or other senior government official before their FIU can exchange information with other FIUs place their FIU at a distinct disadvantage in terms of its effectiveness as a partner in the international fight against money laundering and terrorist financing, because most FIUs do not require formal agreements to share information. Countries with such a requirement may not be in a position to offer other countries “the widest possible range of international cooperation to their foreign counterparts,” as called for by FATF Recommendation 40.

2.3.3(b) *Exchange of information*

Most requests for financial intelligence via the FIU network are made in writing. The requesting FIU sends a request to another FIU, either by letter or by filling out a request form. Requests are transmitted either on paper or electronically. Some FIUs send requests to each other via secure networks shared by them, such as the Egmont Secure Web or, for European Union FIUs, FIU-NET (see Box 2.3.3). In urgent cases, FIUs will request information orally. If the receiving FIU accepts such a request, it will normally ask the requesting FIU to follow up with a request in writing.

FIUs have developed request forms to meet a specific need to standardize international requests. Sometimes a requesting FIU fails to supply sufficient information about the underlying case, the type of information sought, the intended use of the information, or the potential users of the information. When this happens, the receiving FIU needs to ask the requesting FIU to supply the missing information. This can result in delays in processing the request. To avoid these delays, the Egmont Group developed a Request for Research form for FIU-to-FIU requests for information on money-laundering cases. Egmont encourages its members to use the form to standardize FIU-to-FIU exchange of information requests.

Box 2.3.3 FIU.NET

The FIU.NET is a computer network through which participating financial intelligence units exchange information in a quick and safe manner. As of May 2004, 16 FIUs from member states of the European Union share financial intelligence via FIU.NET.

The origin of FIU.NET can be found in the invitation issued in October 2001 by the Joint ECOFIN/JHA Council (i.e., the European ministers of finance, justice, and home affairs) to the member states to set up a system for the exchange of financial intelligence information by automated means. Subsequent to this invitation, the European Commission awarded a grant to the ministry of justice of the Netherlands to advance FIU.NET and undertake the development of the required, highly sophisticated electronic connections among the participating FIUs.

In the current implementation of the FIU.NET, there are two basic kinds of information flows, which occur when:

- an FIU asks for information by means of a request; or
- an FIU provides an answer to an earlier request.

Guided by the display (screen), the financial analyst of the requesting FIU fills out the frames of the information-exchange scenarios to ask another FIU (the providing FIU) whether a certain subject is known. The requesting FIU sends the request via the network. If the providing FIU knows the subject, and is willing to share the information, it can transmit information in any electronic format to the FIU.NET database of the requesting FIU.

Exchanging information thus becomes a quick and relatively simple process.

FIU.NET runs over a private network and is highly secure, protected by firewalls as well as sophisticated encryption and authentication technologies. At each FIU, the hardware comprises servers, firewalls, a Virtual Private Network facility, and one or more client Windows PCs.

The participating FIUs are those of Belgium, the Czech Republic, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Slovakia, Slovenia, Spain, the Netherlands, and the United Kingdom.

2.3.3(c) *Special arrangements for terrorist financing cases*

In recent years, terrorist attacks have had an important impact on the ways in which FIUs exchange information. In the immediate aftermath of the September 11, 2001 terrorist attacks, the Egmont Group FIUs acknowledged that it was important to agree upon a framework for rapidly and effectively exchanging information related to terrorist financing. Although the Egmont Group FIUs were keen to support the investigation of the terrorists of September 11, 2001, some FIUs had experienced multiple requests with insufficient details supplied from different agencies within the same government. To minimize the burden on all FIUs, the Egmont Group agreed that any domestic requestor seeking information from the FIU network should seek the assistance of their

domestic FIU rather than deal directly with a foreign FIU. In that way, the FIUs would serve as a gateway for requests going to other FIUs, and, given their knowledge of the requirements for information exchange, could accelerate the process.

2.3.3(d) *Egmont Group principles of information exchange in money laundering cases*

The Egmont Group has made the improvement of information exchange between FIUs its priority. In June 2001, it adopted the set of *Principles for Information Exchange between Financial Intelligence Units for Money Laundering Cases*, and, to underline the importance it attached to them, it appended these principles to its Statement of Purpose as an annex.

The *Principles of Information Exchange* serve as the international standard for information exchange between FIUs. In addition, to address the practical issues that impede the efficiency of mutual assistance among FIUs, the Egmont Group issued a paper on *Best Practices for the Implementation of Exchange of Information between Financial Intelligence Units*.

The principles encourage international cooperation between FIUs in money-laundering cases on the basis of trust and flexibility. They stress that FIUs should be able to provide information to one another at an FIU's request or spontaneously. Information exchanged by FIUs may be used only for the specific purpose for which the information was requested or provided, and may not be transferred to another authority (including for use as evidence in a court case) without the prior consent of the disclosing FIU. In addition, the confidentiality of the information provided should be protected by strict controls and safeguards, and should be considered, at a minimum, as being protected by the same confidentiality provisions as apply to similar information obtained by the receiving FIU from domestic sources.

3.0 OTHER FIU FUNCTIONS

Although all Egmont Group member FIUs have the three core functions of receiving suspicious transaction and other reports, analyzing them, and disseminating the resulting financial intelligence, some FIUs are also entrusted with other functions. Five of these other functions are discussed below:

- a) monitoring compliance with AML/CFT requirements,
- b) blocking transactions,
- c) training of reporting entity staff on reporting and other AML/CFT obligations,
- d) conducting research, and
- e) enhancing public awareness of AML/CFT issues.

Some FIUs carry out additional functions. Of particular interest is the gathering and storage of financial intelligence. Although, over the years, many FIUs have accumulated considerable financial information and intelligence in the course of receiving and analyzing suspicious and other transactions, some FIUs have become national, centralized “storehouses” of financial information and intelligence, and have developed programs under which law enforcement agencies may access this information.

Other FIUs, whether formally or informally, have become important advisers to their governmental authorities on many aspects of money laundering and the means of combating it. Such FIUs may provide strategic analyses that will be used in the defining of government priorities in combating financial crime. They may also be particularly well suited to provide drafts of amendments to legislation in support of evolving criminal policy.

It may also be noted that in some countries, the list of FIU functions contained in a law or other document contains additional activities or responsibilities of the FIU including the issuance of an annual report is sometimes listed as an FIU function.

3.1 Monitoring Compliance with AML/CFT Requirements

An AML/CFT preventive system requiring businesses and professionals to identify their customers, keep records, set up internal controls, and report suspicious transactions needs monitoring if it is to be effectively implemented. The mere existence of sanctions is not sufficient to ensure compliance. If no attention is paid to supervision, there is a risk that sectors that resist the requirements will not comply with them or will comply less thoroughly than they should. Regular and thorough supervision enhances compliance. In addition, a properly functioning supervisory system will have a similar function as feedback: it will contribute to the quality of the information provided to the FIU.

FATF Recommendation 23 sets as a standard that countries ensure that financial institutions are subject to adequate regulations and supervision. The primary goal of the supervisory function is to ensure that institutions are effectively implementing AML/CFT requirements and have put in place adequate measures to control the risk of their being involved in or used for money laundering or the financing of terrorism; it is not to detect instances of money laundering or the financing of terrorism.

3.1.1 AML/CFT Supervision Arrangements

Some countries have given the supervisory function regarding AML/CFT compliance on the part of regulated institutions to the existing supervising or regulating institutions dealing with these institutions. These supervisors and regulators have extensive knowledge of the concerned sectors, can integrate the ML/FT risk in their general risk analysis, and generally have the necessary experience of the supervisory function. These agencies also often have the necessary resources. Such an arrangement is also consistent with the fact that international standards on prudential supervision include AML/CFT supervision.

In countries with a single financial supervisory agency, this supervisor will be the only party involved in ensuring compliance with AML/CFT requirements.

In other countries, however, several supervisors can be involved in AML/CFT monitoring: the central bank for banks and other credit institutions; the insurance supervisor for the insurance industry; and the securities supervisors for stock exchanges, brokers, and dealers.

For reporting entities that do not have a supervisory authority, such as money remittance services or dealers in high-value goods, there is a need to assign AML/CFT supervision responsibility to a designated agency or agencies. It is possible to designate the FIU for this purpose. It is also possible

to appoint a supervisor whose field of experience is related to the nature of the activities of a nonregulated group or that is particularly well placed to monitor a certain activity. For example, some countries have chosen to have dealers in high-value goods supervised by an investigative agency. Such “matching” of industries and supervisors is not always possible, however, and supervision may have to be entrusted to agencies with little relationship to the industry.

3.1.2 FIU as AML/CFT Supervisor

In some countries, the FIU is responsible for monitoring compliance with the reporting obligation and the other preventive obligations of all institutions covered by the law, whether they are prudentially supervised or not. An advantage of such an arrangement is that the AML/CFT expertise is concentrated in one supervisory agency, which may improve its efficiency. It should be noted, however, that supervision is a resource-intensive task that requires considerable knowledge of the supervised institutions. If the FIU is to discharge its responsibilities in this regard, it should be granted adequate resources for the purpose, so that this task can be accomplished without constraining the FIU’s ability to carry out its core functions.

In countries where the FIU is responsible for ensuring compliance with the AML/CFT obligations, arrangements are needed to ensure that the FIU and the other supervisors can work together to further compliance. Given the knowledge of the sectors that they derive from their oversight responsibilities, the supervisory agencies can play a significant role in helping to ensure compliance with AML/CFT obligations among the entities placed under their authority.

When a country decides to give monitoring responsibility to the FIU, whether it is for all reporting institutions and professions or some of them, the law must provide the FIU with adequate powers to allow it to perform this function. In particular, the FIU needs the power to not only request information related to all suspicious transaction reports but also to enter the premises of the supervised institutions, to inspect documents and make copies of them, and to share information with other supervisors, including suspected cases of non-compliance with sector standards, both domestic and foreign. In short, all the powers that the traditional supervisors have for inspecting AML/CFT should also be provided to the FIU.

The FIU also needs a clear legal mandate if it is to supervise compliance with AML/CFT obligations. More generally, since the establishment of an FIU with responsibility for supervision of AML/CFT requirements may affect the manner in which existing prudential supervisors and regulators carry out their supervisory tasks under accepted international standards, it is important that careful consideration be given to defining the respective responsibilities of each involved agency and ensuring that the law clearly reflects the intended arrangements.

3.1.3 Information Exchange and Cooperation

No matter what arrangements are made with respect to the primary responsibility for AML/CFT supervision, given the multiplicity of agencies involved, arrangements for cooperation among the concerned agencies are necessary to prevent conflicts and ensure coordination of activities. In particular, when an agency other than the FIU is charged with inspecting institutions in a sector for compliance with the AML/CFT requirements, the supervisory agency needs specific information from the FIU, such as the frequency, completeness, and quality of reports received from each

supervised institution; the typologies most frequently reported; the cities or areas of major concern; and the institutions that seem to warrant closer scrutiny. It is not sufficient for supervisors to review the suspicious transaction reports that have been submitted to the FIU when performing onsite inspections; they will need to cross-check this information with the data received by the FIU. Crosschecking will give insight into the controls of the financial institutions and allow supervisors to perform statistical analysis and, thus, compare the performance of financial institutions.

Since the data received by the FIU are covered by strict secrecy rules, the law needs to lift the secrecy rules to make it possible for the FIU to provide such data to the other supervisors. For instance, in the Czech Republic, the law stipulates that the FIU has the obligation to maintain secrecy; however, this secrecy requirement is not to be imposed on, *inter alia*, persons performing bank supervision.

In cases where several authorities are involved, it is important that all parties, including the FIU, cooperate to ensure that supervision is equally enforced among the various sectors. This can be done informally by means of regular meetings to exchange experiences. A more formal arrangement based on a law may, however, provide the legal basis for the exchange of information between the concerned agencies.

3.2 Blocking Transactions and Freezing Accounts

Even in the best of circumstances, an FIU may not be able to determine instantly whether the transaction referred to in a particular report is related to criminal activity or not and, in the affirmative case, transmit the file to the proper authorities for investigation or prosecution. In some cases, a delay in the start of the criminal proceedings may result in the reported transaction being completed and the funds being lost for law-enforcement purposes. In order to give FIUs time to determine whether a transaction is related to criminal activity or not, some jurisdictions give the FIU the power to block the reported transaction for a limited time. During this period, the FIU can analyze the transaction, and if, after analysis, the conclusion is reached that the transaction is indeed related to criminal activity, the FIU can transmit the file to the proper law enforcement authorities that have the power to freeze the transaction and the related bank accounts for a longer period.

The power of the FIU in this regard is usually limited to the blocking of a particular suspicious transaction. In a few cases, the FIU has the broader power to freeze an entire bank account or even to seize assets. It should be noted that the power of the FIU to block transactions is unusual in that, in most legal systems, such action can only be taken by either a court or by order of a court.

There is no international anti-money laundering norm or standard that requires an FIU to have the power to block transactions. A number of international treaties, including the Strasbourg Convention, the International Convention for the Suppression of the Financing of Terrorism, and the Palermo Convention, require that states that are parties take domestic measures for the freezing of suspicious transactions. Similarly, the 2003 FATF Recommendations contain a general statement to the effect that countries should adopt measures to enable their authorities to confiscate criminal property, including allowing them to carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer, or disposal of such property.” Under these instruments, however, the power to freeze may be conferred on authorities other than the FIU; and in many countries, the power is granted to the courts.

In most countries where the FIU has powers of this type, the power is limited to blocking individual transactions reported to it for a maximum period of time set out in the law. A few FIUs have wider powers, including the power to block transactions at the request of a foreign FIU.

Most laws that give blocking power to an FIU give it the authority to block a transaction on its own initiative, usually upon receipt of a suspicious transaction report. In some systems, this authority is more limited.

The length of the period during which the FIU may block a transaction is a key element in the legislation. The blocking authority is intended to give the FIU time to review the case and determine whether the facts warrant transmitting it to the competent authorities for investigation and prosecution, and to allow these authorities to take measures, within their own powers, to safeguard the assets in question. The length of time required for these steps to be taken may vary from country to country. The periods tend to cluster around a span ranging between 24 and 72 hours—that is 1–3 days. A period longer than three days may be warranted by the local constraints, but a much longer period could cause prejudice to the relationship between the reporting institution and its customer, and could raise questions related to fundamental rights of the account owner. A long period would also increase the risk of the account owner being tipped off.

There are variations on the general trend. In some countries, a financial institution making a suspicious transaction report may not carry out the reported transaction during a 24-hour period following receipt of the report by the FIU if this would “thwart or complicate the securing of the proceeds.” During that time, the FIU may block the transaction for an additional period, which cannot bring the total blockage period to more than 72 hours from the receipt of the report by the FIU, if analyzing the transaction takes longer than the initial 24 hours. In the event that the reporting entity is notified of the start of criminal proceedings, it must wait three days before executing the transaction. In other countries, the blocking period varies, depending on the factual elements available to the FIU. The delay is a maximum of three days if there is only probable cause that the transaction is linked to money laundering, while it can be as long as 10 days if there is evidence that a transaction is involved or may be involved in the commission of a money laundering offense.

The reporting entity should be entitled to know rapidly whether it can execute the requested transaction, and close coordination between the reporting entity and the FIU is needed to ensure that this happens. Laws sometimes contain detailed provisions in this regard. In some countries, the law requires the entity reporting a suspicious transaction to indicate the time it intends to carry it out. The FIU must “provide immediate acknowledgment” to the reporting entity. If the matter is “serious and urgent,” the FIU may notify the entity of its opposition to execution of the transaction before the time mentioned by the reporting entity. This action blocks the transaction for two working days from the time of notification of the entity. If the FIU wishes to have this period extended, it must seek authorization from a Prosecutor. In the absence of such a notification, the reporting entity is free to execute the transaction. In other countries, whether to grant an extension may be decided by a court or an investigating judge. In some countries, the reporting entity has the right to demand of the FIU that the latter decide whether there are objections to the immediate execution of a transaction. If no answer is given by the end of the next working day, the entity is free to execute the operation.

What is the next step when a transaction has been blocked? In some systems, the FIU may request a judge to order the blocking or seizure of funds, accounts, or other assets related to the suspicious transaction. Other systems allow the FIUs to request a prosecutor to take the necessary measures. In some countries, the FIU may refer the case to the courts only to obtain the seizure of the property that is the object of the money laundering.

3.3 Training for Staff of Reporting Institutions in Reporting and Other Requirements

Training the staff of reporting entities is an important element of the strategy to enhance the flow and quality of reports. Indeed, under FATF Recommendation 15, financial institutions are responsible for implementing programs against money laundering and terrorist financing that include ongoing staff training. In many countries, it is a function of the FIU to participate in such training. Training not only provides the staffs of the reporting entities with the information they need to understand the requirements, but it can also contribute to the establishment of a climate of trust between the staffs of the FIU and the reporting entities. This is especially important in the first few years of the FIU's existence, since there may be considerable initial reticence to overcome before satisfactory levels of reporting can be achieved. Training programs may also flag issues in the implementation of the legislation on reporting that can be addressed at a later stage. Finally, training can give staff of reporting entities a sense of purpose and of the importance of the work they perform, which can be a factor in the FIU's obtaining improved reporting.

Training on recognizing suspicious transactions can be done by the FIU staff, external (private) consultants, compliance officers of the reporting entities, or a combination of these. For example, training specialists could be brought in to design the courses and prepare the materials (a task for which there may not be any qualified staff in the FIU), but some of the training sessions could be taught by FIU staff who have the necessary expertise. In many countries, private companies are available to carry out this type of assignment and to provide compliance training more generally. In small countries with no such established private expertise, however, the FIU may be the only source of expertise available locally, and cost considerations may limit its opportunities to seek private expertise from outside the country.

The courses can be tailored to each type of reporting entity, and training programs can be conducted in partnership with their respective professional associations and supervisors. For example, the national association of bankers could organize training seminars for banks, or join the FIU in organizing them or vice versa. National regulators and supervisors with a stake in AML/CFT may also participate in the training programs.

The types of training needed may also vary over time. At the beginning of its operations, an FIU will usually concentrate its training on the basic reporting requirements and general awareness rising. Confidence building is also an important product of such early training. At a later stage, the FIU staff can offer more specialized training that is tailored to specific sectors or even to specific reporting institutions (for the larger ones). Decisions as to which sector or institution will be offered training can be based on their relative sizes and market shares, as well as on recorded discrepancies between expected and actual volumes of reports. Such targeted training programs can focus on specific indicators of suspicious transactions in the selected sector and can be presented with related case studies.

Whatever approach is chosen, FIU staff can offer their unique experience in reviewing reports and following evolving typologies in each key sector as an important contribution to the training of staff in reporting entities. Participation of FIU staff is also desirable if one of the objectives of the training program is building trust between the FIUs' staff and the staff of the reporting institutions.

3.4 Conducting Research

FIUs conduct research for many reasons and, in particular, as a tool for shaping the FIU's own policy and developing national AML/CFT policy. In some cases, the legislation specifies that research is a function of the FIU; in other cases, the FIU carries out the research on the basis of the inherent need for such a function to reach its stated objectives.

Some research projects may make use of the results of strategic analysis of transactions. Depending on the nature of the research project, however, other types of information may be used, including statistical data, case typologies, and developments in the context of AML/CFT. Although research is not the main task of an FIU, the ability to conduct research in the areas of its activities enhances the FIU's ability to carry out its core functions and also provides its management and others with a greater and more objective understanding of the FIU's work.

3.5 Enhancing Public Awareness of AML/CFT Issues

In many countries, the establishment of an FIU is received without enthusiasm. The public feels threatened by the potential misuse of their financial data, and reporting institutions worry about the reaction of their customers if they assist the FIU in its work. Trust is not there at the beginning. These problems can be particularly acute for a law enforcement-type FIU, since entities that cooperate with the FIU may appear involved in police work and investigations. For administrative-type FIUs, counterpart law enforcement agencies may not have supported the establishment of the FIU and may be reluctant to work with it once it is established.

Whatever the country or the system, the public needs to be convinced of the value of an FIU as an institution, the importance of its role, and the benefits and protection of the financial system that it offers. No FIU can function well without the trust of the public and the staffs of the reporting institutions.

Trust can be achieved over time through a variety of means. The most important is in the day-to-day, case-by-case cooperation with reporting institutions, where professionalism of the FIU staff can foster a climate of trust. It is important that staff are well trained so that they know how to discuss issues through the appropriate channels and keep in mind the issue of data protection at all times.

Another way to enhance trust and AML/CFT awareness in the public is working with the media. Many FIUs issue information brochures for the public, arrange for staff members to give interviews and publish articles on AML/CFT in magazines and professional publications, and make additional information available to journalists. One way to engage the media is to publicize success stories (while protecting confidential data and the safety of FIU staff). In some parts of the world, FIUs prefer to keep low profiles, for the sake of security of their staffs. In such circumstances, the FIUs can work with other government agencies and other stakeholders to raise public awareness in an indirect manner.

4.0 ENHANCING THE EFFECTIVENESS OF FIUs

Once an FIU is established and has been functioning for a while, it becomes necessary to assess its effectiveness as well as that of the country's entire AML/CFT system. Such assessments should be conducted periodically to ensure that the FIU and the system as a whole are continuously striving to improve their effectiveness. This is consistent with good public sector management policy and is now also an FATF standard.

Over time, an effective AML/CFT system's objective would be to significantly reduce occurrences of money laundering and the financing of terrorism. This would be the result of the preventive and repressive components of the system working in the most effective manner (and assuming a certain degree of stability in the external environment, such as basic criminality patterns and the amount of cooperation received from other countries). Before a definite downward trend can be set in motion, however, fluctuations will be observed in the statistics. The number of suspicious transactions reported, the number of cases prosecuted, and other data will vary from year to year, as know-your-customer obligations are placed on financial and other entities, reporting obligations are fine-tuned, prosecuting authorities acquire expertise in financial crime, and, it must be added, criminals adjust their methods to take into account the new environment.

To attain the maximum degree of effectiveness, all agencies involved—from the reporting entities to the judiciary authorities—need to increase their own effectiveness and to cooperate with each other to form a well-functioning whole. It follows that each component of the system needs to be assessed in terms of its efforts to achieve what is expected of it, even if it is only one part of the total system.

Analyzing the effectiveness of an FIU is not an easy task, given the linkages between its operations and those of the other elements in the AML/CFT system. For example, deficiencies of FIU intelligence might not be attributable to the FIU itself, but to a weakness in other parts of the system. Similarly, the FIU's output depends, in large part, on the quality of information it receives from reporting institutions, and the FIU can influence such quality only to a limited extent, through training, feedback, and guidance to reporting institutions. Also, any bottlenecks at later stages of the process, such as a lack of expertise on financial operations on the part of law enforcement agencies or the judiciary, may limit the impact of the FIU's work. An additional source of difficulty in many countries is the lack of a coherent statistical framework covering the different parts of the system.

The international development of criteria and methods to assess the effectiveness of FIUs is at an early stage. So far, the FATF has established as a standard the principle of periodic reviews of the effectiveness of the AML/CFT system, including the FIU, based on a coherent set of statistics maintained by the concerned authorities. The actual reviews of the effectiveness of the FIUs are to be performed by the FIUs themselves or their governing authorities; using such methods as they believe is appropriate.

4.1 Collecting Relevant Data

The first step in assessing the effectiveness of an FIU is the collection of data related to the inputs it receives and the FIU's outputs. Generally, to paraphrase Recommendation 32, competent authorities should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of the AML/CFT system, including statistics on the suspicious transaction reports (STRs) received and disseminated; on money-laundering and terrorist financing investigations, prosecutions, and convictions; on property frozen, seized, and confiscated; and on mutual legal assistance or other international requests for cooperation.

A more detailed, but not exhaustive, list limited to the operations of the FIU would be as follows:

- STRs received—total and breakdown by
 - type of entity making the report (financial institution, designated nonfinancial businesses and professions);
 - STRs analyzed, disseminated, and sent for investigation or prosecution;
 - content, region of origin, amount of currency, possible crimes involved, complexity, etc;
 - STRs actually analyzed, used, disseminated, stored, or discarded; and
 - STRs resulting in prosecution or convictions for money laundering, financing terrorism, or an underlying predicate offense.
- Assessments of the quality of STRs.
- Reports filed on: i) domestic or foreign currency transactions above a certain threshold; ii) cross-border transportation of currency and bearer negotiable instruments; or iii) international wire transfers.
- Types and frequency of additional information requested.
- Amount of information available for competent authorities in each FIU disclosure in terms of the number of:
 - STRs and CTRs used and linked to the information reported;
 - reporting institutions involved;
 - persons or possible suspects identified; and
 - types of databases queried.
- Time taken to disclose relevant information to competent authorities after it is received from reporting institutions.
- Requests for assistance made or received by the FIU, including whether the request was granted or refused.
- Time taken to respond to each request for assistance made to the FIU.
- Spontaneous referrals made by the FIU to foreign authorities.
- Frequency and scope of guidance issued to reporting institutions (general and individual guidance).
- Response times of reporting institutions to requests for additional information.
- Frequency and scope of strategic analysis provided to other competent authorities and policymakers.
- Feedback received from law enforcement agencies, the judiciary, or other authorities.

These data need to be appropriately correlated. For example, a large number of STRs received should not be taken as an indication of FIU “success” without observing whether the reports come from a wide variety of sectors or only one (i.e., banking) and whether the reports contain useful information. Similarly, a low number of cases forwarded by the FIU for further investigation or

prosecution does not necessarily indicate that the FIU is ineffective if each case already encompasses the analysis of many STRs or if the value added by the FIU often leads to successful prosecutions.

4.2 Identifying Opportunities for Improvement

The analysis of the data collected on each function of the FIU may lead to questions concerning the adequacy of the resources devoted to that particular function. A further analysis of that function may reveal opportunities for improving it. A valuable input in this analysis would be feedback from law enforcement agencies and other entities that receive the FIU's information.

For example, the analysis of STRs may appear in need of improvement. If the reports do not usually contain sufficient relevant information, there may be scope for requiring more such information from the reporting entities and other sources. If the data received appear adequate, improvements may be sought in the analysis function. This function requires strong analytical resources to get the most out of the qualitative data received. Enhancing effectiveness of the FIU in this case might require (among other actions) the following:

- training analysts in the intricacies of the various reporting industries;
- providing analysts with better access to additional sources of information;
- adding to the pool of experts through personnel arrangements with specialized authorities such as financial supervisory or law enforcement agencies (by, for example, establishing a secondment program with these agencies);
- increasing the automation of the reporting system so that the information can automatically feed the FIU's databases, thereby facilitating the gathering of various reports that are relevant to a single case; and
- training the reporting institutions staff on what constitutes a good-quality STR, and what information is useful to the FIU (and what is not).

For each function of the FIU, a number of questions may be raised. Among these are the following:

- *Legal framework.* Does the FIU have the necessary powers to perform each of its functions?
- *Capacity.* Is the FIU operationally and technically capable of performing each function according to its purposes?
- *Quality of information disseminated.* Are the reports from reporting institutions and the FIU's access to other information adequate to enable the FIU to fulfill its functions? What is the value added by the FIU to the information it receives? Is there a mismatch between what is expected of it and what it delivers? A frequent cause of tension is that police and prosecutorial authorities expect information from the FIU that it cannot deliver and make little use of the other valuable information that is available to the FIU.
- *Timeliness.* Is the information at all stages of the FIU process flowing at the required speed? Are there any bottlenecks within the FIU?
- *Cost-effectiveness.* Is the FIU striving to produce what it must produce in a manner proportionate to its resources devoted to it?

Much more work remains to be done to develop internationally acceptable standards and methods of assessing the effectiveness of FIUs. Gathering experience with the collection and analysis of statistics on FIU performance is a preliminary step toward achievement of this important goal.

5.0 INTERNATIONAL ASSESSMENTS OF FIUs

Assessments of AML/CFT frameworks have been carried out since the first round of mutual evaluations of FATF members began in 1992, and FIUs have been included in these assessments from the beginning. A review by the FATF of the first two rounds of mutual evaluations of its members stated that the suspicious transaction reporting system and its associated FIUs were “the driving force in many anti-money laundering regimes” and that the FIU was “central to the anti-money-laundering efforts of almost all members.” Assessments of AML/CFT regimes, including FIUs, are now being conducted globally on the basis of a recognized set of standards and procedures.

5.1 Standards Regarding FIUs

Before the adoption of the 2003 FATF Recommendations, the standard on AML/CFT did not mention FIUs specifically. In certain contexts in the 1996 Recommendations, FIUs were included in the expression “competent authorities.” Nevertheless, as the quotations in the preceding paragraph show, FIUs were considered a key element of the AML/CFT framework. Thus, although no formal standard related specifically to FIUs existed until 2003; AML/CFT assessments took FIUs as a central element in the framework to combat money laundering and the financing of terrorism.

With the endorsement of the *Methodology for Assessing Compliance with Anti-Money Laundering and Combating the Financing of Terrorism Standards* by most institutions with assessing responsibilities in 2002, the assessments were carried out under a methodology that included specific mention of FIUs, although this was not yet formally part of the international standard.

Originally, the FATF Recommendations concerned only the members of the FATF. Over the years, however, the recommendations have been increasingly recognized as the world standard for anti-money laundering and combating the financing of terrorism. The 1996 Recommendations were adopted by a number of FATF-style regional bodies (FSRBs) and endorsed by the Executive Boards of the IMF and the World Bank for use in the work of these institutions.

In July 2002, the Executive Boards of the IMF and the World Bank conditionally endorsed the FATF Recommendations as the anti-money laundering and combating the financing of terrorism standard for the operational work of the two institutions. They also endorsed a 12-month pilot program of AML/CFT assessments based on this standard and using the related methodology. Reports on the Observance of Standards and Codes (ROSCs) are prepared on the basis of this standard.

The IMF and World Bank Executive Boards also emphasized that all assessment procedures should be compatible with the uniform, voluntary, and cooperative nature of the ROSC exercise; the assessments would be conducted in accordance with a comprehensive and integrated methodology; and assessments would be followed up with appropriate technical assistance at the request of countries assessed in order to build their institutional capacity and develop their financial sectors.

In March 2004, the Executive Boards of the IMF and the World Bank unconditionally endorsed the 2003 FATF Recommendations as the new standard for use in their work, together with a revised methodology to assess the new standard. As a result, AML/CFT is now a permanent component of

the two institutions' work. FSRBs are expected to consider the 2003 Recommendations and Methodology in the course of 2004.

5.2 Assessing Compliance with FIU-Related Standards

Under the IMF and World Bank's 12-month pilot program, some 53 assessments were commenced, including some carried out by the IMF and World Bank and others by the FATF and the FSRBs. Under the then-current methodology, assessments were made with regard to 27 of the FATF 40 Recommendations and seven of the Eight Special Recommendations on Terrorist Financing. In decreasing order of compliance, each recommendation was rated as "compliant," "largely compliant," "materially noncompliant," or "noncompliant."

The data collected in the course of the 41 assessments for which detailed reports were available were analyzed and summarized in a joint IMF World Bank paper of March 2004. The rating of the cluster of FATF Recommendations of greatest interest to FIUs was generally high. Taken together, compliance with Recommendations 16 (legal protection for bona fide reports), 17 (prohibition against tipping off), and 18 (compliance with instructions) was very high, with 88 percent, 86 percent, and 76 percent, of jurisdictions, respectively, rated "compliant."

Implementation of the Special Recommendations on Terrorist Financing has lagged behind those related to money laundering. For example, 68 percent of the jurisdictions were assessed as either "compliant" or "largely compliant" with Recommendation 15 on the reporting of suspicious transactions, while 22 percent were rated "materially noncompliant." And 10 percent were rated "noncompliant." In contrast, only 59 percent of the jurisdictions were rated "compliant" or "largely compliant" with Special Recommendation VII on reporting transactions suspected of being related to terrorist financing, while 13 percent were rated "materially noncompliant" and 28 percent were rated "noncompliant."

Other findings relating to FIUs concerned the independence of the FIU, its staffing, clarifying its role vis-à-vis supervisors, strengthening its organizational structure, providing it with wider access to official databases, improving the training and skills of FIU staff, and developing management reporting systems to monitor the effectiveness of the FIU.

Concurrently with the carrying out of those IMF assessments, the Fund, the World Bank, and other institutions provided considerable technical assistance to countries wishing to strengthen their AML/CFT frameworks. The technical assistance provided by the IMF and the World Bank in this area increased sharply during the two-year period extending from January 2002 through December 2003. During that time, the two organizations delivered 117 technical assistance projects, including 85 projects directly to individual countries and 32 regional projects reaching more than 130 countries. The increase in technical assistance activity was spurred, in large part, by the assessments, which provide national authorities with a diagnostic tool to identify their countries' technical assistance needs. More than one-quarter of the technical assistance projects consisted of providing different forms of advice on the establishment and strengthening of FIUs.

6.0 CHALLENGES FACING FIUs

FIUs are an essential component of the international fight against money laundering, the financing of terrorism, and related crime. Their ability to transform data into financial intelligence is a key element in the fight against money laundering and the financing of terrorism. The place of FIUs is now well established in the arsenal of measures to combat these serious crimes. Yet FIUs face a number of challenges. There are two general challenges appear as constants in the design of FIUs and the improvement of existing ones.

6.1 General Challenges Facing FIUs

The first challenge is that there is no set formula to make an FIU work. Each FIU must be tailored to the specific situation of the country in which it is located. Factors such as the structure and relative importance of financial crime in the country, the government's objectives in combating this form of criminality, the resources available for the task, and the legal and administrative systems of the country all have to be taken into consideration in designing an FIU or proposing measures to improve the performance of an existing one. In the design of FIU, many solutions are possible and none is inherently better than the others.

Establishment of an FIU that can carry out the three core functions of receiving suspicious transaction and other reports, analyzing them, and disseminating financial intelligence has recently become the subject of an international standard and is encouraged in a number of recent international conventions dealing with financial crime. Nevertheless, the standard is expressed in very broad terms, and authorities in each country must have a clear vision of their own policy objectives and of the local and regional context when they design an FIU that will meet the standard. And beyond complying with the standard, each country needs to ensure that its FIU makes the contribution that it can to the successful functioning of the AML/CFT system as a whole.

The second challenge is change. In many countries that have established FIUs over the past ten years or so, change has been evident, with their FIU having had to establish themselves as credible organizations capable of dealing with financial institutions and other reporting entities, other government agencies, and international counterparts, changing traditional relationships between economic agents and law enforcement organizations in the process.

6.2 Specific Challenges Facing FIUs

Change will continue to be a feature of the work of FIUs in the future. Although the adoption of the new FATF Recommendations in 2003 may signal a temporary stabilization of the standards applicable to FIUs themselves, other aspects of the fight against money laundering will continue to evolve. Not the least of these is the behavior of criminals. Criminal behavior is like a stream of water, following gravity and constantly prodding the banks for weak points through which it can spread further. As defenses are set up in the supervised financial sector, criminals may move their funds deeper underground or through other, less regulated sectors of the economy. Similarly, as some countries take decisive steps to strengthen their legal and administrative systems to deal with financial crime, criminals may move some of their operations to countries that have not yet done so. There is a need to be constantly on the lookout to counter changes in patterns of criminal behavior.

Against this general background, FIUs currently face more specific challenges. The most important ones are the integration of the financing of terrorism in their work, the broadening of the suspicious transaction reporting obligation beyond the regulated financial sector, and the quest for improved international cooperation.

Integration of the financing of terrorism: for countries fortunate enough not to have had to deal with terrorism in the past, the addition of combating the financing of terrorism to the scope of the FIU's functions presents special challenges. Terrorism is, in many ways, different from money laundering. Terrorism is traditionally not considered a profit-motivated crime; and although significant sums of money may be involved in the commission of terrorist acts, the objective of depriving criminals of the profits of their illegal activity, which is at the heart of an anti-money laundering strategy, does not apply directly to terrorism. Also, in many countries, the agencies involved in combating terrorism are not the same ones dealing with money laundering, thus requiring FIUs to develop new relationships with the former. (In countries that have already faced terrorism, the basic elements needed to combat it may be in place, and the addition of combating the financing of terrorism to the FIU's functions may be more easily integrated.)

Broadening of the suspicious transaction reporting obligation beyond the regulated financial sector: is the broadening of the reporting obligation (and other preventive obligations) to entities beyond the prudentially regulated financial institutions. The extension of the reporting obligation to casinos; dealers in high-value goods; and, more recently, the accounting and legal professions has had a number of implications for FIUs. Some of these professions, such as casinos may be highly regulated in some countries but not in others. Some may not be regulated beyond the basic requirements of incorporation, as may be true of car dealers. Considerable outreach resources are likely to be needed to bring such professions up to an acceptable level of compliance with the reporting requirements. The nature of the reports provided by accounting and legal professionals is bound to be very different from those provided by financial institutions. Complex company structures and trust arrangements require specialized expertise to unravel. Resources have to be allocated to this type of work, and difficult decisions may need to be made as to the balance of resources to be devoted to these new types of reports as compared with the more traditional types.

The quest for improved international cooperation: the need to improve the ability of FIUs to engage in international cooperation. The dynamic growth in FIUs worldwide over the last fifteen years has been accompanied by a strong growth in international cooperation between FIUs. The ability of the more than 80 FIUs to network and share financial intelligence based on agreed principles of information exchange has served as a formidable mechanism for fighting financial crime worldwide. Despite the achievements to date in this area, significant challenges lie ahead. In particular, removing legal obstacles that remain in the way of information sharing and developing and improving systems to ensure the confidentiality of exchanged information remain crucial challenges.

7.0 PUBLICATION

This guideline, adapted from the *‘Financial Intelligence Units: An Overview’ published by the International Monetary Fund and World Bank in 2004*, is a publications of the Financial Intelligence Unit of Liberia as part of its outreach program. This guideline will be reviewed, edited and updated on a periodic basis. Therefore, if you have any comments or suggestions, please send them to:

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Appendix I Financial Intelligence of Liberia

AI.1.0 Establishment of the FIU

AI.1.1 *FIU Act, 2012 §67.2* - The FIU was established as an autonomous agency of the Government of Liberia by an Act of the National Legislature in 2012 (FIU Act, 2012 approved on April 30, 2013 and published on May 2, 2014) "to serve as the central, national agency of Liberia responsible for receiving, requesting, conducting preliminary investigations, analyzing and disseminating information concerning suspected proceeds of crime and terrorist property".

AI.2.0 Functions and Powers of the FIU

AI.2.1 *FIU Act, 2012 §67.3* - The FIU shall:

- (a) receive and analyze intelligence and other public and non-public information in order to disseminate useful information to law enforcement and other competent authorities involved in investigating, prosecuting, detection and prevention of money laundering and terrorist financing, including:
 - (i.) suspicious transaction or cash transaction reports pursuant to AML/CFT reporting obligations from reporting entities, Government Ministries, Government Agencies, quasi-Government Agencies or institutions, or state-owned entities as required by law, and
 - (ii.) public and non-public information provided to the FIU or obtained by the FIU related to money laundering or the predicate offenses, proceeds of crime or related activities;
- (b) trace and/or monitor property or assets suspected to be related to money laundering or its predicate offenses, terrorist financing, or proceeds of crime;
- (c) transmit any information derived from analysis or examination by the FIU to the appropriate domestic or foreign law enforcement authorities on a need to know basis, if there is reason to believe it is relevant to an investigation for a money laundering offense or terrorist financing or an offense involving criminal proceeds;
- (d) disseminate or exchange information with competent domestic or foreign authorities when there are reasonable grounds to believe that the information would be relevant for identifying, tracing, investigating crime proceeds or prosecuting money laundering or related predicate crimes, or terrorist financing;
- (e) enter into any necessary legal agreements or other arrangements (including memorandum of understanding) with authorized domestic, and foreign or international Agencies through the relevant Government institutions to promote cooperation, or information exchange or disclosure in accordance with law upon approval by the Board of the FIU;

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- (f) together with relevant supervisory authorities:
 - (i.) build, implement and continue to improve effectiveness of legally enforceable and necessary preventative measures to obligate reporting entities to identify and detect unusual and/or suspicious activities of their clients, customers or other entities or persons with whom they engage related to money laundering, terrorist financing and proceeds of crime;
 - (ii.) coordinate training and support in drafting, implementing and improving AML/CFT inspection procedures and their effectiveness;
 - (iii.) draft and implement legally enforceable AML/CFT reporting and other internal control obligations applicable to legal entities and individuals subject to AML/CFT obligations;
 - (iv.) provide AML/CFT training programs to reporting entities and individuals to effectively discharge their AML/CFT obligations; and
 - (v.) examine sanctions and penalties for non-compliance with AML/CFT reporting and other obligations to ensure they are proportional, effective and dissuasive;
- (g) participate in AML/CFT inspection of supervisory authorities to monitor compliance with AML/CFT reporting and other obligations, when appropriate;
- (h) promptly inform the relevant supervisory authority where the FIU discovers that a reporting entity is not in compliance with AML/CFT obligations and direct the supervisory authority to take effective and appropriate actions;
- (i) provide feedback and guidance to supervisory authorities and reporting entities to enhance effectiveness of implementation and compliance with AML/CFT requirements;
- (j) regulate, supervise, monitor and enforce compliance of AML/CFT obligations of reporting entities that do not have a supervisory authority;
- (k) in collaboration with supervisory authorities, issue appropriate regulations;
- (l) serve as the central coordinating body for development and implementation of national AML/CFT policies and strategies to ensure effective implementation of international AML/CFT standards;
- (m) examine records, computer systems or data processing systems of reporting entities relevant to ensuring compliance with obligations and make copies of any records;
- (n) enforce compliance where a reporting entity fails to comply in whole or in part with reporting obligations through administrative sanctions established by regulation or initiate or refer the matter to the Ministry of Justice for prosecution where an offense has been committed;
- (o) collaborate with relevant supervisory authorities, law enforcement and national security Agencies to implement procedures for freezing and seizing assets of known or designated terrorists in accordance with relevant United Nations Security Council Resolutions; and

- (p) promote declaration or disclosure of physical cross-border transportation of currency or bearer negotiable instruments.

AI.2.2 *FIU Act, 2012 §67.4* - The FIU shall: receive, review and analyze reports from the following entities or persons hereinafter referred collectively as “reporting entities”, for the purpose of monitoring proceeds of crime, money laundering and terrorist financing:

- (a) Financial institutions;
- (b) Non-financial business and professions; and
- (c) state institutions, ministries, agencies, quasi-government organizations or state-owned enterprises, who shall promptly report relevant information which may reasonably be related to crime proceeds, money laundering, predicate offenses or terrorist financing to the FIU when required to do so by law, regulation or memorandum of understanding or voluntarily, if such suspicion becomes apparent in the course of work. If, due to the regular course of business, type of work, or risks due to the nature of the sector in which a state institution operates, indications of activity or transactions which may be related to crime proceeds, money laundering, predicate offenses or terrorist financing are occasionally or frequently apparent, such state institution shall consult with the FIU to jointly determine whether it may be useful to consider formal implementation of systems and procedures for:
 - (i) transmitting such information to the FIU; or
 - (ii) a system of internal controls and/or screening tools such as risk factors or other indicators that may be useful in identifying transactions, persons or activities that may be involved in criminal activity.

AI.3.0 Governance of the FIU

AI.3.1 As depicted in the Organization Chart below, the FIU is headed by a Director who reports to the Board of Directors that reports to the President of Liberia.

AI.3.2 *FIU Act, 2012 §67.7* - Board of Directors: is the governing body of the FIU, appointed by and reports to the President of Liberia and responsible to formulate and ensure the implementation of policies necessary for the achievement of the objective of anti-money laundering and terrorist financing laws, and oversees the implementation of anti-money laundering and financing of terrorism policies in Liberia. It shall, in its actions, supports the overall purpose and functions of the FIU and comprises representatives of:

- (a) Central Bank of Liberia – Chairperson
- (b) Ministry of Finance and Development Planning – Member
- (c) Ministry of Justice – Member
- (d) Ministry of Foreign Affairs - Member
- (e) National Security Agency – Member
- (f) Liberia Anti-Corruption Commission – Member
- (g) Civil Societies – member (represented by the Liberia Media Center)
- (h) Business Sector – member (represented by the Liberia Chamber of Commerce)
- (i) Director of the FIU - Secretary

AI.3.3 *FIU Act, 2012 §67.8* - Powers and Functions of the Board of Directors

- (a) The Board shall:
 - (i) instruct the Director to furnish it with any information, reports or other documents which the Board considers necessary for the performance of its functions;
 - (ii) review and approve reports and other documents prepared by FIU; and
 - (iii) oversee and monitor the administration, management of FIU.
- (b) The Board shall have the power to regulate its own procedure and may make standing orders providing for all matters relating to the proper conduct of its business.
- (c) The Board shall be the governing body for the FIU, and in that respect shall:
 - (i) approve operational principles and guidelines of the FIU;
 - (ii) approve the management, performance, policies and annual operational plans and budget of the FIU;
 - (iii) approve general terms and conditions of employment for employees of the FIU;
 - (iv) oversee and monitor the management and performance of the FIU;
 - (v) appoint the auditor of the FIU and approve the auditor's reports.

AI.3.4 *FIU Act, 2012 §67.9* - Meetings and Procedures of the Board of Directors

AI.3.5 The Board shall establish bylaws for its internal governance pursuant to international best practices applicable to FIU including meetings, voting and other internal procedures.

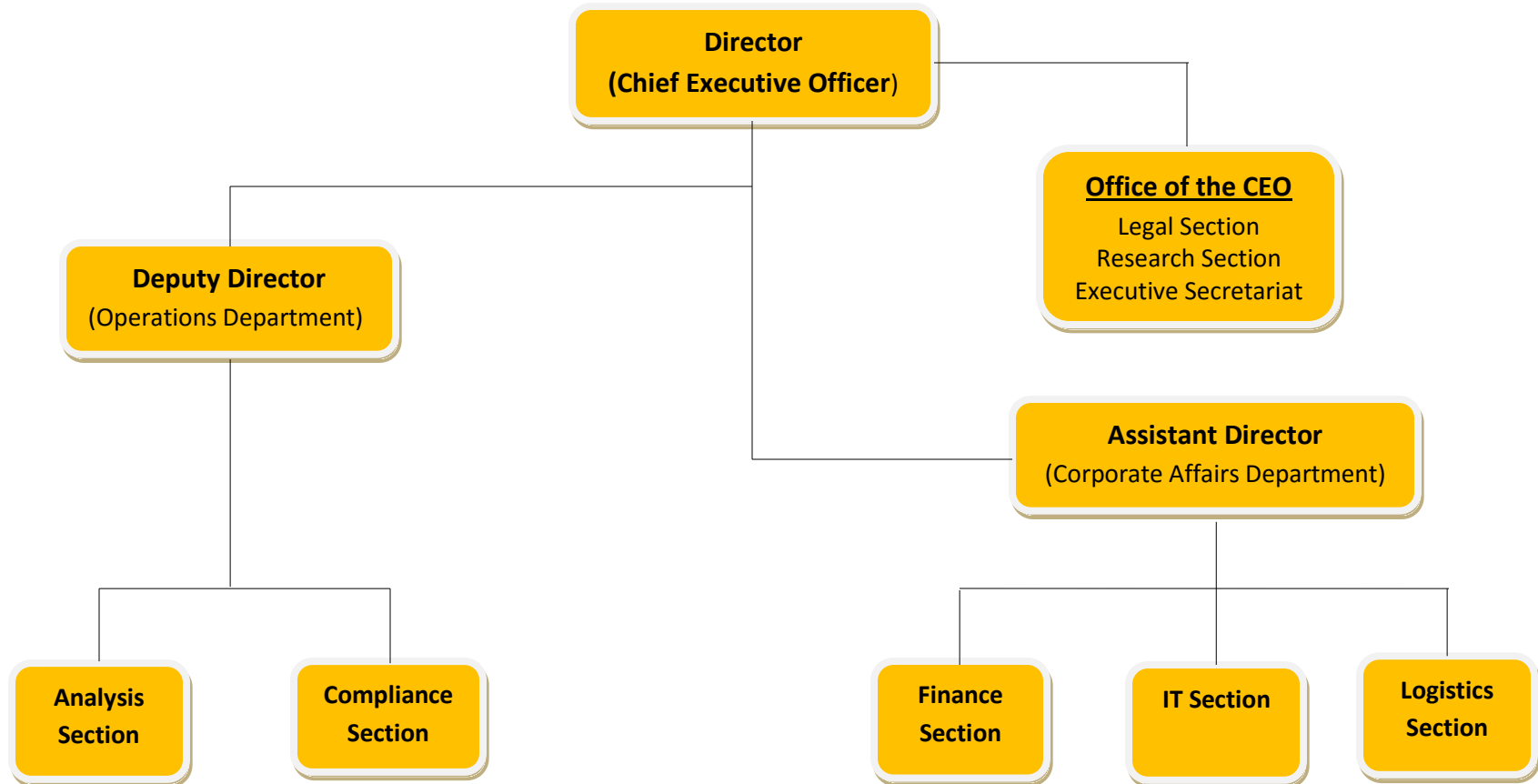
AI.3.6 *FIU Act, 2012 §67.10* - Appointment and Duties of the Director

AI.3.7 Appointment: The President shall, on recommendation of the Board appoint a Director and a Deputy Director for the FIU. The Director of FIU shall be Secretary to the Board. The Board shall vet all candidates on the basis of professional and technical skills, and ethics. The Director shall hold office for a term of five years which may be subject to renewal once. The Director shall be removed from office on grounds of misconduct or other good cause based on a written recommendation of members of the Board. A person may not be appointed or remain Director who is a director, officer, agent or employee of a financial or other institution creating conflict of interest or has a controlling interest in any financial institution.

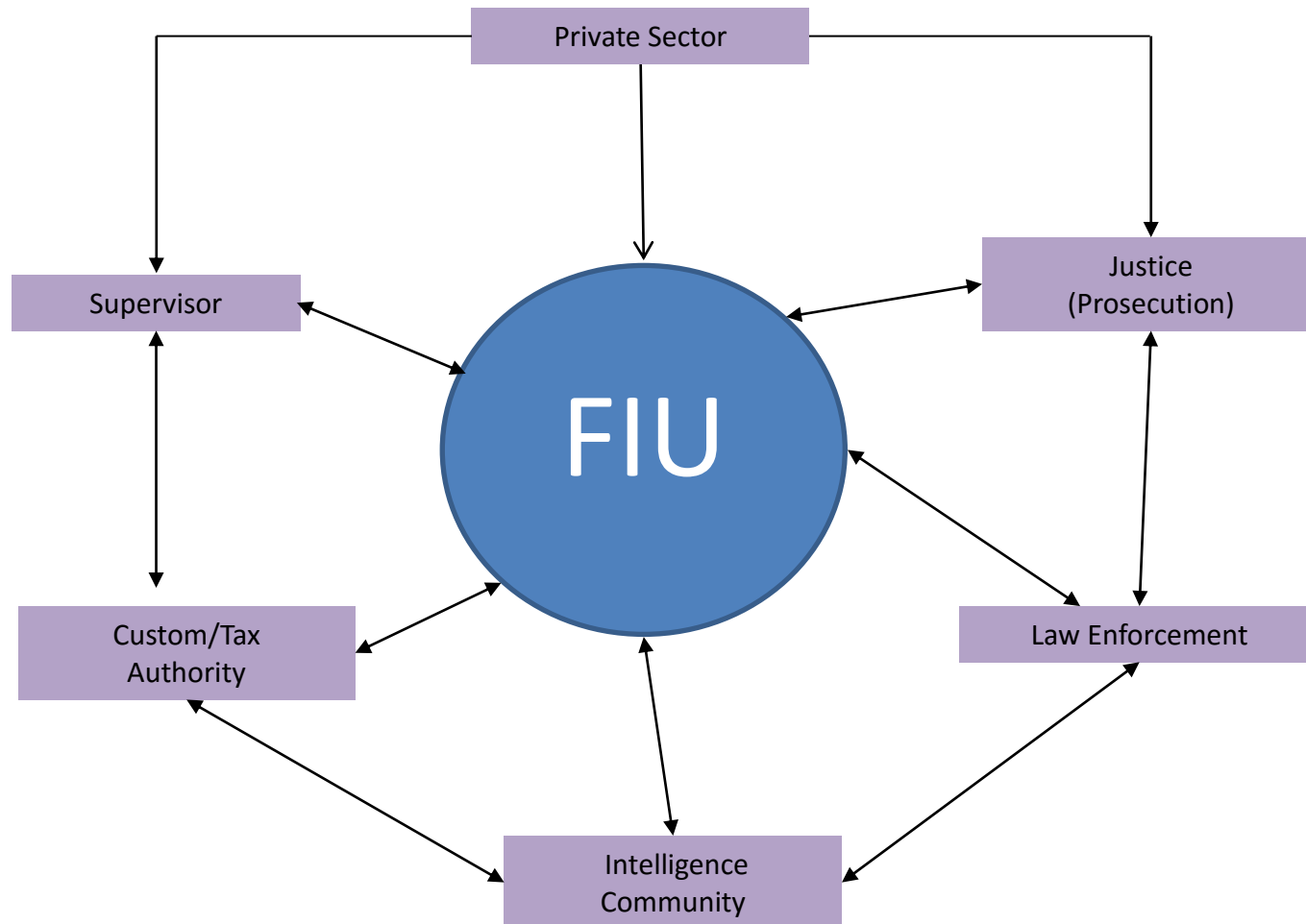
AI.3.8 Duties: The Director shall be responsible for the day to day administration of the FIU and shall be answerable to the Board in the performance of the functions of the FIU. The Director may delegate a function to the Deputy Director but the Director shall not be relieved of the ultimate responsibility for the performance of the delegated function.

AI.4.0 Organization Structure of the FIU

AI.4.1 As depicted in Organization Chart below, the FIU comprises the Office of the Chief Executive Officer (CEO), Operations and Corporate Affairs.



AI.4.2 As depicted in the Chart below, the FIU works collaboratively with reporting entities, law enforcement and investigative entities, and prosecution and judicial institutions.



AI.5.0 Additional Information Related to the FIU

AI.5.1 Obligation Regarding Confidentiality and Use of Information

- 5.1.1 (*Section 1, §67.13 of the FIU Act*): Any person, the Director, and every person employed with or seconded to the FIU shall be required to keep confidential any information obtained within the scope of his/her duties, and after the cessation of those duties, except as otherwise provided in the FIU Act or as ordered by a court.
- 5.1.2 (*Section 2, §67.13 of the FIU Act*): Any current or past employee of the FIU or other person who has or performs duties for or within the FIU who intentionally reveals information, the confidentiality of which is required to be protected, or misuses such information shall commit a second degree felony under the Penal Law.

AI.5.2 Obligation Regarding Tipping Off

- 5.2.1 (*Section 1, §15.8 of the AML/CFT Act*): A person or body corporate or other legal entity is guilty of the offense of tipping off if:
- a) the person knows or suspects that a law enforcement officer or customs officer is acting or proposing to act in connection with an investigation which is being, or is about to be, conducted into money laundering or terrorist financing; and
 - b) the person discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.
- 5.2.2 (*Section 2, §15.8 of the AML/CFT Act*): No financial institution or designated non-financial business and profession, nor any director, partner, officer, principal or employee thereof shall disclose to their customer or a third party that a report or any other information concerning suspected money laundering or financing of terrorism will be, is being, or has been submitted to a competent authority, or that a money laundering or financing of terrorism investigation is being or has been carried out.
- 5.2.3 (*Section 3, §15.8 of the AML/CFT Act*): Notwithstanding the sub-sections 6.2.1 and 6.2.2 above, it shall not be an offense in the case of a lawyer to disclose any information in connection with the giving of legal advice to a client including when seeking to dissuade a client from engaging in illegal activity or in contemplation of or relating to legal proceedings.

AI.5.3 Immunity

- 5.3.1 (*§67.15 of the FIU Act*): No civil or criminal action shall be brought against the Director, any officer, employee or agent of the FIU acting under the direction of the Director for anything done in good faith in the administration or lawful discharge of any powers, duties or functions as contained in the FIU Act. Notwithstanding the foregoing, such persons shall not be immune from liability for gross negligence or intentional or malicious crimes, or corruption.