

巴塞尔银行监管委员会《关于防止犯罪分子利用银行系统洗钱的声明》(1998)

Prevention of Criminal Use of the Banking System for the Purpose of Money-Laundering (1998)

背景: 巴塞尔银行监管委员会(以下简称委员会)的成员由西方 10 国集团(实际上是 12 个发达国家: 比利时、加拿大、法国、德国、意大利、日本、荷兰、瑞典、瑞士、英国、美国 and 卢森堡)的中央银行和金融监管机构组成, 于 1975 年成立。秘书处设在位于巴塞尔的国际清算银行, 其宗旨是促进国际在银行监管事宜上的合作。

《关于防止犯罪分子利用银行系统洗钱的声明》于 1998 年 12 月通过。其中分为前言和原则声明两个部分。整个声明的全部内容都与反洗钱活动密切相关, 故在此引用其全部内容。

Preamble[1]

1. Banks and other financial institutions may be unwittingly[2] used as intermediaries for the transfer or deposit of funds derived from criminal activity. Criminals and their associates[3] use the financial system to make payments and transfers of funds from one account to another; to hide the source and beneficial ownership of money; and to provide storage for bank-notes through a safe deposit facility[4]. These activities are commonly referred to as money-laundering.

2. Efforts undertaken hitherto[5] with the objective of preventing the banking system from being used in this way have largely been undertaken by judicial and regulatory agencies at national level. However, the increasing international dimension of organised criminal activity, notably in relation to the narcotics trade, has prompted[6] collaborative initiatives at the international level. One of the earliest such initiatives was undertaken by the Committee of Ministers of the Council of Europe[7] in June 1980. In its report the Committee of Ministers concluded that "... the banking system can play a highly effective preventive role while the cooperation of the banks also assists in the repression[8] of such criminal acts by the judicial authorities and the police". In recent years the issue of how to prevent criminals laundering the proceeds of crime through the financial system has attracted increasing attention from legislative authorities, law enforcement agencies and banking supervisors in a number of countries.

3. The various national banking supervisory authorities represented on the Basle Committee on Banking Regulations and Supervisory Practices[9] do not have the same roles and responsibilities in relation to the suppression of money-laundering. In some countries supervisors have a specific responsibility in this field; in others they may have no direct responsibility. This reflects the role of banking supervision, the primary function of which is to maintain the overall financial stability and soundness of banks rather than to ensure that individual transactions conducted by bank customers are legitimate. Nevertheless, despite the limits in some countries on their specific responsibility, all members of the Committee firmly believe that supervisors cannot be indifferent to the use made of banks by criminals.

4. Public confidence in banks, and hence their stability, can be undermined by adverse publicity as a result of inadvertent[10] association by banks with criminals. In addition, banks may lay themselves open to direct losses from fraud, either through negligence in screening[11] undesirable customers or where the integrity of their own officers has been undermined through association with criminals. For these reasons the members of the Basle Committee consider that banking supervisors have a general role to encourage ethical standards of professional conduct among banks and other financial institutions.

5. The Committee believes that one way to promote this objective, consistent with differences in national supervisory practice, is to obtain international agreement to a Statement of Principles[12] to which financial institutions should be expected to adhere.

6. The attached Statement is a general statement of ethical principles which encourages banks' management to put in place effective procedures to ensure that all persons conducting business with their institutions are properly identified; that transactions that do not appear legitimate are discouraged; and that cooperation with law enforcement agencies is achieved. The Statement is not a legal document and its implementation will depend on national practice and law. In particular, it should be noted that in some countries banks may be subject to additional more stringent[13] legal regulations in this field and the Statement is not intended to replace or diminish those requirements. Whatever the legal position in different countries, the Committee considers that the first and most important safeguard against money-laundering is the integrity of banks' own managements and their vigilant[14] determination to prevent their institutions becoming associated with criminals or being used as a channel for money-laundering. The Statement is intended to reinforce those standards of conduct.

7. The supervisory authorities represented on the Committee support the principles set out in the Statement. To the extent that these matters fall within the competence of supervisory authorities in different member countries, the authorities will recommend and encourage all banks to adopt policies and practices consistent with the Statement. With a view to its acceptance worldwide, the Committee would also commend the Statement to supervisory authorities in other countries.

Statement of Principles

I. Purpose

Banks and other financial institutions may unwittingly be used as intermediaries for the transfer or deposit of money derived from criminal activity. The intention behind such transactions is often to hide the beneficial ownership of funds. The use of the financial system in this way is of direct concern to police and other law enforcement agencies; it is also a matter of concern to banking supervisors and banks' managements, since public confidence in banks may be undermined through their association with criminals.

This Statement of Principles is intended to outline some basic policies and procedures that banks' managements should ensure are in place within their institutions with a view to assisting in the

suppression of money-laundering through the banking system, national and international. The Statement thus sets out to reinforce existing best practices among banks and, specifically, to encourage vigilance against criminal use of the payments system, implementation by banks of effective preventive safeguards, and cooperation with law enforcement agencies.

II. Customer identification

With a view to ensuring that the financial system is not used as a channel for criminal funds, banks should make reasonable efforts to determine the true identity of all customers requesting the institution's services. Particular care should be taken to identify the ownership of all accounts and those using safe-custody facilities[15]. All banks should institute effective procedures for obtaining identification from new customers. It should be an explicit policy that significant business transactions will not be conducted with customers who fail to provide evidence of their identity.

III. Compliance with laws

Banks' management should ensure that business is conducted in conformity with high ethical standards and that laws and regulations pertaining[16] to financial transactions are adhered to. As regards transactions executed on behalf of customers, it is accepted that banks may have no means of knowing whether the transaction stems from or forms part of criminal activity. Similarly, in an international context it may be difficult to ensure that cross-border transactions on behalf of customers are in compliance with the regulations of another country. Nevertheless, banks should not set out to offer services or provide active assistance in transactions which they have good reason to suppose are associated with money-laundering activities.

IV. Cooperation with law enforcement authorities

Banks should cooperate fully with national law enforcement authorities to the extent permitted by specific local regulations relating to customer confidentiality. Care should be taken to avoid providing support or assistance to customers seeking to deceive law enforcement agencies through the provision of altered, incomplete or misleading information. Where banks become aware of facts which lead to the reasonable presumption that money held on deposit derives from criminal activity or that transactions entered into are themselves criminal in purpose, appropriate measures, consistent with the law, should be taken, for example, to deny assistance, sever relations with the customer and close or freeze accounts.[17]

V. Adherence to the Statement

All banks should formally adopt policies consistent with the principles set out in this Statement and should ensure that all members of their staff concerned, wherever located, are informed of the bank's policy in this regard. Attention should be given to staff training in matters covered by the Statement. To promote adherence to these principles, banks should implement specific procedures for customer identification and for retaining internal records of transactions. Arrangements for

internal audit may need to be extended in order to establish an effective means of testing for general compliance with the Statement.

[1] preamble[pri:5Ambl] 前言, 序文

[2] unwittingly[Qn5witiNli] 不知情地, 无意地

[3] associate[E5sEuFieit] 同伙

[4] safe deposit facility:保险箱业务

[5] hitherto[7hiTE5tu:] 迄今为止

[6] prompt[prCmpt] 促使

[7] committee of Ministers of the Council of Europe:欧洲理事会部长委员会

[8] repression[ri5preFEn] 抑制

[9] basle Committee on Banking Regulations and Supervisory Practices:巴塞尔银行规则和监管事务委员会

[10] inadvertent[7inEd5vE:tEnt] 无意的

[11] screen[skri:n] 审查, 筛选

[12] Statement of Principles:原则声明

[13] stringent[5strindVEnt] 迫切的, 严格的

[14] vigilant[5vidVilEnt] 警醒的, 警惕的

[15] safe-custody facilities:保管箱业务, 银行提供给客户的除了存贷款以外的一种中间业务

[16] pertaining[pE(:)5teiniN] 附属, 属于, 关于

[17] Where banks become aware of factsclose or freeze accounts:当银行得知可以从中推断存款资金可能源自犯罪或参与交易本身就是犯罪的事实时,它应根据法律的规定采取适当的措施,如拒绝协助、断绝与客户的关系和关闭或冻结账户。