Luxembourg, le 4 juillet 2001

A tous les établissements de crédit,
OPC et autres professionnels du
secteur financier.

CIRCULAIRE CSSF 01/31

Concerne : Complément aux circulaires CSSF 00/16 et IML 94/112 concernant la lutte contre le blanchiment et la prévention de l'utilisation du secteur financier à des fins de blanchiment

Mesdames, Messieurs,

Nous avons l'honneur de porter à votre attention la publication en date du 22 juin 2001 d'une mise à jour du document du Groupe d'action financière (GAFI) concernant les pays et territoires non-coopératifs en matière de lutte contre le blanchiment de capitaux.

Les développements intervenus depuis la publication du document originaire en juin 2000 ont amené le GAFI à mettre à jour la liste des pays et territoires considérés comme étant non coopératifs. En effet, plusieurs pays ont fait des efforts considérables en vue de mettre leur législation et réglementation en matière de lutte contre le blanchiment de capitaux en conformité avec les recommandations du GAFI. Au regard des progrès réalisés par ces pays, le GAFI a estimé que leur maintien sur la liste des pays non coopératifs n'est plus justifié. Les pays concernés sont les Bahamas, les îles Cayman, le Liechtenstein et le Panama. Le GAFI ne manquera cependant pas de suivre de près les développements dans ces pays.

Par contre, le GAFI a identifié des lacunes significatives dans le dispositif anti-blanchiment des six pays suivants : Egypte, Guatemala, Hongrie, Indonésie, Myanmar et Nigéria. Ces pays sont dès lors ajoutés à la liste des pays et territoires non coopératifs publiée par le GAFI.

La liste mise à jour a donc la teneur suivante : îles Cook, Dominique, Egypte, Guatemala, Hongrie, Indonésie, Israël, Liban, îles Marshall, Myanmar, Nauru, Nigéria, Niue, Philippines, Russie, St. Kitts et Nevis, St. Vincent et Grenadines. Le document GAFI du 22 juin 2001 dont une copie est jointe en annexe, fournit de plus amples informations à ce sujet.

Les lacunes dans la législation et la réglementation en matière de blanchiment de capitaux sont, de l'avis du GAFI, particulièrement graves dans trois pays, à savoir à Nauru, aux Philippines et en Russie. Au regard de l'insuffisance du dispositif législatif de ces pays, le GAFI se réserve le droit d'introduire fin septembre 2001 une exigence de notification des transactions financières ayant trait à ces pays à moins que les gouvernements concernés ne prennent des mesures significatives en vue de renforcer leur législation en matière de lutte contre le blanchiment de capitaux.

Dans ce contexte, nous nous permettons de rappeler aux établissements de la place de traiter avec une attention toute particulière les clients et les transactions financières impliquant un des pays et territoires figurant sur la liste mise à jour du GAFI. En particulier, les principes énoncés dans la circulaire CSSF 00/16 restent d'application.

Veuillez recevoir, Mesdames, Messieurs, l'assurance de nos sentiments très distingués.

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Arthur PHILIPPE Directeur	Jean-Nicolas SCHAUS Directeur général

Annexe.

Financial Action Task Force on Money Laundering

Groupe d'action financière sur le blanchiment de capitaux

Review to Identify Non-Cooperative Countries or Territories: Increasing The Worldwide Effectiveness of Anti-Money Laundering Measures

22 June 2001

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EXECUTIVE SUMMARY OF THE JUNE 2001 NCCTs REPORT

1. In order to reduce the vulnerability of the international financial system and increase the world-wide effectiveness of anti-money laundering measures, the FATF agreed to the following steps:

Removal of countries from the list

- It recognises that the Bahamas, the Cayman Islands, Liechtenstein and Panama, listed as non-cooperative in June 2000, have addressed the deficiencies identified by the FATF through the enactment of legal reforms. These countries have also taken concrete steps to implement these reforms and are therefore removed from the NCCT list. Consequently, the procedures prescribed in FATF Recommendation 21 are withdrawn. To ensure continued effective implementation of these reforms, the FATF will monitor the situation, in consultation with the relevant FATF-style regional bodies, in particular in the areas laid out in the NCCT report.

Progress made since June 2000

- It welcomes the progress made by the Cook Islands, Dominica, Israel, Lebanon, Marshall Islands, Niue and St. Kitts and Nevis, in addressing deficiencies and calls upon them to continue this work. Until the deficiencies have been fully addressed and the necessary reforms have been sufficiently implemented, it believes that scrutiny of transactions with these jurisdictions, as well as those with St. Vincent and the Grenadines, continues to be necessary and reaffirms its advice of June 2000 to apply, in accordance with Recommendation 21, special attention to such transactions. The FATF notes with particular satisfaction that Israel, Cook Islands, Lebanon and Marshall Islands have enacted most, if not all legislation needed to remedy the deficiencies identified in June 2000. On the basis of this progress, the FATF has asked those countries to submit implementation plans to enable the FATF to evaluate the actual implementation of the legislative changes according to the principles agreed upon by its Plenary.

Identification of new NCCTs

- following the assessment of thirteen countries and territories, it identifies six new jurisdictions as non-cooperative in the fight against money laundering: Egypt, Guatemala, Hungary, Indonesia, Myanmar and Nigeria. The report contains a brief explanation of the issues or deficiencies identified and of the remedial actions that need to be taken to eliminate these deficiencies as well as any positive steps taken.

Countermeasures

- It considers that inadequate progress has been made by Nauru, the Philippines and Russia in addressing the serious deficiencies identified in June 2000. In addition to the application of Recommendation 21, it recommends the application of further counter-measures which should be gradual, proportionate and flexible regarding their means and taken in concerted action towards a common objective. It believes that enhanced surveillance and reporting of financial transactions and other relevant actions involving these jurisdictions is now required, including the possibility of:

    - Stringent requirements for identifying clients and enhancement of advisories, including jurisdiction-specific financial advisories, to financial institutions for identification of the beneficial owners before business relationships are established with individuals or companies from these countries;

- Enhanced relevant reporting mechanisms or systematic reporting of financial transactions on the basis that financial transactions with such countries are more likely to be suspicious;

- In considering requests for approving the establishment in FATF member countries of subsidiaries or branches or representative offices of banks, taking into account the fact that the relevant bank is from an NCCT;

- Warning non-financial sector businesses that transactions with entities within the NCCTs might run the risk of money laundering.

– It recommends that its members apply countermeasures as of 30 September 2001 to Nauru, the Philippines and Russia, unless their governments enact significant legislation that addresses FATF-identified money laundering concerns. This date should allow time for these governments to fulfil their political commitments and complete parliamentary processes to enact reforms. The FATF urges those countries to place emphasis on the criminalisation of money laundering; the mandatory creation of a suspicious transaction reporting regime; the establishment of a proper customer identification requirements; the elimination of excessive bank secrecy; and international co-operation.

2. The FATF looks forward to adequate progress being made by Nauru, the Philippines and Russia so that the coming into force of the countermeasures can be avoided. With respect to those countries listed in June 2000 whose progress in addressing deficiencies has stalled, the FATF will consider the adoption of additional counter-measures as well.

3. In sum, the list of NCCTs is comprised of the following jurisdictions: **Cook Islands; Dominica; Egypt; Guatemala; Hungary; Indonesia; Israel; Lebanon; Marshall Islands; Myanmar; Nauru; Nigeria; Niue; Philippines; Russia; St. Kitts and Nevis; and St. Vincent and the Grenadines**. The FATF calls on its members to request their financial institutions to give special attention to businesses and transactions with persons, including companies and financial institutions, in countries or territories identified in the report as being non-cooperative.

FATF REVIEW TO IDENTIFY NON-COOPERATIVE COUNTRIES OR TERRITORIES : INCREASING THE WORLD-WIDE EFFECTIVENESS OF ANTI-MONEY LAUNDERING MEASURES

INTRODUCTION AND BACKGROUND

4. The Forty Recommendations of the Financial Action Task Force on Money Laundering (FATF) have been established as the international standard for effective anti-money laundering measures.

5. FATF regularly reviews its members to check their compliance with these Forty Recommendations and to suggest areas for improvement. It does this through annual self-assessment exercises and periodic mutual evaluations of its members. The FATF also identifies emerging trends and methods used to launder money and suggests measures to combat them.

6. Combating money laundering is a dynamic process because the criminals who launder money are continuously seeking new ways to achieve their illegal ends. Moreover, it has become evident to the FATF through its regular typologies exercises that, as its members have strengthened their systems to combat money laundering, the criminals have sought to exploit weaknesses in other jurisdictions to continue their laundering activities. Therefore, to foster truly global implementation of international anti-money laundering standards, the FATF was charged in its current mandate to promote the establishment of regional anti-money laundering groups to complement the FATF's work and help spread the FATF's philosophy throughout the world.

7. In order to reduce the vulnerability of the international financial system to money laundering, governments must intensify their efforts to remove any detrimental rules and practices which obstruct international co-operation against money laundering. Since the end of 1998, the FATF has been engaged in a significant initiative to identify key anti-money laundering weaknesses in jurisdictions both inside and outside its membership.

8. In this context, on 14 February 2000, the FATF published an initial report on the issue of non-cooperative countries and territories (NCCTs) in the international fight against money laundering[1]. The February 2000 report set out twenty-five criteria to identify detrimental rules and practices which impede international co-operation in the fight against money laundering (see Appendix). The criteria are consistent with the FATF Forty Recommendations. The report also described a process designed to identify jurisdictions which have rules and practices that can impede the fight against money laundering and to encourage these jurisdictions to implement international standards in this area. Finally, the report contained a set of possible counter-measures that FATF members could use to protect their economies against the proceeds of crime.

9. The goal of the FATF's work in this area is to secure the adoption by all financial centres of international standards to prevent, detect and punish money laundering. A major step in this work was the publication of the June 2000 Review[2] to identify non-cooperative countries or territories. This initiative has so far been both productive and successful because most of the 15 jurisdictions identified as being non-cooperative in June 2000 have made significant and rapid progress.

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1 Available at the following website address : http://www.oecd.org/fatf/pdf/NCCT_en.pdf

2 Available at the following website address: http://www.oecd.org/fatf/pdf/NCCT2000_en.pdf

10. At its Plenary meeting on 20-22 June 2001, the FATF approved this new review. Section I of this document summarises the review process. Section II highlights progress made by the 15 jurisdictions which were deemed to be non-cooperative in June 2000. In section III, the report briefly describes the findings with respect to a second group of jurisdictions which were reviewed. Section IV outlines future steps to be taken and identifies the seventeen countries or territories which are viewed by the FATF as non-cooperative in the fight against money laundering.

I. PROCESS

11. At its February 2000 Plenary meeting, the FATF set up four regional review groups (Americas; Asia/Pacific; Europe; and Africa and the Middle East) to analyse the anti-money laundering regimes of a number of jurisdictions against the above-mentioned twenty-five criteria. In 2000-2001, the review groups were maintained to continue this work and to monitor the progress made by NCCTs.

(i) Review process

12. The jurisdictions to be reviewed were informed of the work to be carried out by the FATF. The reviews involved gathering the relevant information, including laws and regulations, as well as any mutual evaluation reports, related progress reports and self-assessment surveys, where these were available. This information was then analysed against the twenty-five criteria and a draft report was prepared and sent to the jurisdictions concerned for comment. In some cases, the reviewed jurisdictions were asked to answer specific questions designed to seek additional information and clarification. Each reviewed jurisdiction provided their comments on their respective draft reports. These comments and the draft reports themselves were discussed between the FATF and the jurisdictions concerned during a series of face-to-face meetings which took place from the end of May to the beginning of June 2001. Subsequently, the draft reports were discussed by the FATF Plenary. The findings are reflected in Section III of the present report.

(ii) Assessing progress

13. The assessments of the 15 jurisdictions identified as non-cooperative by the FATF in June 2000 were discussed as a priority item at each FATF Plenary meeting during 2000-2001 to determine whether any jurisdictions should be removed from the list of NCCTs. These assessments were discussed initially by the FATF review groups, including through face-to-face meetings, and then discussed by the Plenary of FATF. In making such assessments, the FATF seeks to establish whether comprehensive and effective anti-money laundering systems exist in the jurisdictions concerned. Decisions to revise the list published in June 2000 are taken in the FATF Plenary.

14. In deciding whether a jurisdiction should be removed from the list, the FATF Plenary assesses whether a jurisdiction has addressed the deficiencies previously identified. The FATF relies on its collective judgement, and attaches particular importance to reforms in the area of criminal law, financial supervision, customer identification, suspicious activity reporting, and international co-operation. Legislation and regulations need to have been enacted and to have come into effect before removal from the list can be considered. In addition, the FATF seeks to ensure that the jurisdiction is effectively implementing the necessary reforms. Thus, information related to institutional arrangements, as well as the filing of suspicious activity reports, examinations of financial institutions, international co-operation and the conduct of money laundering investigations, are considered.

15. The FATF views the enactment of the necessary legislation and the promulgation of associated regulations as essential and fundamental first step for jurisdictions on the list. The jurisdictions which have enacted most, if not all legislation needed to remedy the deficiencies identified in June 2000 were asked to submit implementation plans to enable the FATF to evaluate the

actual implementation of the legislative changes according to the above principles. Finally, the FATF has further elaborated a process, which includes on-site visits to the jurisdiction concerned, by which jurisdictions can be de-listed at the earliest possible time.

(iii) Monitoring process for jurisdictions removed from the NCCT list

16. To ensure continued effective implementation of the reforms enacted, the FATF has adopted a monitoring mechanism to be carried out in consultation with the relevant FATF-style regional body. This mechanism would include the submission of regular implementation reports and a follow-up visit to assess progress in implementing reforms and to ensure that stated goals have, in fact, been fully achieved.

17. The monitoring process of de-listed jurisdictions will be carried out against the implementation plans already submitted by de-listed jurisdictions, specific issues raised in the 2001 progress reports and the experience of FATF members on implementation issues. In this context, subjects addressed may include, as appropriate: the issuance of secondary legislation and regulatory guidance; inspections of financial institutions planned and conducted; STRs systems; process for money laundering investigations and prosecutions conducted; regulatory, FIU and judicial co-operation; adequacy of resources; and assessment of compliance culture in the relevant sectors.

II. FOLLOW-UP ON JURISDICTIONS IDENTIFIED AS NON-COOPERATIVE IN JUNE 2000

18. This section constitutes an overview of progress made by these jurisdictions. Jurisdictions marked with an asterisk are still regarded as being non-cooperative by the FATF. (References to "meeting the criteria" means that the concerned jurisdictions were found to have detrimental rules and practices in place.) For each of the following jurisdictions, the situation which prevailed in June 2000 is summarised (criteria met, main deficiencies) and is followed by an overview of the actions taken by jurisdictions since that time.

(i) Jurisdictions which have addressed the deficiencies identified by the FATF through the enactment of legal reforms and concrete steps taken to implement them, and are not considered as non-cooperative

Bahamas

19. The Commonwealth of the Bahamas previously met criteria 12-16, 18, 21, 22, 23 and 25. It partially met criteria 5, 10, 11 and 20. Serious deficiencies were found in its anti-money laundering system. In particular, the lack of information about beneficial ownership as to trusts and International Business Companies (IBCs), which were allowed to issue bearer shares. There was also a serious breach in identification rules, since certain intermediaries could invoke their professional code of conduct to avoid revealing the identity of their clients. International co-operation was marked by long delays and restricted responses to requests for assistance and there was no scope for co-operation outside of judicial channels.

20. Since June 2000, the Bahamas enacted the Money Laundering (Proceeds of Crime) (Amendment) Act, 2000 on 27 June 2000, and the Evidence (Proceedings in other Jurisdictions) Act, 2000 and the Evidence (Proceedings in other Jurisdictions) (Amendment) Act, 2000 on 17 August 2000. On 29 December 2000, it also enacted the Central Bank of the Bahamas Act, 2000; the Bank and Trust Companies Regulation Act, 2000; the Financial Intelligence Unit Act, 2000; the Financial and Corporate Service Providers Act, 2000; the Criminal Justice (international co-operation) Act, 2000; the International Business Companies Act, 2000; the Dangerous Drug Act, 2000; the Financial Transaction Reporting Act, 2000; and the Proceeds of Crime Act, 2000. These laws address banking supervision, customer identification, information about ownership of IBCs and channels for providing

international co-operation at the judicial level as well as the administrative level through the new FIU (financial intelligence unit).

21. The Bahamas have made important progress in terms of implementation of its new counter-money laundering regime. It has established a financial intelligence unit and has dedicated significant human and financial resources to make it operational. The Central Bank has established and begun to implement an ambitious inspection programme. It has required banks to establish a physical presence in the jurisdiction, has already revoked 19 licences of banks not intending to comply, and has required all pre-existing accounts to be identified by 31 December 2002. The Bahamas is eliminating bearer shares, has imposed new requirements on IBCs, and has established an inspection programme to ensure compliance. In the area of international co-operation, the Attorney General's Office has established an international co-operation unit and the financial intelligence unit has joined the Egmont Group.

22. In the future, FATF will pay particular attention to the level of resources devoted to the newly-created institutions, the ability of the Bahamian regulators to access STR information and co-operate with foreign counterparts, the continued practice of co-operating with judicial authorities, the progress made in applying customer identification requirements to pre-existing accounts, and further efforts to enhance compliance by the financial sector with the new anti-money laundering requirements.

Cayman Islands

23. The Cayman Islands previously met criteria 1, 5, 6, 8, 10, 11, 13, 14, 15, 16, 17, 18 and 23. It partially met criteria 2, 3, 7 and 12. The Cayman Islands did not have any legal requirements for customer identification and record keeping. Even if in the absence of a mandatory requirement, financial institutions were to identify their customers, supervisory authorities could not, as a matter of law, readily access information regarding the identity of customers. Moreover, the supervisory authority placed too much reliance on the home country supervisors' assessment of the management of bank branches. The Cayman Islands lacked a *mandatory* regime for the reporting of suspicious transactions. Moreover, a wide range of management companies – including those providing nominee shareholders for the purpose of formation of a company or holding the issued capital of a company -- was unregulated.

24. Since June 2000, the Cayman Islands has enacted the following laws: Building Societies (Amendment) (Regulation by Monetary Authority) Law, 2000; Cooperative Societies (Amendment) (Credit Unions) Law, 2000; Monetary Authority (Amendment) (Regulation of Non-Bank Financial; Institutions) Law, 2000; Proceeds of Criminal Conduct (Amendment)(Financial Intelligence Unit) Law, 2001; Proceeds of Criminal Conduct Law (2000 Revision) Money Laundering (Amendment) (Client Identification) Regulations, 2001. Additionally, the following laws were enacted in April 2001: Banks and Trust Companies (Amendment) (Prudent Management) Law 2001; Insurance (Amendment) (Prudent Management) Law 2001; Mutual Funds (Amendment) (Prudent Administration) Law 2001; Companies Management (Amendment) Law 2001. The Regulations address customer identification and record-keeping for a wide range of financial services. Amendments to certain laws deal with the power of the financial supervisory authority to monitor compliance with the Regulations. Other amendments to the Proceeds of Criminal Conduct Law concern the sanction for failure to report a suspicious transaction.

25. The Cayman Islands have made important progress in terms of implementation of its new counter-money laundering regime. It has significantly increased the human and financial resources dedicated to financial supervision and to its financial intelligence unit. It has initiated an ambitious financial inspection programme, required the identification of pre-existing accounts by 31 December 2002, and required all banks licensed in the Cayman Islands to maintain a physical presence in the jurisdiction.

26. In the future, FATF will pay particular attention to the continued ability of the Cayman FIU and other Caymanian authorities to co-operate with foreign counterparts, the ability of the financial regulators to meet their ambitious inspection goals, the identification of the beneficiaries of trusts and the progress made in applying customer identification requirements to pre-existing accounts, and further efforts to enhance compliance by the financial sector with the new anti-money laundering requirements.

Liechtenstein

27. Liechtenstein previously met criteria 1, 5 (partially), 10, 13 (partially), 15, 16, 17, 18, 20, 21 and 23. The system for reporting suspicious transactions was still inadequate; there were no proper laws in place for exchanging information about money laundering investigations and co-operating with foreign authorities in prosecuting cases, and the resources devoted to tackling money laundering were inadequate.

28. Since June 2000, Liechtenstein amended its Due Diligence Act and enacted a new law on Mutual Legal Assistance in Criminal Matters, on 15 September 2000. It also enacted the Ordinance to Due Diligence Act and the Ordinance to establish a Financial Intelligence Unit and revised the Criminal Code, Criminal Procedure Code and Narcotics Act 1993. Finally, Liechtenstein enacted an Executive Order setting out the roles and responsibilities of the FSA (Financial Supervisory Authority). These texts address obligations on regulated financial institutions to identify customers and the financial regulators' powers to obtain and exchange information about client accounts, regulations about know-your-customer procedures, the extension of money laundering offences, mutual legal assistance procedures and the establishment of an FIU.

29. Liechtenstein has made important progress in terms of the implementation of this new legal framework, by creating the FIU, strengthening the resources (both financial and human) allocated to the fight against money laundering and by significantly improving its international co-operation provisions, both in administrative and judicial matters. These efforts must continue to develop. The Liechtenstein FIU has joined the Egmont Group. Liechtenstein has also taken clear commitments as to the identification for accounts whose owners were not previously identified.

30. In the future, FATF will pay particular attention to the real progress and results in fostering compliance by the financial sector with the new anti-money laundering requirements, in particular for the identification and suspicious reporting requirements, and analysis of STRs. In this context, the FATF welcomes the proposal from Liechtenstein's authorities to put in place, in conjunction with the FATF, a monitoring mechanism, focusing in particular on the roles of the FSA and FIU to further enhance its compliance mechanisms, and on further efforts to enhance compliance by the financial sector with the new anti-money laundering requirements. The FATF will continue to monitor, among other things, the progress made in applying customer identification requirements to pre-existing accounts, and international co-operation.

Panama

31. Panama previously met criteria 7, 8, 13, 15, 16, 17, 18 and 19, and partially met criterion 10. Panama had not yet criminalised money laundering for crimes other than drug trafficking. It had an unusual and arguably inefficient mechanism for transmitting suspicious transaction reports to competent authorities. Panama's FIU was not able to exchange information with other FIUs. In addition, certain outdated civil law provisions impeded the identification of the true beneficial owners of trusts.

32. Since June 2000, Panama enacted laws Nos. 41 and 42 on 2 October 2000, issued Executive Decrees Nos. 163 and 213 on 3 October 2000, and issued Agreement No. 9-2000 of October 23, 2000. Laws nos. 41 and 42 deal with the scope of predicate offences for money laundering and they contain various anti-money laundering measures. The Executive Orders address the process for reporting

money laundering activity, the ability of the FIU to co-operate at the international level, and the dissemination of information relating to trusts. Agreement No. 9-2000 reinforces customer identification procedures and provides greater precision on due diligence for banks.

33. Panama has made important progress in terms of the implementation of its new anti-money laundering regime. It has a well-developed anti-money laundering supervision programme and has significantly increased the human and financial resources dedicated to its Bank Superintendency and financial intelligence unit. It has enhanced its ability to co-operate internationally, and has actively sought to enter into written agreements with FATF members and other countries to provide for international FIU co-operation. Several such written agreements have been signed.

34. In the future, FATF will pay attention to Panama's continued efforts to enter into written agreements for FIU co-operation, its continued practice of international co-operation and its focus on potential money laundering threats in the Colon Free Zone, the ability of Panamanian prosecutors to effectively pursue money laundering cases and further efforts to enhance compliance by the financial sector with the new anti-money laundering requirements. Additionally, Panama should consider adding additional predicates with its money laundering law.

(ii) Jurisdictions which have made progress in enacting legislation to address deficiencies

Cook Islands *

35. In June 2000, the Cook Islands met criteria 1, 4, 5, 6, 10, 11, 12, 14, 18, 19, 21, 22, 23 and 25. In particular, the Government had no relevant information on approximately 1,200 international companies that it had registered. The country also licensed seven offshore banks that could take deposits from the public but were not required to identify customers or keep their records. Its excessive secrecy provisions guarded against the disclosure of relevant information on those international companies as well as bank records.

36. Since June 2000, the Cook Islands enacted the Money Laundering Prevention Act on 18 August 2000 and has drafted the Money Laundering Prevention Regulations 2000. The Act addresses the following areas: anti-money laundering measures in the financial sector, the money laundering criminal offence and international co-operation in money laundering investigations. The Cook Islands also issued Guidance Notes on Money Laundering Prevention in April 2001.

Dominica *

37. In June 2000, Dominica met criteria 4, 5, 7, 10-17, 19, 23 and 25. Dominica had outdated proceeds of crime legislation, which lacked many features now expected, and very mixed financial services legislation currently on the books. In addition, company law provisions created additional obstacles to identification of ownership. The offshore sector in Dominica appeared to be largely unregulated although it was understood that responsibility for its regulation was to be transferred to the Eastern Caribbean Central Bank.

38. Since June 2000, Dominica has enacted amendments to several laws, and brought into force the Money Laundering (Prevention) Act in January 2001. Regulations under this Act were introduced in May 2001. The enacted legislation and regulations address issues relating to the criminalisation of money laundering, the establishment of a Money Laundering Supervisory Authority (MLSA) and of a financial intelligence unit, and requirements on financial institutions concerning record-keeping and reporting of suspicious transactions. However, there remain several issues to be resolved, including customer identification procedures, the retention of records, and the ability of the administrative authorities to access and to share specific information.

Israel *

39. In June 2000, Israel met criteria 10, 11, 19, 22 and 25. It also partially met criterion 6. The absence of anti-money laundering legislation caused Israel to fall short of FATF standards in the areas of mandatory suspicious transaction reporting, criminalisation of money laundering arising from serious crimes and the establishment of a financial intelligence unit. Israel was partially deficient in the area of record keeping, since this requirement did not apply to all transactions.

40. Since June 2000, Israel enacted the Prohibition on Money Laundering Law [5760-2000] on 2 August 2000 which addresses the money laundering criminal offence, as well as customer identification, record-keeping and reporting requirements. It promulgated two of the required regulations to implement the law: the Prohibition on Money Laundering (Reporting to Police) Regulation and the Prohibition on Money Laundering (The Banking Corporations' Requirement Regarding Identification, Reporting and Record-Keeping) Order.

Lebanon *

41. In June 2000, Lebanon met criteria 1, 2, 7, 8, 9, 10, 11, 14, 15, 16, 18, 19, 20, 24 and 25. In particular, it maintained a strict banking secrecy regime which affected access to the relevant information both by administrative and investigative authorities. International co-operation was compromised as well. Anomalies in the identification procedures for clients and doubts related to the actual identity of the clients could have constituted grounds for the bank to terminate any existing relationship, without violating the terms of the contract. No specific reporting requirement existed in such cases. Furthermore, there did not seem to be any well-structured unit tasked with FIU functions.

42. On 26 April 2001, Law no. 318 ("Fighting Money Laundering") was promulgated in Lebanon's Official Gazette. The law criminalises the laundering of the proceeds of crime specifically in relation to narcotics offences, organised crime, terrorist acts, arms trafficking, embezzlement/other specified frauds and counterfeiting of money or official documents. Moreover, Lebanon Central Bank, with the decision no. 7818 of 18 May 2001, promulgated regulations on the control of financial and banking operation for fighting money laundering which addresses issues relating to the check of the client's identity and the obligation to control suspicious operations. The new money laundering law partially addresses the FATF's major concerns with regard to bank secrecy.

Marshall Islands *

43. In June 2000, Marshall Islands met criteria 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 19, 23 and 25. It also indirectly met criteria 15, 16 and 17. It lacked a basic set of anti-money laundering regulations, including the criminalisation of money laundering, customer identification and a suspicious transaction reporting system. While the size of the financial sector in the Marshall Islands is limited with only three onshore banks and no offshore bank, the jurisdiction had registered about 3,000 IBCs. The relevant information on those international companies was guarded by the excessive secrecy provision and not accessible by financial institutions.

44. Since June 2000, the Marshall Islands passed the Banking (Amendment) Act of 2000 (P.L. 2000-20) on 31 October 2000. The Act addresses the following areas: criminalisation of money laundering, customer identification for accounts, and reporting of suspicious transactions.

St. Kitts and Nevis *

45. In June 2000, St. Kitts and Nevis met criteria 1-13, 15-19, 23 and 25. Money laundering was a crime only as it related to narcotics trafficking. There was no requirement to report suspicious transactions. Most of the other failings related to Nevis, which constituted the only significant financial centre of the federation. The Nevis offshore sector was effectively unsupervised, and there were no requirements in place to ensure financial institutions to follow procedures or practices to prevent or detect money laundering. Non-residents of Nevis were allowed under law to own and operate an offshore bank without any requirement of identification. Strong bank secrecy laws prevented access to information about offshore bank account holders apparently even in some criminal proceedings. Company law provisions outlined additional obstacles to customer identification and international co-operation: limited liability companies could be formed without registration of their owners and there was no mutual legal assistance or international judicial co-operation (notwithstanding a treaty or convention) with respect to legal action against an international trust, or a settlor, trustee, protector, or beneficiary of such trust.

46. St. Kitts and Nevis enacted, on 29 November 2000, the Financial Intelligence Unit Act, No. 15 of 2000; the Proceeds of Crime Act No. 16 of 2000; and the Financial Services Commission Act, No. 17 of 2000. The Nevis Offshore Banking (Amendment) Ordinance, No. 3 of 2000, was enacted on 14 November 2000. The latter Act addresses deficiencies in the supervision of the financial sector. Anti-Money Laundering Regulations 2001, n° 15 of 2001, were enacted on 22 May 2001. These regulations require the financial institutions to establish identification procedures in relation to new and continuing business, to maintain a record of transactions and to report suspicious transactions to the Reporting Authority. However, there remain several issues to be resolved, including the ability of the FIU and the financial regulators to co-operate internationally and the identification of the beneficial owners of legal entities.

St. Vincent and the Grenadines *

47. In June 2000, St. Vincent and the Grenadines met criteria 1-6, 10-13, 15, 16 (partially), 18, and 22-25. There were no anti-money laundering regulations or guidelines in place with respect to offshore financial institutions, and thus no customer identification or record-keeping requirements or procedures. Resources devoted to supervision were extremely limited. Licensing and registration requirements for financial institutions were rudimentary. There was no system to require reporting of suspicious transactions. IBC and trust law provisions created additional obstacles, and the Offshore Finance Authority was prohibited by law from providing international co-operation with respect to information related to an application for a license, the affairs of a licensee, or the identity or affairs of a customer of a licensee. International judicial assistance was unduly limited to situations where proceedings had been commenced against a named defendant in a foreign jurisdiction.

48. Following June 2000, St. Vincent and the Grenadines enacted the International Banks (Amendment) Act, 2000 and the Confidential Relationships Preservation (International Finance) (Amendment) Act 2000 on 28 August 2000. It also amended the International Banks Act on 17 October 2000. These Acts intend to cover deficiencies in issues related to the authorisation and registration requirements for offshore banks, and access to confidential information. However, no progress has been made since the February 2001 Plenary meeting.

Niue *

49. In June 2000, Niue met criteria 1, 2, 3, 4, 5, 10, 11, 12, 14, 15 and 25. The legislation in Niue contained a number of deficiencies, in particular in relation to customer identification requirements. While it has licensed five offshore banks and registered approximately 5,500 IBCs, there were serious concerns about the structure and effectiveness of the regulatory regime for those institutions. In addition, Niue's willingness to co-operate in money laundering investigations was not tested in practice.

50. Since June 2000, Niue enacted the Financial Transactions Reporting Act 2000, on 16 November 2000. The new Act addresses requirements dealing with customer identification, reporting of suspicious transactions and the establishment of an FIU.

(iii) Jurisdictions which have not made adequate progress in addressing the serious deficiencies identified by the FATF

Nauru *

51. Nauru meets criteria 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 19, 23, 24 and 25. It lacks a basic set of anti-money laundering regulations, including the criminalisation of money laundering, customer identification and a suspicious transaction reporting system. It has licensed approximately 400 offshore "banks", which are prohibited from taking deposits from the public but are poorly supervised. The excessive secrecy provisions guard against the disclosure of the relevant information on those offshore banks and international companies.

52. On 14 June 2001, Nauru introduced to the Parliament the draft anti-money laundering Act 2001 which would address the obligation of customer identification and record-keeping.

Philippines *

53. The Philippines meet criteria 1, 4, 5, 6, 8, 10, 11, 14, 19, 23 and 25. The country lacks a basic set of anti-money laundering regulations such as customer identification and record keeping. Bank records have been under excessive secrecy provisions. It does not have any specific legislation to criminalise money laundering per se. Furthermore, a suspicious transaction reporting system does not exist in the country.

54. Since June 2000, the Government of the Philippines has been seeking unsuccessfully for the Congress to pass an anti-money laundering Bill to criminalise money laundering, require customer identification as well as record keeping, introduce suspicious transaction reporting system and relax the bank secrecy provisions. However, on 11 May 2001, the President of the Republic of the Philippines made the commitment to certify to the newly-elected Philippine Parliament the urgency of a strong anti-money laundering Bill.

Russia *

55. Russia meets criteria 1, 4, 5, 10, 11, 17, 21, 23, 24 and 25. It also partially meets criterion 6. While Russia faces many obstacles in meeting international standards for the prevention, detection and prosecution of money laundering, currently the most critical barrier to improving its money laundering regime is the lack of a comprehensive anti-money laundering law and implementing regulations that meet international standards. In particular, Russia lacks: comprehensive customer identification requirements; a suspicious transaction reporting system; a fully operational FIU with adequate resources; and effective and timely procedures for providing evidence to assist in foreign money laundering prosecutions.

56. Russia has begun a process to adopt a comprehensive anti-money laundering system. On 16 May 2001, it enacted a federal law ratifying the 1990 Council of Europe Convention on Laundering, Search, Seizure and the Confiscation of the Proceeds from Crime. On 25 May 2001, the State Duma of the Russian Federation adopted in first reading a draft Federal Law on Counteracting the Laundering of the Proceeds from Crime. The second and third readings are expected to occur at the end of June or July (the third reading is currently scheduled for 12 July 2001). The draft law contains identification and record-keeping requirements as well as provisions for a mandatory suspicious transactions reporting regime, which will require that the reports be filed with the federal

executive agency to be designated by the Federation President, as well as international co-operation provisions.

III. EXAMINATION OF A SECOND SET OF JURISDICTIONS

57. This section contains summaries of the reviews of a second set of jurisdictions carried out by the FATF during 2000-2001. The reviews of two jurisdictions (Seychelles and Vanuatu) were completed in October 2000 and reflect the information available at that time. Jurisdictions marked with an asterisk are regarded as being non-cooperative by the FATF. (References to "meeting the criteria" means that the concerned jurisdictions were found to have detrimental rules and practices in place.)

(i) Summaries of reviews

Czech Republic

58. The recent amendments made to the anti-money laundering legislation in the Czech Republic represent an important step towards compliance with the international standards, in particular in terms of effective enforcement of the requirements in the financial sector.

59. However, the existence of bearer passbooks issued anonymously is clearly an important weakness of the current system although the recent decision to prohibit the issue of new bearer passbooks constitutes a major progress. Important steps have recently been taken to prohibit the issuance of new bearer passbooks, the existing ones being subjected to the same identification requirements (thresholds, suspicious activities reporting) as other banking products.

60. The anonymous passbooks are clearly a weakness in the Czech Republic's anti-money laundering system. The FATF raised concern on this issue with the competent authorities in the Czech Republic and requested that they respond regarding how they would address these concerns.

61. The absence of adequate criminalisation of money laundering is another major weakness in the current system, which is well identified by the authorities, who intend to address it in the short term. In addition, the requirements on identification of beneficial owners are insufficient as far as legal persons are concerned.

Egypt *

62. Egypt meets criteria 5, 10, 11, 14, 19 and 25 and it partially meets criteria 1, 6 and 8. Particular concerns identified included: a failure to adequately criminalise money laundering to internationally accepted standards; a failure to establish an effective and efficient STR system covering all financial institutions; a failure to establish an FIU or equivalent mechanism; and a failure to establish rigorous identification requirements that apply to all financial institutions. Further clarification is also sought on the evidential requirements necessary for access to information covered by Egypt's banking secrecy laws.

Guatemala *

63. Guatemala meets criteria 6, 8, 15, 16, 19 and 25 and partially meets criteria 1, 7 and 10. Guatemalan laws contain secrecy provisions that constitute a considerable obstacle to administrative counter-money laundering authorities and Guatemalan law provides no adequate gateways for administrative authorities to co-operate with foreign counterparts. Additionally, Guatemala has not criminalised money laundering beyond the proceeds of narcotics violations. Further, the suspicious transaction reporting system contains no provision preventing "tipping off".

64. Guatemala has recently issued Regulations for the Prevention and Detection of Money Laundering. These Regulations significantly improve Guatemala's ability to implement customer identification procedures.

Hungary *

65. Hungary meets criteria 4 and 13 and partially meets criteria 5, 7, 10, 11 and 12. Even though Hungary has a comprehensive anti-money laundering system, it still suffers major deficiencies. Though progress has been achieved in terms of supervision, identification requirements and suspicious transactions reporting, the existence of anonymous passbooks and the lack of clear plans to address this problem constitute a major deficiency of this system.

66. In contrast to other countries in which a high number of such savings books also exist, and which have already begun to take measures to restrict these passbooks, up to now the Hungarian Government has only decided that the opening of new anonymous savings books and the depositing on such savings books will be prohibited, as from the date of the accession to the European Union. From the same date, each customer will be identified in cases of withdrawing from such a savings book. The fact that, at present, any deposit on such a savings deposit book exceeding two million HUF (approximately USD 7,000) results in a requirement to identify the client, is not sufficient, since it is possible to hold an unlimited number of anonymous savings deposit books.

67. Another important deficiency is the existing lack of information about beneficial ownership in Hungary. This results from the absence of a corresponding requirement for financial institutions to identify the beneficial owners or to renew identification in cases in which it is doubtful whether the client is acting on his own account and no specific suspicious exists. This situation also reflects directly on criteria 7, and 12 to 14.

Indonesia *

68. Indonesia meets criteria 1, 7, 8, 9, 10, 11, 19, 23 and 25, and partially meets criteria 3, 4, 5 and 14. It lacks a basic set of anti-money laundering provisions. Money laundering is presently not a criminal offence in Indonesia. There is no mandatory system of reporting suspicious transactions to a FIU. Customer identification regulations have been recently introduced, but only apply to banks and not to non-bank financial institutions.

69. In order to rectify those deficiencies, the Government has drafted a Law concerning Eradication of Money Laundering Criminal Acts. The draft is being discussed in Parliament.

Myanmar *

70. Myanmar meets criteria 1, 2, 3, 4, 5, 6, 10, 11, 19, 20, 21, 22, 23, 24 and 25. It lacks a basic set of anti-money laundering provisions. It has not yet criminalised money laundering for crimes other than drug trafficking. There are no anti-money laundering provisions in the Central Bank Regulations for financial institutions. Other serious deficiencies concern the absence of a legal requirement to maintain records and to report suspicious or unusual transactions. There are also significant obstacles to international co-operation by judicial authorities.

71. In order to prevent money laundering, the Government is in the process of drafting an Illicit Proceeds and Property Control Law.

Nigeria *

72. Nigeria demonstrated an obvious unwillingness or inability to co-operate with the FATF in the review of its system. Nigeria meets criteria 5, 17 and 24. It partially meets criteria 10 and 19, and has a broad number of inconclusive criteria as a result of its general failure to co-operate in this exercise. Finally, corruption in Nigeria continues to be of concern.

73. The Nigerian system to fight against money laundering has a significant number of deficiencies which include a discretionary licensing procedure to operate a financial institution, the absence of customer identification under very high threshold (US$ 100,000) for certain transactions, the lack of the obligation to report suspicious transactions if the financial institution decides to carry out the transaction. The scope of the application of the decree on money laundering is unclear, because it generally refers to financial institutions, and it does not seem to be applied to insurance companies and stock brokerage firms.

Poland

74. The anti-money laundering system in Poland seems to be well structured and co-ordinated among the Polish authorities involved in combating money laundering, with the enactment of the Act of 16 November 2000, which criminalises the laundering of proceeds from serious crimes, in addition to other specific regulations. All financial institutions are supervised and are obliged to identify clients, to keep an updated register of transactions for a period of at least five years, and to develop a system of suspicious transactions reporting (STR) in accordance with international standards.

75. However, there is no evidence of an obligation to identify the beneficial owner, which will require measures to be implemented in this matter. Furthermore, it will be necessary to monitor the full implementation of the November 2000 Act in the near future, particularly the functioning and ability of the Polish FIU to exchange information regarding money laundering with foreign FIUs.

Seychelles (as of October 2000)

76. The Seychelles have a comprehensive anti-money laundering system and recently strengthened it with the repeal of the 1995 Economic Development Act. Some new concerns were nevertheless found in the area of commercial law requirements for the registration of business and legal entities as well as in the identification of their beneficial owners by financial institutions. In addition, obstacles to the exchange of information at the level of administrative authorities were noted. Finally, difficulties were also found in the area of mutual legal assistance in international investigations on serious crimes which also appear to be linked to tax matters.

Slovak Republic

77. The Slovak Republic has a well functioning system to combat money laundering with enacted legislation and an established financial intelligence unit. Nonetheless some deficiencies still remain. These include the lack of institutionalised co-operation between the FIU in its compliance auditing role and non-bank financial institutions supervisors as well as the absence of automatic reporting obligation for the non-banking supervisory authority/authorities; the limited resources of the financial police where they are required to assess compliance with the anti-money laundering legislation; the problems of old bearer passbooks in respect of which no identification procedures have taken place, which cause concerns for the FATF, and furthermore reflects on other criteria in the NCCTs exercise; the need for a requirement to identify the beneficial owner; and the necessity to reconsider the term of three days within which a reporting entity should inform the financial police on an unusual business activity.

78. The anonymous passbooks are clearly a weakness in the Slovak anti-money laundering system. The FATF raised concern on this issue with the competent authorities in the Slovak Republic and requested that they respond regarding how they would address these concerns.

Turks and Caicos

79. The Turks and Caicos have a comprehensive system to combat money laundering with the relevant legislative framework and an established financial intelligence unit. Nonetheless a concern remains with the horizontal issue of re-verification of ownership of accounts that existed before customer identification rules came into effect. The Turks and Caicos is working to resolve this problem by 2005. The FATF urges the Turks and Caicos to deal with this issue as soon as possible. There is a concern that the present legal basis for granting co-operation is inadequate but, in the light of a functioning FIU and a record of anti-money laundering co-operation with other jurisdictions, this is not currently causing problems.

Uruguay

80. Uruguay has a comprehensive anti-money laundering system in place. It joined the GAFISUD, the regional FATF-style regional body recently established in South America, and it has volunteered to be one of the first countries of the region to be evaluated in the mutual evaluation programme of this body. Uruguay has offered its permanent training centre for the use of the GAFISUD as well.

81. Uruguay recently established the Financial Intelligence Unit, the suspicious transaction report mechanism and enhanced customer identification rules (December 2000). The country has subscribed the United Nations Convention against Transnational Organized Crime (Palermo, 2000). Moreover, it has recently enacted legislation (Law 17,343 enacted on 25 May 2001) which extended the predicate offences of the money laundering crime beyond drug trafficking and corruption to other serious crimes. However, the absence of the laundering of funds stemming from criminal fraud as a money laundering predicate is a matter of concern.

82. Due to the recent nature of the above-mentioned progress in the fight against money laundering, Uruguay will need to ensure that the relevant newly-established institutions are provided with adequate resources and authority to co-operate internationally. Statutory improvement of the measures to guard against the management of and the acquisition in financial institutions by criminals are welcomed.

83. Finally, as Uruguayan corporations are permitted to issue bearer shares (though in certain cases ownership identification is required), the FATF may in the future need to discuss with the Uruguayan authorities the adequacy of the bearer share system in place with respect to the Forty Recommendations.

Vanuatu (as of October 2000)

84. The Government of Vanuatu has strengthened its anti-money laundering regime to follow the recommendations included in the APG[3]/OGBS[4] mutual evaluation report of June 2000. The enactment of the Financial Transactions Reporting Act 2000 was a major milestone in the fight against money laundering in Vanuatu. However, deficiencies were found in the area of the information on legal and business entities which is available to financial institutions.

[3] Asia/Pacific Group on Money Laundering.

[4] Offshore Group of Banking Supervisors.

(ii) Conclusions

85. The FATF has considered the reports summarised above and confirmed that there is a wide variance in both the character of the money laundering threat posed by different jurisdictions and in the status of efforts to implement anti-money laundering controls.

86. This second round of reviews carried out by the FATF has been particularly productive. Most jurisdictions have participated actively and constructively in the reviews. As in 1999-2000, the reviews of jurisdictions against the 25 criteria have revealed – and stimulated – many ongoing efforts by governments to improve their systems. Many jurisdictions indicated that they would shortly submit anti-money laundering Bills to their legislative bodies and would conclude international arrangements to exchange information on money laundering cases among competent authorities. Some of these have already enacted anti-money laundering legislation.

87. Nevertheless, serious systemic problems have been identified in the following jurisdictions: Egypt, Guatemala, Hungary, Indonesia, Myanmar and Nigeria.

IV. OVERALL CONCLUSION AND THE WAY FORWARD

88. Following the progress made by the jurisdictions deemed to be non-cooperative in June 2000, and the conclusions of the above second set of reviews, the list of NCCTs now comprises the following jurisdictions:

Cook Islands
Dominica
Egypt
Guatemala
Hungary
Indonesia
Israel
Lebanon
Marshall Islands
Myanmar
Nauru
Nigeria
Niue
Philippines
Russia
St. Kitts and Nevis
St. Vincent and the Grenadines

89. These jurisdictions are strongly urged to adopt measures to improve their rules and practices as expeditiously as possible in order to remedy the deficiencies identified in the reviews. Pending adoption and implementation of appropriate legislative and other measures, and in accordance with Recommendation 21, the FATF recommends that financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from the "non-cooperative countries and territories" mentioned in paragraph 88 and so doing take into account issues raised in the relevant summaries in Sections II and III of this report and any progress made by these jurisdictions listed in June 2000.

90. In addition, FATF recommends to its members the application of counter-measures as of 30 September 2001, to Nauru, the Philippines and Russia, which were identified as non-cooperative in June 2000 and which have not made adequate progress, unless their governments enact significant legislation to address FATF-identified money laundering concerns.

91. Should those countries or territories newly identified as non-cooperative maintain their detrimental rules and practices despite having been encouraged to make certain reforms, FATF members would then need to consider the adoption of counter-measures, as for the NCCTs of June 2000 which have not made adequate progress. With respect to those countries listed in June 2000 whose progress addressing deficiencies has stalled, the FATF will consider the adoption of additional counter-measures as well.

92. The FATF and its members will continue the dialogue with these jurisdictions. FATF members are also prepared to provide technical assistance, where appropriate, to help jurisdictions in the design and implementation of their anti-money laundering systems.

93. All countries and territories which are part of the global financial system are urged to change any rules or practices which impede the fight against money laundering. To this end, the FATF will continue its work to improve its members' and non-members' implementation of the FATF Forty Recommendations. It will also encourage and support the regional anti-money laundering bodies in their ongoing efforts. In this context, the FATF also calls on all the jurisdictions mentioned in this report to adopt legislation and improve their rules or practices as expeditiously as possible, in order to remedy the deficiencies identified in the reviews.

94. The FATF intends to remain fully engaged with all the jurisdictions identified in paragraph 88. The FATF will continue to place on the agenda of each plenary meeting the issue of non-cooperative countries and territories, to monitor any progress which may materialise, and to revise its findings, including the removal of jurisdictions' names from the list of NCCTs, as warranted.

95. The FATF will continue to monitor weaknesses in the global financial system that could be exploited for money laundering purposes. This could lead to further jurisdictions being examined. Future reports will continue to update the FATF findings in relation to these matters.

96. The FATF expects that this exercise along with its other anti-money laundering efforts, and the activities of regional anti-money laundering bodies, will provide an ongoing stimulus for all jurisdictions to bring their regimes into compliance with the FATF Forty Recommendations, in the global fight against money laundering.

APPENDIX 1

LIST OF CRITERIA FOR DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES[5]

A. Loopholes in financial regulations

(i) No or inadequate regulations and supervision of financial institutions

1. Absence or ineffective regulations and supervision for all financial institutions in a given country or territory, onshore or offshore, on an equivalent basis with respect to international standards applicable to money laundering.

(ii) Inadequate rules for the licensing and creation of financial institutions, including assessing the backgrounds of their managers and beneficial owners

2. Possibility for individuals or legal entities to operate a financial institution without authorisation or registration or with very rudimentary requirements for authorisation or registration.

3. Absence of measures to guard against holding of management functions and control or acquisition of a significant investment in financial institutions by criminals or their confederates.

(iii) Inadequate customer identification requirements for financial institutions

4. Existence of anonymous accounts or accounts in obviously fictitious names.

5. Lack of effective laws, regulations, agreements between supervisory authorities and financial institutions or self-regulatory agreements among financial institutions on identification by the financial institution of the client and beneficial owner of an account:

- no obligation to verify the identity of the client;
- no requirement to identify the beneficial owners where there are doubts as to whether the client is acting on his own behalf;
- no obligation to renew identification of the client or the beneficial owner when doubts appear as to their identity in the course of business relationships;
- no requirement for financial institutions to develop ongoing anti-money laundering training programmes.

6. Lack of a legal or regulatory obligation for financial institutions or agreements between supervisory authorities and financial institutions or self-agreements among financial institutions to record and keep, for a reasonable and sufficient time (five years), documents connected with the identity of their clients, as well as records on national and international transactions.

7. Legal or practical obstacles to access by administrative and judicial authorities to information with respect to the identity of the holders or beneficial owners and information connected with the transactions recorded.

(iv) Excessive secrecy provisions regarding financial institutions

8. Secrecy provisions which can be invoked against, but not lifted by competent administrative authorities in the context of enquiries concerning money laundering.

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[5] This list should be read in conjunction with the attached comments and explanations.

9. Secrecy provisions which can be invoked against, but not lifted by judicial authorities in criminal investigations related to money laundering.

(v) Lack of efficient suspicious transactions reporting system

10. Absence of an efficient mandatory system for reporting suspicious or unusual transactions to a competent authority, provided that such a system aims to detect and prosecute money laundering.

11. Lack of monitoring and criminal or administrative sanctions in respect to the obligation to report suspicious or unusual transactions.

B. Obstacles raised by other regulatory requirements

(i) Inadequate commercial law requirements for registration of business and legal entities

12. Inadequate means for identifying, recording and making available relevant information related to legal and business entities (name, legal form, address, identity of directors, provisions regulating the power to bind the entity).

(ii) Lack of identification of the beneficial owner(s) of legal and business entities

13. Obstacles to identification by financial institutions of the beneficial owner(s) and directors/officers of a company or beneficiaries of legal or business entities.

14. Regulatory or other systems which allow financial institutions to carry out financial business where the beneficial owner(s) of transactions is unknown, or is represented by an intermediary who refuses to divulge that information, without informing the competent authorities.

C. Obstacles to international co-operation

(i) Obstacles to international co-operation by administrative authorities

15. Laws or regulations prohibiting international exchange of information between administrative anti-money laundering authorities or not granting clear gateways or subjecting exchange of information to unduly restrictive conditions.

16. Prohibiting relevant administrative authorities to conduct investigations or enquiries on behalf of, or for account of their foreign counterparts.

17. Obvious unwillingness to respond constructively to requests (e.g. failure to take the appropriate measures in due course, long delays in responding).

18. Restrictive practices in international co-operation against money laundering between supervisory authorities or between FIUs for the analysis and investigation of suspicious transactions, especially on the grounds that such transactions may relate to tax matters.

(ii) Obstacles to international co-operation by judicial authorities

19. Failure to criminalise laundering of the proceeds from serious crimes.

20. Laws or regulations prohibiting international exchange of information between judicial authorities (notably specific reservations to the anti-money laundering provisions of international agreements) or placing highly restrictive conditions on the exchange of information.

21. Obvious unwillingness to respond constructively to mutual legal assistance requests (e.g. failure to take the appropriate measures in due course, long delays in responding).

22. Refusal to provide judicial co-operation in cases involving offences recognised as such by the requested jurisdiction especially on the grounds that tax matters are involved.

D. Inadequate resources for preventing and detecting money laundering activities

(i) Lack of resources in public and private sectors

23. Failure to provide the administrative and judicial authorities with the necessary financial, human or technical resources to exercise their functions or to conduct their investigations.

24. Inadequate or corrupt professional staff in either governmental, judicial or supervisory authorities or among those responsible for anti-money laundering compliance in the financial services industry.

(ii) Absence of a financial intelligence unit or of an equivalent mechanism

25. Lack of a centralised unit (i.e., a financial intelligence unit) or of an equivalent mechanism for the collection, analysis and dissemination of suspicious transactions information to competent authorities.

CRITERIA DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES

1. International co-operation in the fight against money laundering not only runs into direct legal or practical impediments to co-operation but also indirect ones. The latter, which are probably more numerous, include obstacles designed to restrict the supervisory and investigative powers of the relevant administrative[6] or judicial authorities[7] or the means to exercise these powers. They deprive the State of which legal assistance is requested of the relevant information and so prevent it from responding positively to international co-operation requests.

2. This document identifies the detrimental rules and practices which obstruct international co-operation against money laundering. These naturally affect domestic prevention or detection of money laundering, government supervision and the success of investigations into money laundering. Deficiencies in existing rules and practices identified herein have potentially negative consequences for the quality of the international co-operation which countries are able to provide.

3. The detrimental rules and practices which enable criminals and money launderers to escape the effect of anti-money laundering measures can be found in the following areas:

- the financial regulations, especially those related to identification;
- other regulatory requirements;
- the rules regarding international administrative and judicial co-operation; and
- the resources for preventing, detecting and repressing money laundering.

A. Loopholes in financial regulations

(i) No or inadequate regulations and supervision of financial institutions (Recommendation 26)

4. All financial systems should be adequately regulated and supervised. Supervision of financial institutions is essential, not only with regard to purely prudential aspects of financial regulations, but also with regard to implementing anti-money laundering controls. Absence or ineffective regulations and supervision for all financial institutions in a given country or territory, offshore or onshore, on an equivalent basis with respect to international standards applicable to money laundering is a detrimental practice.[8]

(ii) Inadequate rules for the licensing and creation of financial institutions, including assessing the backgrounds of their managers and beneficial owners (Recommendation 29)

5. The conditions surrounding the creation and licensing of financial institutions in general and banks in particular create a problem upstream from the central issue of financial secrecy. In addition to the rapid increase of insufficiently regulated jurisdictions and offshore financial centres, we are witnessing a proliferation in the number of financial institutions in such jurisdictions. They are easy to set up, and the identity and background of their founders, managers and beneficial owners are frequently

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6 The term "administrative authorities " is used in this document to cover both financial regulatory authorities and certain financial intelligence units (FIUs).

7 The term "judicial authorities" is used in this document to cover law enforcement, judicial/prosecutorial authorities, authorities which deal with mutual legal assistance requests, as well as certain types of FIUs.

8 For instance, those established by the Basle Committee on Banking Supervision, the International Organisation of Securities Commissions, the International Association of Insurance Supervisors, the International Accounting Standards Committee and the FATF.

not, or insufficiently, checked. This raises a potential danger of financial institutions (banks and non-bank financial institutions) being taken over by criminal organisations, whether at start-up or subsequently.

6. The following should therefore be considered as detrimental:

- possibility for individuals or legal entities to operate a financial institution[9] without authorisation or registration or with very rudimentary requirements for authorisation or registration; and,

- absence of measures to guard against the holding of management functions, the control or acquisition of a significant investment in financial institutions by criminals or their confederates (Recommendation 29).

(iii) Inadequate customer identification requirements for financial institutions

7. FATF Recommendations 10, 11 and 12 call upon financial institutions not to be satisfied with vague information about the identity of clients for whom they carry out transactions, but should attempt to determine the beneficial owner(s) of the accounts kept by them. This information should be immediately available for the administrative financial regulatory authorities and in any event for the judicial and law enforcement authorities. As with all due diligence requirements, the competent supervisory authority should be in a position to verify compliance with this essential obligation.

8. Accordingly, the following are detrimental practices:

- the existence of anonymous accounts or accounts in obviously fictitious names, i.e. accounts for which the customer and/or the beneficial owner have not been identified (Recommendation 10);

- lack of effective laws, regulations or agreements between supervisory authorities and financial institutions or self-regulatory agreements among financial institutions[10] on identification[11] by the financial institution of the client, either occasional or usual, and the beneficial owner of an account when a client does not seem to act in his own name (Recommendations 10 and 11), whether an individual or a legal entity (name and address for individuals; type of structure, name of the managers and commitment rules for legal entities...);

- lack of a legal or regulatory obligation for financial institutions to record and keep, for a reasonable and sufficient time (at least five years), documents connected with the identity of their clients (Recommendation 12), e.g. documents certifying the identity and legal structure of the legal entity, the identity of its managers, the beneficial owner and any record of changes in or transfer of ownership as well as records on domestic and international transactions (amounts, type of currency);

- legal or practical obstacles to access by the administrative and judicial authorities to information with respect to the identity of the holders or beneficiaries of an account at a financial institution and to information connected with the transactions recorded (Recommendation 12).

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9 The Interpretative Note to bureaux de change states that the minimum requirement is for there to be "an effective system whereby the bureaux de change are known or declared to the relevant authorities".

10 The agreements and self-regulatory agreements should be subject to strict control.

11 No obligation to verify the identity of the account-holder; no requirement to identify the beneficial owners when the identification of the account-holder is not sufficiently established; no obligation to renew identification of the account-holder or the beneficial owner when doubts appear as to their identity in the course of business relationships; no requirement for financial institutions to develop ongoing anti-money laundering training programmes.

(iv) Excessive secrecy provisions regarding financial institutions

9. Countries and territories offering broad banking secrecy have proliferated in recent years. The rules for professional secrecy, like banking secrecy, can be based on valid grounds, i.e., the need to protect privacy and business secrets from commercial rivals and other potentially interested economic players. However, as stated in Recommendations 2 and 37, these rules should nevertheless not be permitted to pre-empt the supervisory responsibilities and investigative powers of the administrative and judicial authorities in their fight against money laundering. Countries and jurisdictions with secrecy provisions must allow for them to be lifted in order to co-operate in efforts (foreign and domestic) to combat money laundering.

10. Accordingly, the following are detrimental:

- secrecy provisions related to financial activities and professions, notably banking secrecy, which can be invoked against, but not lifted by competent administrative authorities in the context of enquiries concerning money laundering;

- secrecy provisions related to financial activities and professions, specifically banking secrecy, which can be invoked against, but not lifted by judicial authorities in criminal investigations relating to money laundering.

(v) Lack of efficient suspicious transaction reporting system

11. A basic rule of any effective anti-money laundering system is that the financial sector must help to detect suspicious transactions. The forty Recommendations clearly state that financial institutions should report their "suspicions" to the competent authorities (Recommendation 15). In the course of the mutual evaluation procedure, systems for reporting unusual transactions have been assessed as being in conformity with the Recommendations. Therefore, for the purpose of the exercise on non-cooperative jurisdictions, in the event that a country or territory has established a system for reporting unusual transactions instead of suspicious transactions (as mentioned in the forty Recommendations), it should not be treated as non-cooperative on this basis, provided that such a system requires the reporting of all suspicious transactions.

12. The absence of an efficient mandatory system for reporting suspicious or unusual transactions to a competent authority, provided that such a system aims to detect and prosecute money laundering, is a detrimental rule. The reports should not be drawn to the attention of the customers (Recommendation 17) and the reporting parties should be protected from civil or criminal liability (Recommendation 16).

13. It is also damaging if the competent authority does not monitor whether financial institutions comply with their reporting obligations, and if there is a lack of criminal or administrative sanctions for financial institutions in respect to the obligation to report suspicious or unusual transactions.

B. Impediments set by other regulatory requirements

14. Commercial laws, notably company formation and trust law, are of vital importance in the fight against money laundering. Such rules can hinder the prevention, detection and punishment of criminal activities. Shell corporations and nominees are widely used mechanisms to launder the proceeds from crime, particularly bribery (for example, to build up slush funds). The ability for competent authorities to obtain and share information regarding the identification of companies and their beneficial owner(s) is therefore essential for all the relevant authorities responsible for preventing and punishing money laundering.

(i) Inadequate commercial law requirements for registration of business and legal entities

15. Inadequate means for identifying, recording and making available relevant information related to legal and business entities (identity of directors, provisions regulating the power to bind the entity, etc.), has detrimental consequences at several levels:

- it may significantly limit the scope of information immediately available for financial institutions to identify those of their clients who are legal structures and entities, and it also limits the information available to the administrative and judicial authorities to conduct their enquiries;

- as a result, it may significantly restrict the capacity of financial institutions to exercise their vigilance (especially relating to customer identification) and may limit the information that can be provided for international co-operation.

(ii) Lack of identification of the beneficial owner(s) of legal and business entities (Recommendations 9 and 25)

16. Obstacles to identification by financial institutions of the beneficial owner(s) and directors/officers of a company or beneficiaries of legal or business entities are particularly detrimental practices: this includes all types of legal entities whose beneficial owner(s), managers cannot be identified. The information regarding the beneficiaries should be recorded and updated by financial institutions and be available for the financial regulatory bodies and for the judicial authorities.

17. Regulatory or other systems which allow financial institutions to carry out financial business where the beneficial owner(s) of transactions is unknown, or is represented by an intermediary who refuses to divulge that information, without informing the competent authorities, should be considered as detrimental practices.

C. Obstacles to international co-operation

(i) At the administrative level

18. Every country with a large and open financial centre should have established administrative authorities to oversee financial activities in each sector as well as an authority charged with receiving and analysing suspicious transaction reports. This is not only necessary for domestic anti-money laundering policy; it also provides the necessary foundations for adequate participation in international co-operation in the fight against money laundering.

19. When the aforementioned administrative authorities in a given jurisdiction have information that is officially requested by another jurisdiction, the former should be in a position to exchange such information promptly, without unduly restrictive conditions (Recommendation 32). Legitimate restrictions on transmission of information should be limited, for instance, to the following:

- the requesting authority should perform similar functions to the authority to which the request is addressed;

- the purpose and scope of information to be used should be expounded by the requesting authority, the information transmitted should be treated according to the scope of the request;

- the requesting authority should be subject to a similar obligation of professional or official secrecy as the authority to which the request is addressed;

- exchange of information should be reciprocal.

In all events, no restrictions should be applied in a bad faith manner.

20. In light of these principles, laws or regulations prohibiting international exchange of information between administrative authorities or not granting clear gateways or subjecting this exchange to highly restrictive conditions should be considered abusive. In addition, laws or regulations that prohibit the relevant administrative authorities from conducting investigations or enquiries on behalf of, or for account of their foreign counterparts when requested to do so can be a detrimental practice.

21. Obvious unwillingness to respond constructively to requests (e.g. failure to take the appropriate measures in due course, long delays in responding) is also a detrimental practice.

22. Restrictive practices in international co-operation against money laundering between supervisory authorities or between FIUs for the analysis and investigation of suspicious transactions, especially on the grounds that such transactions may relate to tax matters (fiscal excuse[12]). Refusal only on this basis is a detrimental practice for international co-operation against money laundering.

(ii) At the judicial level

23. Criminalisation of money laundering is the cornerstone of anti-money laundering policy. It is also the indispensable basis for participation in international judicial co-operation in this area. Hence, failure to criminalise laundering of the proceeds from serious crimes (Recommendation 4) is a serious obstacle to international co-operation in the international fight against money laundering and therefore a very detrimental practice. As stated in Recommendation 4, each country would determine which serious crimes would be designated as money laundering predicate offences.

24. Mutual legal assistance (Recommendations 36 to 40) should be granted as promptly and completely as possible if formally requested. Laws or regulations prohibiting international exchange of information between judicial authorities (notably specific reservations formulated to the anti-money laundering provisions of mutual legal assistance treaties or provisions by countries that have signed a multilateral agreement) or placing highly restrictive conditions on the exchange of information are detrimental rules.

25. Obvious unwillingness to respond constructively to mutual legal assistance requests (e.g. failure to take the appropriate measures in due course, long delays in responding) is also a detrimental practice.

26. The presence of tax evasion data in a money laundering case under judicial investigation should not prompt a country from which information is requested to refuse to co-operate. Refusal to provide judicial co-operation in cases involving offences recognised as such by the requested jurisdiction, especially on the grounds that tax matters are involved is a detrimental practice for international co-operation against money laundering.

D. Inadequate resources for preventing, detecting and repressing money laundering activities

(i) Lack of resources in public and private sectors

27. Another detrimental practice is failure to provide the administrative and judicial authorities with the necessary financial, human or technical resources to ensure adequate oversight and to conduct

[12] "Fiscal excuse" as referred to in the Interpretative Note to Recommendation 15.

investigations. This lack of resources will have direct and certainly damaging consequences for the ability of such authorities to provide assistance or take part in international co-operation effectively.

28. The detrimental practices related to resource constraints that result in inadequate or corrupt professional staff should not only concern governmental, judicial or supervisory authorities but also the staff responsible for anti-money laundering compliance in the financial services industry.

(ii) Absence of a financial intelligence unit or of an equivalent mechanism

29. In addition to the existence of a system for reporting suspicious transactions, a centralised governmental authority specifically dealing with anti-money laundering controls and/or the enforcement of measures in place must exist. Therefore, lack of centralised unit (i.e., a financial intelligence unit) or of an equivalent mechanism for the collection, analysis and dissemination of suspicious transactions information to competent authorities is a detrimental rule.

APPENDIX 2

FATF'S POLICY CONCERNING IMPLEMENTATION AND DE-LISTING IN RELATION TO NCCTs

The FATF has articulated the steps that need to be taken by Non-Cooperative Countries or Territories (NCCTs) in order to be removed from the NCCT list. These steps have focused on what precisely should be required by way of implementation of legislative and regulatory reforms made by NCCTs to respond to the deficiencies identified by the FATF in the NCCT reports. This policy concerning implementation and de-listing enables the FATF to achieve equal and objective treatment among NCCT jurisdictions.

In order to be removed from the NCCT list:

1. An NCCT must enact laws and promulgate regulations that comply with international standards to address the deficiencies identified by the NCCT report that formed the basis of the FATF's decision to place the jurisdiction on the NCCT list in the first instance.

2. The NCCTs that have made substantial reform in their legislation should be requested to submit to the FATF through the applicable regional review group, an implementation plan with targets, milestones, and time frames that will ensure effective implementation of the legislative and regulatory reforms. The NCCT should be asked particularly to address the following important determinants in the FATF's judgement as to whether it can be de-listed: filing of suspicious activity reports; analysis and follow-up of reports; the conduct of money laundering investigations; examinations of financial institutions (particularly with respect to customer identification); international exchange of information; and the provision of budgetary and human resources.

3. The appropriate regional review groups should examine the implementation plans submitted and prepare a response for submission to the NCCT at an appropriate time. The Chairs of the four review groups (Americas; Asia/Pacific; Europe; Africa and the Middle East) should report regularly on the progress of their work. A meeting of those Chairs, if necessary, to keep consistency among their responses to the NCCTs.

4. The FATF, on the initiative of the applicable review group chair or any member of the review group, should make an on-site visit to the NCCT at an appropriate time to confirm effective implementation of the reforms.

5. The review group chair shall report progress at subsequent meetings of the FATF. When the review groups are satisfied that the NCCT has taken sufficient steps to ensure continued effective implementation of the reforms, they shall recommend to the Plenary the removal of the jurisdiction from the NCCT list. Based on an overall assessment encompassing the determinants in paragraph 2, the FATF will rely on its collective judgement in taking the decision.

6. Any decision to remove countries from the list should be accompanied by a letter from the FATF President:

   (a) clarifying that delisting does not indicate a perfect anti-money laundering system;

   (b) setting out any outstanding concerns regarding the jurisdiction in question;

   (c) proposing a monitoring mechanism to be carried out by FATF in consultation with the relevant FATF-style regional body, which would include the submission of regular implementation reports to the relevant review group and a follow-up visit to assess progress in implementing reforms and to ensure that stated goals have, in fact, been fully achieved.

7. Any outstanding concerns and the need for monitoring the full implementation of legal reforms should also be mentioned in the NCCT public report.

OUTLINE FOR MONITORING PROGRESS OF IMPLEMENTATION

SUBSTANCE

The FATF will monitor progress of de-listed jurisdictions against the implementation plans, specific issues raised in the 2001 progress reports (*e.g.*, phasing out of unidentified accounts) and the experience of FATF members. Subjects addressed may include, as appropriate:

- the issuance of secondary legislation and regulatory guidance;
- inspections of financial institutions planned and conducted;
- STRs systems;
- process for money laundering investigations and prosecutions conducted;
- regulatory, FIU and judicial co-operation;
- adequacy of resources;
- assessment of compliance culture in the relevant sectors.