



**Financial Action Task Force  
on Money Laundering**

Groupe d'action financière  
sur le blanchiment de capitaux

**Annual Review of Non-Cooperative  
Countries or Territories**

**20 June 2003**

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## EXECUTIVE SUMMARY OF THE JUNE 2003 NCCTS REPORT

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

### Removal of countries from the Non-Cooperative Countries and Territories (NCCTs) list in October 2002, February 2003, and June 2003

- It recognises that St. Vincent and the Grenadines, listed as non-cooperative in the fight against money laundering in June 2000, has sufficiently addressed the deficiencies identified by the FATF through enactment and implementation of appropriate legal reforms. In October 2002, the Plenary recognised that Russia, Dominica, Niue and Marshall Islands, identified as NCCTs in June 2000, had addressed the identified deficiencies and therefore removed them from the NCCTs list. And in February 2003, the Plenary removed Grenada from the list of NCCTs after enactment and implementation of legal reforms addressing identified deficiencies. Consequently, the procedures prescribed in FATF Recommendation 21 are withdrawn. To ensure continued effective implementation of these reforms, the FATF will monitor the developments in St. Vincent & the Grenadines, as well as Dominica, Niue, the Marshall Islands, and Grenada, in consultation with the relevant FATF-style regional body and particularly in the areas laid out in this NCCT report.
- Although removed from the NCCTs list in June 2001, the Bahamas has been subject to FATF monitoring since that time. The FATF encourages the Bahamas to improve mechanisms for international co-operation so that the FATF may end formal monitoring.

### Progress made since June 2002

- It welcomes the progress made by the Cook Islands, Egypt, Guatemala, Nigeria, the Philippines, Ukraine and Nauru 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 Indonesia and Myanmar, 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 Egypt, Guatemala, and the Philippines have enacted most, if not all legislation needed to remedy the deficiencies previously identified. On the basis of this progress, the FATF will invite those countries to submit implementation plans to enable the FATF to evaluate actual implementation of the legislative changes in each jurisdiction according to the principles agreed upon by its Plenary.
- With respect to jurisdictions de-listed in June 2002 and subject to the monitoring process from June 2002—June 2003, future monitoring for St Kitts & Nevis will be conducted within the context of the Caribbean Financial Action Task Force's (CFATF) relevant monitoring mechanisms. Future monitoring of Hungary will be conducted within the Council of Europe's MONEYVAL and its relevant monitoring mechanisms.

### Counter-measures

- Due to Ukraine's failure to enact anti-money laundering legislation that met international standards, the Plenary recommended that counter-measures apply to Ukraine as of 20 December 2002. However, after that time, Ukraine enacted legislation that significantly addressed the identified deficiencies, and therefore the FATF Plenary removed the application of counter-measures on 14 February 2003. Due to Nauru's failure to enact appropriate legislative measures

and the existence of numerous shell banks, counter-measures have been in effect with respect to Nauru since December 2001. The FATF welcomes Nauru's recent legislative measures to eliminate shell banks. The FATF would like Nauru to take additional steps to ensure that previously licensed offshore banks are no longer conducting banking activity and are no longer in existence. When it is shown that Nauru has fully co-operated with the international community and has taken every step to ensure that shell banks no longer operate, the FATF can consider the removal of counter-measures.

#### Jurisdictions that have not made adequate progress

- It noted with concern the failure by the governments of Indonesia and Myanmar to enact significant reforms since June 2002 to address their remaining deficiencies. The FATF strongly urges them to prioritise the enactment and enforcement of the needed reforms by the next FATF Plenary meeting.
2. With respect to those countries on the NCCTs list 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; Egypt; Guatemala; Indonesia; Myanmar; Nauru; Nigeria; Philippines; and Ukraine.** The FATF calls on its members to update their advisories requesting that their financial institutions give special attention to businesses and transactions with persons, including companies and financial institutions, in those countries or territories identified in the report as being non-cooperative.

## INTRODUCTION AND BACKGROUND

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

5. Combating money laundering is a dynamic process because the criminals who launder money are continuously seeking new ways to achieve their illegal ends. 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.

6. 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 that obstruct international co-operation against money laundering. The goal of the FATF's work in this area is therefore to secure the adoption by all financial centres of international standards to prevent, detect and punish money laundering.

7. In this context, on 14 February 2000, the FATF published an initial report on the issue of non-cooperative countries and territories (NCCTs)<sup>1</sup>, which set out twenty-five criteria identifying detrimental rules and practices that impede international co-operation in the fight against money laundering (see Appendix). The criteria are consistent with the FATF Forty Recommendations. It describes a process whereby jurisdictions having such rules and practices can be identified and encourages these jurisdictions to implement international standards in this area. Finally, the report contains a set of possible counter-measures that FATF members could use to protect their economies against the proceeds of crime.

8. A major step in this process was the publication of the June 2000 Review<sup>2</sup> and June 2001 Review<sup>3</sup> to identify non-cooperative countries or territories, and the September 2001 news release<sup>4</sup>, which identified a total of 23 NCCTs. This initiative has so far been both productive and successful because most of these jurisdictions have made significant and rapid progress, with 14 being removed from the NCCTs list as of 20 June 2003. The June 2002 NCCT Review<sup>5</sup> updates the situation as of that time. No additional jurisdictions were reviewed since that time.

9. The FATF approved this report at its 18-20 June 2003 Plenary meeting. Section I of this document summarises the review process. Section II highlights progress made by the jurisdictions deemed to be non-cooperative in June 2000, June 2001, and September 2001 that remained on the NCCTs list prior to the June 2003 Plenary meeting. Section III updates the situations in de-listed jurisdictions that were subject to the monitoring process from June 2002 – June 2003. Section IV concludes the document and indicates future steps.

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<sup>1</sup> Available at the following website address: [http://www.fatf-gafi.org/pdf/NCCT\\_en.pdf](http://www.fatf-gafi.org/pdf/NCCT_en.pdf)

<sup>2</sup> Available at the following website address: [http://www.fatf-gafi.org/pdf/NCCT2000\\_en.pdf](http://www.fatf-gafi.org/pdf/NCCT2000_en.pdf)

<sup>3</sup> Available at the following website address: [http://www.fatf-gafi.org/pdf/NCCT2001\\_en.pdf](http://www.fatf-gafi.org/pdf/NCCT2001_en.pdf)

<sup>4</sup> Available at the following website address: [http://www.fatf-gafi.org/pdf/PR-20010907\\_en.pdf](http://www.fatf-gafi.org/pdf/PR-20010907_en.pdf)

<sup>5</sup> Available at the following website address: [http://www.fatf-gafi.org/pdf/NCCT2002\\_en.pdf](http://www.fatf-gafi.org/pdf/NCCT2002_en.pdf)

## **I. PROCESS**

10. 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 2000-2003, the review groups were maintained to continue this work and to monitor the progress made by NCCTs.

### **A. REVIEW PROCESS**

11. 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 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. Subsequently, the draft reports were discussed and adopted by the FATF Plenaries. The findings are reflected in Sections II and III of the present report. For NCCTs, FATF has indicated that Recommendation 21<sup>6</sup> applies.

### **B. ASSESSING PROGRESS**

12. The assessments of the jurisdictions identified as non-cooperative by the FATF were discussed as a priority item at each FATF Plenary meeting during 2002-2003. These assessments were discussed initially by the FATF review groups, including through face-to-face meetings, and then discussed by the FATF Plenary.

13. Decisions to revise the NCCTs list are taken in the FATF Plenary. In deciding whether a jurisdiction should be removed from the list, the FATF Plenary assesses whether a jurisdiction has adequately addressed the deficiencies previously identified. 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 FATF 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.

14. In addition, the FATF seeks to ensure that the jurisdiction is effectively implementing the necessary reforms. Thus, the jurisdictions which have enacted most, if not all legislation needed to remedy the deficiencies were asked to submit implementation plans to enable the FATF to evaluate the actual implementation of the legislative changes according to the above principles. 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

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<sup>6</sup> 21. Financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply these Recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.



investigations, are considered. 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. (See Annex.)

### **C. MONITORING PROCESS FOR JURISDICTIONS REMOVED FROM THE NCCT LIST**

15. 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 includes the submission of regular implementation reports and a possible follow-up visit to assess progress in implementing reforms and to ensure that stated goals have, in fact, been fully achieved.

16. 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 updated 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; STR 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.

### **D. IMPLEMENTATION OF COUNTER-MEASURES**

17. In jurisdictions that have failed to make adequate progress in addressing the serious deficiencies previously identified by the FATF, in addition to the application of Recommendation 21, the FATF 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. The FATF believes that enhanced surveillance and reporting of financial transactions and other relevant actions involving these jurisdictions would now be 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.

## II. FOLLOW-UP TO JURISDICTIONS ON THE NCCT LIST

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 when the jurisdiction was placed on the NCCTs list is summarised (criteria met, main deficiencies) and is followed by an overview of the actions taken by jurisdictions since that time.

### A. JURISDICTIONS THAT ARE NO LONGER CONSIDERED AS NON-COOPERATIVE

#### **St. Vincent and the Grenadines**

##### *Situation in June 2000*

19. 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. There was no system to require reporting of suspicious transactions. IBC and trust law provisions created additional obstacles, and international judicial assistance was unduly limited to situations where proceedings had been commenced against a named defendant in a foreign jurisdiction.

##### *Progress made since June 2000*

20. St. Vincent and the Grenadines has enacted significant legislative reforms to address the deficiencies identified in June 2000, including the Proceeds of Crime and Money Laundering (Prevention) Act No. 39 of 2001, of 18 December 2001 (amended 28 May 2002), and the Proceeds of Crime (Money Laundering) Regulations 2002 of 29 January 2002 (amended 26 April 2002). These provisions criminalise the laundering of proceeds from any criminal conduct, mandate record keeping requirements for on-shore and offshore institutions, and mandate suspicious transaction reporting. The Financial Intelligence Unit Act, No. 38 of 2001, creates an FIU. Amendments to the International Banks Act (No. 7 of 2000 and no. 30 of 2002) improve registration requirements for offshore banks, and the Exchange of Information Act n° 29 of 2002, of June 2002, expands regulatory co-operation and repeals the previously restrictive Confidential Relationships Preservation (International Finance) Act.

21. The Eastern Caribbean Central Bank (ECCB), in conjunction with local supervisory authorities, now supervises St. Vincent and the Grenadines’ offshore banks. Exchange of Information order, 2002 no. 48, effective 5 November 2002, also expands the ECCB’s authority to share information regarding on-shore financial institutions.

22. St. Vincent and the Grenadines has also taken adequate steps to implement these reforms. Since June 2000, the size of the offshore sector has also been significantly reduced. In the future, the FATF encourages strengthening the oversight of offshore entities and continued judicial, regulatory, and FIU co-operation. The FATF also encourages St. Vincent and the Grenadines to consider tightening provisions relating to the granting of exemptions from customer identification requirements.

## **B. JURISDICTIONS THAT HAVE MADE PROGRESS SINCE JUNE 2002**

### **Cook Islands \***

#### *Situation in June 2000*

23. 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 offshore banks that were not required to identify customers or keep their records and were not effectively supervised. Excessive secrecy provisions guarded against the disclosure of relevant information on those international companies as well as bank records.

#### *Progress made since June 2000*

24. In August 2000 the Cook Islands Parliament enacted the “Money Laundering Prevention Act 2000” (MLPA). Guidance notes for financial institutions on the prevention of money laundering were issued by the Money Laundering Authority (MLA) in mid-2001 and on 23 January 2002, the Cook Islands passed the Money Laundering Prevention Regulations 2002 (the regulations), pursuant to section 41 of the Act. A financial intelligence unit (FIU) was established under a Letter of Delegation in respect of certain of the powers of the MLA under section 9 (1) (a), (e), (f), (g), and (h) of the MLPA.

25. On 7 May 2003, the Cook Islands took significant steps by passing nine new Acts. They include the Crimes Amendment Act 2003; the Proceeds of Crime Act 2003; Mutual Assistance In Criminal Matters Act 2003; the Financial Transactions Reporting Act 2003, (FTRA); the Financial Supervisory Commission Act 2003, (FSCA); the Banking Act 2003; and the International Companies Amendment Act 2003 (ICAA). The legislation creates measures for an overall comprehensive anti-money laundering framework and introduces regulation and supervision of the financial sector consistent with international standards. However, the necessary regulations under the acts have to be promulgated.

26. The FATF welcomes these substantial new measures and the fact that they will eliminate the existence of shell banks in the Cook Islands by 1 June 2004. The FATF emphasises the need for early and effective implementation, as the continued existence of shell banks is considered to reduce the effectiveness of an anti-money laundering regime and poses an unacceptable risk to the international financial community.

### **Egypt \***

#### *Situation in June 2001*

27. In June 2001, Egypt met criteria 5, 10, 11, 14, 19 and 25, and it partially met 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 was also sought on the evidential requirements necessary for access to information covered by Egypt’s banking secrecy laws.

### *Progress made since June 2001*

28. On 22 May 2002, Egypt enacted Law No. 80-2002 for Combating Money Laundering. The law criminalises the laundering of proceeds from various crimes, including narcotics, terrorism, fraud, and organised crime. The law addresses customer identification, record-keeping, and establishes the framework for the Money Laundering Combating Unit (MLCU) to function as an FIU within the Central Bank of Egypt. On 24 June 2002, Presidential Decree No. 164 of 2002 was issued which formally established and structured the MLCU.

29. Law no. 78-2003 came into effect 9 June 2003. It enhances the scope of the Law No. 80-2002 by expanding the predicate offences and removing a previous loophole which appeared to grant broad exemptions from imprisonment. Prime Minister Decree No. 951-2003 details the Executive Regulations for Law No. 80-2002 and came into effect on 10 June 2003. The Regulations further detail anti-money laundering obligations for financial institutions, including banks, bureaux de change, money remittance, securities, and insurance. The Regulations detail requirements for STR reporting, customer identification procedures, the functions of the MLCU, supervision of entities for compliance with the obligations, and international co-operation.

### **Guatemala \***

#### *Situation in June 2001*

30. In June 2001, Guatemala met criteria 6, 8, 15, 16, 19 and 25 and partially met criteria 1, 7 and 10. Guatemalan laws contained secrecy provisions that constituted a considerable obstacle to administrative counter-money laundering authorities, and Guatemalan law provided no adequate gateways for administrative authorities to co-operate with foreign counterparts. Additionally, Guatemala had not criminalised money laundering beyond the proceeds of narcotics violations. Further, the suspicious transaction reporting system contains no provision preventing “tipping off.” Guatemala had recently issued Regulations for the Prevention and Detection of Money Laundering, which significantly improved Guatemala’s ability to implement customer identification procedures.

#### *Progress made since June 2001*

31. Guatemala enacted Decree No. 67-2001, “Law Against Money and Asset Laundering,” on 27 November 2001. The law criminalises the laundering of proceeds relating to any crime, contains specific record-keeping requirements, and creates a special investigative unit (IVE) as a financial intelligence unit. The law’s April 2002 implementing regulations improve suspicious transaction reporting and customer identification requirements. Decree No. 19-2002, the Banks and Financial Groups Law, of 1 June 2002, will place offshore banks under the oversight of the Superintendent of Banks (SIB) after a six-month transition period following application for authorisation to operate. In addition, on 21 May 2003, the Monetary Board issued Resolution JM-68-2003, which requires banks to cancel or register all existing coded accounts within 3 months.

32. Although the SIB has conducted on-site inspections of 13 offshore banks (12 of which have applied for authorisation), the SIB has not completed the licensing and authorisation process. These entities therefore continue to operate without adequate supervision. Guatemala is encouraged to complete the authorisation process and bring these entities under the full control of the SIB as promptly as possible.

### **Nigeria\***

#### *Situation in June 2001*

33. Nigeria demonstrated an unwillingness or inability to co-operate with the FATF in the review of its system, and when placed on the NCCTs list in June 2001, met criteria 5, 17 and 24. It partially met

criteria 10 and 19, and had a broad number of inconclusive criteria as a result of its general failure to co-operate in this exercise.

*Progress made since June 2001*

34. The Government of Nigeria has substantially improved its co-operation with the FATF and its willingness to address its anti-money laundering deficiencies. On 14 December 2002, Nigeria enacted the Money Laundering Act (Amendment) Act 2002. This Act significantly enhanced the scope of Nigeria's 1995 Money Laundering Law by extending predicate offences for money laundering from drugs to "any crime or illegal act," extending certain anti-money laundering obligations to non-bank financial institutions, and extending customer identification requirements to include occasional transactions of \$5,000 or more. In December 2002, Nigeria also enacted the Economic and Financial Crime Commission (Establishment) Act. Once established, the Commission will enforce anti-money laundering provisions and investigate alleged offences. The Banking and other Financial Institutions (BOFI) Amendment Act, also enacted in December 2002, improves licensing requirements for financial institutions.

35. Nigeria enacted the Money Laundering Act 2003 on 22 May 2003. It consolidates and supersedes the previous anti-money laundering legislation. It provides for a broader interpretation of financial institutions and scope of supervision of regulatory authorities on money laundering activities, and improves customer identification requirements. It also improves STR provisions by removing a previous threshold.

36. Nigeria is encouraged in its efforts to strengthen and harmonise domestic laws and entities and put the new measures into full effect. Nigeria has created an Economic and financial Crimes Commission, which will receive STRs and function as an FIU, but it is not yet fully operational.

**The Philippines\***

*Situation in June 2000*

37. In June 2000, the Philippines met criteria 1, 4, 5, 6, 8, 10, 11, 14, 19, 23 and 25. The country lacked a basic set of anti-money laundering regulations such as customer identification and record keeping. Bank records had been under excessive secrecy provisions. It did not have any specific legislation to criminalise money laundering per se. Furthermore, a suspicious transaction reporting system did not exist in the country.

*Progress made since June 2000*

38. The Anti-Money Laundering Act (AMLA) of 2001 was enacted on 29 September 2001 and took effect 17 October 2001. The Act criminalises money laundering, introduces the mandatory reporting of certain transactions, requires customer identification, and creates the legal basis for the Anti-Money Laundering Council (AMLC), which functions as an FIU. The Act's implementing rules and regulations (IRRs) took effect 2 April 2002. Although the Philippines' authorities interpreted the regulations as requiring the reporting of all suspicious transactions, this nevertheless conflicted with the AMLA, which only required reporting of high threshold suspicious transactions. A legislative measure was needed to address this issue.

39. On 7 March 2003, the Philippines enacted Republic Act No. 9194, which amends the AMLA and addresses the legal deficiencies. It requires the reporting of all suspicious transactions, grants the BSP (the banking supervisor) full access to account information to examine for anti-money laundering compliance, and allows the AMLC to inquire into deposits and investments made prior to the AMLA coming into effect. Since the general restrictions on access to information have been deleted from the AMLA, the AMLC may now respond to foreign information requests regarding deposits and

investments made prior to the coming into effect of the AMLA. The Philippines will now need to adequately implement the anti-money laundering measures.

#### **Ukraine\***

##### *Situation in September 2001*

40. In September 2001, Ukraine met criteria 4, 8, 10, 11, 14, 15, 16, 23, 24 and 25. It partially met criteria 1, 2, 3, 5, 6, 7 and 13. The country lacked a complete set of anti-money laundering measures. There was no efficient mandatory system for reporting suspicious transactions to an FIU. Other deficiencies concerned customer identification provisions. There were inadequate resources to combat money laundering.

##### *Progress made since September 2001*

41. Ukraine has adopted certain presidential decrees, including: Decree No 1199/2001 (10 December 2001) “On the Measures Aimed at Elimination of Legalization (Money Laundering) of the Profits Obtained by Illegal Ways), Resolution No. 35 (10 January 2002) “On Establishment of the State Department of Financial Monitoring.” Regulation No. 700 (29 May 2002) provides guidance to what kinds of transactions financial institutions should consider as “doubtful and uncommon.” However, Ukraine still lacked comprehensive anti-money laundering legislation.

42. The FATF decided that its members apply counter-measures to Ukraine as of 15 December unless Ukraine enacted legislation that met international standards. On 7 December, Ukraine enacted the “Law of Ukraine on Prevention and Counteraction of the Legalization (Laundering) of the Proceeds from Crime.” However, this legislation did not meet international standards, and therefore counter-measures became effective on 20 December 2002. Since that time, however, Ukraine enacted amendments that significantly improved the STR system, measures for information sharing, and identification of beneficial ownership of legal entities. Amendments to the criminal code clarified the money laundering offence. As a result of these new measures, the FATF removed the application of counter-measures on 14 February 2003. Ukraine’s new basic anti-money laundering law, with amendments, entered into force on 12 June 2003. However, Ukraine still needs to bring these measures into full effect as well as establish a comprehensive and operational regulatory and supervisory structure for non-bank financial institutions. If Ukraine maintains its current pace of reform, it may be asked to submit an implementation plan in the near future.

### **C. JURISDICTIONS THAT HAVE NOT MADE ADEQUATE PROGRESS SINCE JUNE 2002**

#### **Indonesia\***

##### *Situation in June 2001*

43. In June 2001, Indonesia met criteria 1, 7, 8, 9, 10, 11, 19, 23 and 25, and partially met criteria 3, 4, 5 and 14. It lacked a basic set of anti-money laundering provisions. Money laundering was not a criminal offence in Indonesia. There was no mandatory system of reporting suspicious transactions to a FIU. Customer identification regulations had been recently introduced, but only apply to banks and not to non-bank financial institutions.

##### *Progress made since June 2001*

44. Bank Regulation 3/23/PBI/2001, of 13 December 2001, and Circular Letter of Bank Indonesia, of 31 December 2001, require banks to establish “know your customer” policies, compliance officers, and employee training. On 17 April 2002, Indonesia enacted Law of the Republic of Indonesia Number 15/2002 Concerning Money Laundering Criminal Acts. The law expands customer

identification requirements and creates the Indonesian Financial Transaction Reports and Analysis Centre (PPATK), the framework for an FIU. The law criminalises the laundering of illicit proceeds, however, only in relation to criminal proceeds exceeding threshold of 500 million rupiah (approximately USD 60,000 as of June 2003). The law also mandates reporting of suspicious transactions, although the definition of such transactions is limited. Also, institutions are allowed 14 days to make a report, and the law does not criminalise unauthorised disclosure of such reports. These deficiencies will inhibit adequate domestic anti-money laundering enforcement as well as international co-operation.

45. Although a director of PPATK has been appointed, the unit will not become fully operational until October 2003, when the reporting obligations also become mandatory. In the interim, the Bank of Indonesia has received 178 STRs, referring 19 matters to law enforcement, with one matter before the Attorney General. Decrees number 02/PM/2003 and 45/KMK.06/2003 enhance know your customer provisions for the securities and insurance sectors. However, the remaining regulatory structure for NBFIs remains unclear.

46. Indonesia has drafted legislation that would partly address the remaining issues. Indonesia needs to move quickly to address the deficiencies, especially the removal of the threshold for defining the proceeds of crime, a more comprehensive regulatory framework for non-banking financial institutions, more comprehensive STR requirements, and enhanced measures for international co-operation.

## **Myanmar\***

### *Situation in June 2001*

47. In June 2001, Myanmar met criteria 1, 2, 3, 4, 5, 6, 10, 11, 19, 20, 21, 22, 23, 24 and 25. It lacked a basic set of anti-money laundering provisions. It had not yet criminalised money laundering for crimes other than drug trafficking. There were no anti-money laundering provisions for financial institutions, and there was an absence of a legal requirement to maintain records and to report suspicious or unusual transactions. There were also significant obstacles to international co-operation by judicial authorities.

### *Progress made since June 2001*

48. On 17 June 2002 Myanmar enacted The Control of Money Laundering Law (CMLL) (The State Peace and Development Council Law No. 6 /2002). The law criminalises money laundering for certain predicate offences, including trafficking/smuggling, counterfeiting, and acts of terrorism. This list could be extended, and the law allows for the establishment of a monetary threshold relating to money laundering offences. The law also requires the reporting of suspicious transactions, creates a “safe harbour” provision for reporting, and requires customer identification and record keeping.

49. Although the law creates a framework for anti-money laundering measures, deficiencies remain, and Myanmar has taken little action since June 2002. There are no provisions to enhance international co-operation, particularly mutual legal assistance. Rules that would implement the CMLL still need to be drafted and issued. Also, the law does not criminalise unauthorised disclosure of STRs. In addition, further legislative work may be necessary to fully address the regulatory and supervisory functions of the central bank.

## **D. JURISDICTIONS CURRENTLY SUBJECT TO COUNTER-MEASURES**

### **Nauru \***

#### *Situation in June 2000*

50. In June 2000 Nauru met criteria 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 19, 23, 24 and 25. It lacked a basic set of anti-money laundering regulations, including the criminalisation of money laundering, customer identification and a suspicious transaction reporting system. It had licensed approximately 400 offshore “banks,” which were prohibited from taking deposits from the public and were poorly supervised. These banks are shell banks that have no physical presence. The excessive secrecy provisions guarded against the disclosure of the relevant information on those offshore banks and international companies.

#### *Progress made since June 2000*

51. On 28 August 2001, Nauru enacted the Anti-Money Laundering Act of 2001. The Act criminalised money laundering, requires customer identification for accounts, and requires suspicious activity reporting. However, the act did not cover the regulation and supervision of Nauru’s offshore banking sector; therefore, the FATF recommended that its members apply counter-measures as of 5 December 2001. On 6 December 2001, Nauru amended the law to apply to the offshore banks. However, Nauru took no action to address the main area of concern—the licensing and supervision of the offshore sector.

52. Nauru has recently taken steps by enacting the Corporation (Amendment) Act of 2003 and the Anti-Money Laundering Act of 2003 on 27 March 2003. The legislation is intended to abolish offshore shell banks and prohibit the granting of new licences. Nauru has indicated that it has since revoked the licenses of all remaining offshore banks operating out of Nauru and that the only bank currently licensed is the National Bank of Nauru, which conducts only domestic business. While the FATF welcomes these efforts, the FATF would like Nauru to take additional steps to ensure that previously licensed offshore banks are no longer conducting banking activity and are no longer in existence. When it is shown that Nauru has fully co-operated with the international community and has taken every step to ensure that shell banks no longer operate, the FATF can consider the removal of counter-measures.

## **III. JURISDICTIONS SUBJECT TO THE MONITORING PROCESS**

### **The Bahamas**

53. The Commonwealth of the Bahamas was identified as an NCCT in June 2000. The Bahamas subsequently enacted comprehensive anti-money laundering measures, made important progress implementing these measures, and was therefore removed from the NCCTs list in June 2001.

54. The Bahamas established a financial intelligence unit (FIU) that has been successfully operational and was admitted into the Egmont Group in 2001. In 2002, the FIU received 160 STRs and forwarded 45 to the Royal Bahamas Police Force for investigation. The FIU received 49 requests for information from foreign FIUs and responded to 40. From 1 January to 30 April 2003, The FIU received an additional 50 STRs, forwarded 10 for investigation, and had responded to 17 of 28 additional requests for information. To date, there have been 4 convictions under the money laundering legislation, with several other prosecutions on-going.

55. The Bahamas required banks to establish a physical presence in the jurisdiction, and required all pre-existing accounts to be identified by 31 December 2002. The Central Bank also established and



began to implement an ambitious inspection programme, conducting 102 on-site inspections in 2002 and 20 in 2003 up to 31 March. The Securities Commission conducted 78 inspections of registrants and licensees from March 2001 to May 2002, and an additional 29 inspections up to 31 March 2003.

56. The Attorney General's Office also established an international co-operation unit, which processed 120 legal assistance requests in 2002 and 35 in 2003 up to 15 May. The FATF will continue to monitor the situation in the Bahamas, particularly in light of continuing concerns expressed by FATF members regarding inadequate international co-operation.

### **Dominica**

57. Dominica was identified as an NCCT in June 2000. After that time, Dominica enacted significant legislative reforms that addressed 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 for record-keeping, reporting of suspicious transactions, and customer identification. The Exchange of Information Act, effective January 31, 2002, expanded Dominica's authority to assist foreign regulatory authorities. Dominica was among the first to place its offshore banks under the direct supervision of the Eastern Caribbean Central Bank (ECCB), in conjunction with the local supervisory authorities. As a result of adequate implementation of these reforms, including significant improvement on international co-operation matters, Dominica was de-listed in October 2002.

58. Since that time, implementation has continued to improve in Dominica. The FIU had received 100 suspicious (69) and large (31) transaction reports as of 31 December 2002 and investigated 65; an additional 8 were received and investigated in 2003 up to 15 May. The FIU co-operates with foreign FIUs and police units; it will become an official Egmont Group member at the July 2003 Egmont Plenary meeting. Dominica has significantly reduced the size of its offshore sector, with only one offshore bank remaining operational. The new Anti-Money Laundering Supervisory Authority inspected 12 scheduled entities between September 2002 and 15 May 2003. To date Dominica had responded to all requests for mutual legal assistance and all requests under the Exchange of Information Act.

### **Grenada**

59. Grenada was placed on the NCCTs list in September 2001. Since that time, Grenada has achieved significant progress, including legislative reforms that permit regulatory access to account records, allow the regulator to communicate relevant information to other Grenadian authorities, and the creation of a registration mechanism for bearer shares of IBCs.

60. Grenada also enacted the Financial Intelligence Unit (FIU) Act (No. 1 of 2003), the Exchange of Information Act (No. 2 of 2003) and the Proceeds of Crime Act on 31 January 2003. An MOU between Grenada and the ECCB now gives the ECCB a supervisory role in the regulation of the offshore banking and trust businesses. By February 2003, the size of the offshore sector had been drastically reduced, with the remaining offshore banks being liquidated or under government oversight. The FIU had a staff of 5 and had received 29 suspicious transaction reports as of December 2002. As a result of implementation of the above measures, and adequate responses to requests for mutual legal assistance, Grenada was de-listed in February 2003.

61. By May 2003, the FIU had received a total of 58 STRs. The FIU was investigating two money laundering cases, with another case proceeding in court. International co-operation has also continued to improve in 2003; Grenada has responded to the two requests from foreign regulators, all three requests for legal assistance, and seven requests from foreign police agencies and FIUs. Grenada should complete the process of amending the Exchange of Information Act 2003 to clarify Grenada's ability to co-operate with foreign regulator authorities and the Offshore Banking Act to provide a statutory role for the ECCB.

## **Hungary**

62. Hungary was identified as an NCCT in June 2001. After that time, Hungary significantly enhanced its anti-money laundering regime. New legislation abolished anonymous passbooks by requiring registration, i.e. the identification of both the depositors and the beneficiaries and the conversion of existing passbooks to registered form. The legislation also extended anti-money laundering controls to non-banking sectors including casinos, real estate agents, and tax consultants. As a result of these reforms and adequate implementation thereof, Hungary was removed from the NCCTs list in June 2002.

63. In July 2002, Hungary began the second phase of the transformation of anonymous accounts, which requires that the data on all the owners of accounts above 8,400 euros are to be reported. 5,809 STRs were reported from January-November 2002, an increase of more than three times for the previous year. An additional 3,193 STRs were received between 1 January and 1 June 2003. Between 1 January and 31 March 2003, more than 90% of the value of anonymous deposits had been registered. Two new investigations had also begun. Co-operation with Hungary also remained good since de-listing. Act XV of 2003, enacted on 18 March 2003 and in force as of 16 June 2003, extends anti-money laundering controls to lawyers and notaries.

64. Hungary has adequately addressed all the previously identified deficiencies and therefore will no longer require monitoring by the FATF. Future monitoring of Hungary will be conducted within the Council of Europe's MONEYVAL and its relevant monitoring mechanisms.

## **Israel**

65. Israel was identified as an NCCT in June 2000. After that time, Israel adopted legislation and regulations for the money laundering criminal offence, customer identification, and record keeping and reporting requirements. In January 2002, the Israel Money Laundering Prohibition Authority (IMPA) was established and functions as an FIU. The FIU was admitted into the Egmont Group in June 2002. After substantial implementation of these reforms, Israel was de-listed in June 2002.

66. After June 2002, the IMPA continued efforts to improve financial institutions' reporting compliance. From February 2002—January 2003 the IMPA received approximately 1,100 STRs; 200 were undergoing further analysis and 81 were disseminated to other agencies. Co-operation with other law enforcement agencies and foreign FIUs also increased; 5 MOUs with foreign FIUs had been finalised and 20 more were under negotiation. During 2002 the IMPA had responded to 12 of the 30 requests for information and was processing the other requests as of February 2003. During 2002 a total of five money laundering cases yielded indictments, one was under consideration of the District prosecutor, one yielded a request for a civil forfeiture, one case ended with the arrest and indictment of suspects in another country, and eleven cases were in various stages of investigation.

67. Israel has also instituted a program for inspecting financial institutions. As of April 2003, the Central Bank had completed comprehensive inspections in three banking corporations (about 40% of banking activity), and plans to complete comprehensive inspections of all five of the largest banking groups in Israel by year's end (95% of banking activity). Customer identification procedures for existing customers of banks and portfolio managers are set to be completed in August 2003. The FATF welcomes Israel's plans to accelerate its compliance monitoring of Israeli banks in order to complete general anti-money laundering examinations in all banks by September 2003. The FATF will continue to monitor the situation in Israel as it continues to implement its banking inspection and customer identification procedures.

## **Lebanon**

68. Lebanon was identified as an NCCT in June 2000. Law No. 318 of 26 April 2001 and Circular No. 83 of 18 May 2001 addressed the criminalisation of money laundering, bank secrecy, customer identification, and suspicious transaction reporting. The law also created the Special Investigation Commission as the FIU. The SIC is an independent entity with judicial status that investigates money laundering operations and monitors compliance of banks and other financial institutions with the provisions of Law No. 318. After adequate implementation, Lebanon was de-listed in June 2002.

69. For 2002, the FIU received 138 STRs, 75 of which came from local reporting and 63 from foreign cases. Twenty-four cases were passed on for additional investigation, and 11 bank accounts had been frozen. The SIC investigated 103 cases and lifted bank secrecy in 79 of these cases. In the first three months of 2003, the SIC received another 50 STRs, and the General Prosecutor had brought the first two money laundering cases to the Criminal Court.

70. The FATF encourages Lebanon to enact proposed changes to Law No. 318 that could expand the number of money laundering cases brought for prosecution. The FATF will continue to monitor the implementation of Lebanon's anti-money laundering regime, with particular attention paid to general compliance and STR reporting in the banking and non-banking sectors, the number and quality of investigations, seizures, and prosecutions for money laundering offences.

## **The Marshall Islands**

71. After the Republic of the Marshall Islands (RMI) was identified as an NCCT in June 2000, it 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. On 27 May 2002, the RMI enacted a set of regulations that provide standards for reporting and compliance. The Marshall Islands had increased the number of IBCs from 3,000 in June 2002 to nearly 8,500 in October 2002, but the arrangements for controlling registrations had improved. The RMI was de-listed in October 2002.

72. The FATF continues to monitor the situation in the Marshall Islands, with particular attention to ensuring that adequate information regarding legal and business entities is recorded and made available to investigators.

## **Niue**

73. After being listed as an NCCT in June 2000, Niue enacted significant reforms to address the deficiencies. The Financial Transactions Reporting Act 2000 addressed requirements dealing with reporting of suspicious transactions, the establishment of an FIU, and partly addressed customer identification. The International Banking Repeal Act 2002, which was brought into force on 5 June 2002, eliminated Niue's offshore banks as of October 2002. Although Niue retained its 5,500 IBCs, company registry information is now maintained in Niue so as to provide local access to current information. As a result of these measures, Niue was de-listed in October 2002.

74. The FATF continues to monitor the situation in Niue, with particular attention to ensuring that adequate information regarding legal and business entities is recorded and made available to investigators.

## **Russia**

75. After being identified as an NCCT in June 2000, Russia has enacted significant reforms to address the issues identified. Federal Law No. 115-FZ "On Combating the Legalisation (Laundering) of Income Obtained by Criminal Means" came into effect 1 February 2002 and included customer identification requirements, a suspicious activity reporting system, procedures for international co-

operation, and provisions for a Commission for Financial Monitoring (KFM) to operate as a financial intelligence unit (FIU). The KFM began operations on 1 February 2002 and was admitted into the Egmont Group in June 2002. Russia was de-listed by the FATF in October 2002.

76. After de-listing, Russia continued to implement and enhance its new anti-money laundering structures. Law No. 115-FZ was amended in January 2003 to include measures to address terrorist financing and to expand the scope of the law to include gaming entities, entities involved in the purchase and sale of precious metals and stones, and investment funds. The KFM is also now tasked with supervising entities for anti-money laundering compliance which do not fall under the jurisdiction of an existing supervisory authority, including gambling services, leasing companies, and pawn shops, and the KFM began measures to implement these provisions. As of April 2003, the KFM had received approximately 320,000 mandatory transaction reports and 234,000 suspicious transaction reports, which resulted in 124 cases referred to law enforcement bodies. The KFM had responded to 73 requests from foreign FIUs. The Operational Detection Bureau (OSB), a new specialised anti-money laundering investigation unit within the Ministry of Interior Affairs, had approximately 1,400 open cases.

77. As an observer member to the FATF, Russia also underwent a mutual evaluation in April 2003. A summary of the findings can be found in the FATF Annual Report for 2002-2003 of 20 June 2003.

### **St. Kitts and Nevis**

78. After being placed on the NCCTs list in June 2000, St. Kitts and Nevis enacted comprehensive legislation to address the identified deficiencies. These new measures expanded the money laundering offence, required customer identification and record keeping procedures, and suspicious transaction reporting, and established a financial intelligence unit. New measures also enhanced the licensing, regulation and supervision of offshore entities. A new mechanism to register bearer shares that includes identifying the beneficial owners was instituted. The ECCB now vets offshore bank applications and supervises Nevis' one offshore bank in conjunction with the Nevis regulator. As a result of adequate implementation of these measures, St. Kitts and Nevis was removed from the NCCTs list in June 2002.

79. By January 2003, the FIU had a staff of seven and had received 82 STRs, with 44 referrals to police and 13 investigations on-going. The FIU had responded to 24 of the 40 requests from foreign jurisdictions that it had received. By May 2003 the FIU had received an additional 21 STRs, and had responded to 3 of 16 additional requests from foreign FIUs.

80. Although there is an indirect mechanism for regulatory co-operation between the ECCB and foreign bank regulators, the FATF encourages the efforts of the ECCB and St. Kitts and Nevis to continue with its efforts to establish a direct gateway. St. Kitts and Nevis has adequately addressed all the previously identified deficiencies and therefore will no longer require monitoring by the FATF. Future monitoring of St. Kitts and Nevis will be conducted within the CFATF and its relevant monitoring mechanisms.

#### IV. CONCLUSIONS AND THE WAY FORWARD

81. The reviews carried out in 2000 and 2001 by the FATF have been extremely productive. Most jurisdictions participated actively and constructively in the reviews. The reviews of jurisdictions against the 25 criteria have revealed – and stimulated – many ongoing efforts by governments to improve their systems. As of June 2003, most jurisdictions had enacted significant reforms and are well on their way towards comprehensive anti-money laundering regimes.

82. Nevertheless, serious systematic problems remain in several jurisdictions. Following the progress made by the jurisdictions deemed to be non-cooperative in June 2000, June 2001, and September 2001, the list of NCCTs now comprises the following jurisdictions:

**Cook Islands**  
**Egypt**  
**Guatemala**  
**Indonesia**  
**Myanmar**  
**Nauru**  
**Nigeria**  
**Philippines**  
**Ukraine**

83. These jurisdictions are strongly urged to adopt the necessary measures to improve their rules and practices as expeditiously as possible in order to remedy the remaining 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 82 and in so doing take into account issues raised in the relevant summaries in Section II of this report and any progress made by these jurisdictions since being listed as NCCTs.

84. The FATF notes with concern the failure by the governments of Indonesia and Myanmar to make more substantive progress since June 2002. Although they have enacted some anti-money laundering measures, serious deficiencies remain that will inhibit implementation of comprehensive anti-money laundering systems.

85. Should those countries or territories identified as non-cooperative maintain their detrimental rules and practices despite having been encouraged to make certain reforms, FATF members would need to consider the adoption of counter-measures against such jurisdictions. With respect to those countries listed in June 2000, June 2001 and September 2001, whose progress addressing deficiencies has stalled, the FATF will consider the adoption of additional counter-measures as well.

86. 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.

87. All countries and territories that 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.

88. The FATF intends to remain fully engaged with all the jurisdictions identified in paragraph 82. 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.

89. 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's findings in relation to these matters.

90. 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.

**LIST OF CRITERIA FOR DEFINING  
NON-COOPERATIVE COUNTRIES OR TERRITORIES<sup>7</sup>**

**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*

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<sup>7</sup> This list should be read in conjunction with the attached comments and explanations.

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

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<sup>8</sup> or judicial authorities<sup>9</sup> 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.<sup>10</sup>

(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

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<sup>8</sup> The term "administrative authorities" is used in this document to cover both financial regulatory authorities and certain financial intelligence units (FIUs).

<sup>9</sup> 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.

<sup>10</sup> 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.

set up, and the identity and background of their founders, managers and beneficial owners are frequently 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<sup>11</sup> 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<sup>12</sup> on identification<sup>13</sup> 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);

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<sup>11</sup> 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”.

<sup>12</sup> The agreements and self-regulatory agreements should be subject to strict control.

<sup>13</sup> 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.

- 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).

*(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<sup>14</sup>). 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**

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<sup>14</sup> "Fiscal excuse" as referred to in the Interpretative Note to Recommendation 15.

*(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 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.

## 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 de-listing 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.