Financial Action Task Force

Groupe d'action financière

Annual Review of Non-Cooperative
Countries and Territories
2005-2006

23 June 2006

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EXECUTIVE SUMMARY OF THE JUNE 2006 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 the progress made in these areas, in the last year the Financial Action Task Force (FATF) agreed to the following steps:

Removal of Nauru and Nigeria from the Non-Cooperative Countries and Territories (NCCT) list

2. In October 2005, the FATF removed Nauru from the NCCTs list after Nauru abolished its 400 shell banks and therefore removed the major money laundering risk. At its June 2006 Plenary meeting, the FATF de-listed Nigeria, recognising the progress that that country has made in implementing AML reforms, including establishing an operational financial intelligence unit and progressing money laundering investigations, prosecutions, and convictions. Consequently, the procedures prescribed in FATF Recommendation 21 were withdrawn. To ensure continued effective implementation of these reforms, the FATF will monitor the developments in Nauru and Nigeria for a period of time after de-listing, in consultation with the relevant FATF-style regional body (FSRB), and particularly in the areas laid out in this NCCT report.

Other progress made since June 2005

3. The FATF welcomes the progress made by Myanmar in implementing anti-money laundering (AML) reforms and urges that government to continue their efforts. The FATF will conduct an on-site visit to that country in order to verify the progress made. Previously to June 2005, the FATF had recognised that Myanmar had enacted the main legal reforms that were necessary and therefore invited Myanmar to submit an implementation plan to outline progress made in implementing AML measures. These measures include money laundering investigations, prosecutions, suspicious transaction reporting, financial institution inspections, and international co-operation. A jurisdiction remains designated as an NCCT until such measures have been adequately implemented.

4. Regarding countries de-listed prior to June 2005 and subject to the monitoring process, the FATF will now end formal monitoring of the Cook Islands. The FATF ended formal monitoring of The Bahamas in October 2005, Ukraine in January 2006, and Indonesia and the Philippines in February 2006. Any future monitoring of these countries will be conducted within the context of the relevant FSRBs and their evaluation mechanisms.

Current NCCT

5. One country is still considered by the FATF to be an NCCT: **Myanmar**. The FATF calls on its members to update their advisories directing their financial institutions to give special attention to business relations and transactions with persons, including companies and financial institutions, in Myanmar.

I. BACKGROUND AND HISTORY OF THE EXERCISE

6. The Forty Recommendations of the Financial Action Task Force (FATF) are the international standard for effective anti-money laundering measures. FATF regularly reviews its members to check their compliance with these Forty Recommendations (as well as the Nine Special Recommendations on Terrorist Financing) and to suggest areas for improvement through periodic mutual evaluations. The FATF also identifies emerging trends and methods used to launder money and suggests measures to combat them.

7. Combating money laundering is a dynamic process because the criminals who launder money are continuously seeking new ways to achieve their illegal ends. It became evident to the FATF through its regular typologies exercises that, as its members have strengthened their systems to combat money laundering, criminals sought to exploit weaknesses in other jurisdictions to continue their laundering activities. In order to reduce the vulnerability of the international financial system to money laundering, governments decided to intensify their efforts to effectively co-operate at the international level.

8. The Non-Cooperative Countries and Territories (NCCTs) exercise began in 1998 at a time when many countries around the world did not have adequate AML measures in place. The goal of the initiative is to secure the adoption by all financial centres of international standards to prevent, detect and punish money laundering, and thereby effectively co-operate internationally in the global fight against money laundering.

9. In February 2000, the FATF published the initial report on NCCTs[1], which included 25 criteria identifying detrimental rules and practices that impede international co-operation in the fight against money laundering. These criteria are listed in Annex 1. The report described a process to use these criteria to identify jurisdictions that do not co-operate adequately in the fight against money laundering. The report also contained a set of possible counter-measures that FATF members could use to protect their economies against the proceeds of crime.

10. The exercise reviewed 47 jurisdictions in two rounds of reviews (31 in 2000[2] and 16 in 2001[3]). A total of 23 jurisdictions were identified as NCCTs (15 in 2000 and 8 in 2001). The FATF recommended that financial institutions give special attention to transactions involving the NCCTs, in accordance with Recommendation 21. No additional jurisdictions have been reviewed under this process since 2001. This initiative has so far been both productive and successful because all of these jurisdictions have made significant progress, with only one country remaining designated as an NCCT as of 23 June 2006. The timeline with respect to FATF decisions on listing, counter-measures, implementation plans, and de-listing is summarised in narrative and graphic form in Annex 3.

11. Most NCCTs began immediately improving their AML systems after being listed. This took place for several reasons. Generally, countries recognised that adopting current AML standards was important for the protection and soundness of their own financial systems. In addition, being

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1 The Initial Report on NCCTs of February 2000 and the Annual NCCT reviews are available at: http://www.fatf-gafi.org/document/51/0,2340,en_32250379_32236992_33916403_1_1_1_1,00.html.

2 Antigua & Barbuda, *Bahamas*, Belize, Bermuda, British Virgin Islands, *Cayman Islands*, *Cook Islands*, Cyprus, *Dominica*, Gibraltar, Guernsey, Isle of Man, *Israel*, Jersey, *Lebanon*, *Liechtenstein*, Malta, *Marshall Islands*, Mauritius, Monaco, *Nauru*, *Niue*, *Panama*, *Philippines*, *Russia*, Samoa, Seychelles, *St. Kitts & Nevis*, St. Lucia, *St. Vincent & the Grenadines* and Vanuatu. (The 15 jurisdictions identified as NCCTs at that time are in italics.)

3 Costa Rica, Czech Republic, *Egypt*, *Grenada*, *Guatemala*, *Hungary*, *Indonesia*, *Myanmar*, *Nigeria*, Palau, Poland, Slovakia, Turks & Caicos Islands, United Arab Emirates, *Ukraine* and Uruguay. (The 8 jurisdictions identified as NCCTs at that time are in italics.)

identified by the FATF as an NCCT and the application of Recommendation 21 by the FATF were viewed by countries as harmful to their reputations and needed to be addressed. Also, in some jurisdictions, there were already stimuli for moving forward with AML reforms such as through feedback from mutual evaluations conducted by FSRBs. The process continues to demonstrate the willingness and commitment of countries to improve their AML systems.

12. The annual NCCT reviews of June 2002, June 2003, July 2004, and June 2005 updated the situation as of those times. The FATF approved this report at its 20-23 June 2006 Plenary. Section II of this document summarises the NCCT process. Section III highlights progress made by the jurisdictions that remained on the NCCTs list after the June 2005 Plenary meeting. Section IV updates the situations in de-listed jurisdictions that were subject to the monitoring process between June 2005 and June 2006. Section V concludes the document and indicates future steps.

II. THE NCCT PROCESS

13. In February 2000, 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 25 NCCT criteria. In 2000-2004, the review monitored progress made by NCCTs as well as de-listed jurisdictions subject to the monitoring process. In October 2004, the FATF consolidated the four review groups into two: the Review Group on Asia/Pacific and the Review Group on the Americas, Europe and Africa/Middle East.

A. REVIEW PROCESS

14. 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 25 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 III and IV of the present report. For NCCTs, FATF has indicated that Recommendation 21[4] applies.

B. ASSESSING PROGRESS

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

16. 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 its AML deficiencies. The FATF views the enactment of the necessary legislation and the promulgation of associated regulations as an essential and fundamental first step.

[4] Recommendation 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.

The FATF attaches particular importance to reforms in the area of criminal law, financial supervision, customer identification, suspicious transaction reporting, and international co-operation. Legislation and regulations need to have been enacted and to have come into effect.

17. In addition, the FATF seeks to ensure that the jurisdiction is effectively implementing the necessary reforms. Thus, the jurisdictions that have enacted legislation to remedy the main deficiencies are 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 conducting of money laundering investigations are considered. The FATF, through the review group, should make an on-site visit to the NCCT at an appropriate time to confirm effective implementation of the reforms. (See Annex 2 for a thorough description of the de-listing process.) When the review group is satisfied that the NCCT has taken sufficient steps to ensure continued effective implementation of AML measures, it will recommend to the Plenary that the jurisdiction be de-listed.

C. MONITORING PROCESS FOR JURISDICTIONS REMOVED FROM THE NCCT LIST

18. 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 FSRB. 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 been fully achieved.

19. The monitoring process of de-listed jurisdictions is carried out against the implementation plans, specific issues raised in the implementation reports, and using the experience of FATF members on implementation issues. In this context, subjects include, as appropriate: the issuance of secondary legislation and regulatory guidance; inspections of financial institutions planned and conducted; suspicious transaction reporting (STR) systems; money laundering investigations and prosecutions conducted; regulatory, financial intelligence unit (FIU) and judicial co-operation; adequacy of resources; and assessment of compliance culture in the relevant sectors.

D. IMPLEMENTATION OF COUNTER-MEASURES

20. In addition to the application of Recommendation 21, in cases where NCCTs have failed to make adequate progress in addressing the serious deficiencies previously identified by the FATF, and in cases where progress has stalled, the FATF will recommend 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 enhancing 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;

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

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

III. FOLLOW-UP TO COUNTRIES ON THE NCCT LIST IN JUNE 2005

21. This section summarises the progress made by these countries and territories. References to "meeting the criteria" means that the concerned jurisdiction was found to have detrimental rules and practices in place. For each of the following jurisdictions, the situation that prevailed when the jurisdiction was identified by the FATF as an NCCT is summarised (criteria met, main deficiencies) and is followed by an overview of the actions taken since that time.

A. COUNTRIES REMOVED FROM THE NCCT LIST IN OCTOBER 2005 AND JUNE 2006

Nauru

Situation in June 2000

22. 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 were shell banks with no physical presence. Excessive secrecy provisions prevented the disclosure of the relevant information.

Progress made since June 2000

23. The *Anti-Money Laundering Act 2001* criminalises 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 make the preventative measures applicable to the offshore banks, although it did not address the main area of concern—the licensing and supervision of the offshore sector. On 27 March 2003, Nauru enacted the *Corporation (Amendment) Act 2003* and the *Anti-Money Laundering Act 2003*. The legislation aimed to abolish offshore shell banks and prohibit the granting of new licences. Nauru authorities also formally revoked the licenses of all remaining offshore banks at that time. The government took further steps in 2004 to ensure that offshore banks could no longer operate, through enactment of the *Banking (Amendment) Act 2004* and the *Corporation (Amendment) Act 2004*. Nauru also enacted the *Anti-Money Laundering Act 2004*, which expanded the scope of AML requirements, as well as the *Mutual Assistance in Criminal Matters Act 2004*, the *Proceeds of Crime Act 2004*, and the *Counter-Terrorism and Transnational Organised Crime Act 2004*. In 2005, Nauru implemented further improvements to its offshore corporate registry to require that adequate information on ownership and control of these companies be collected and maintained. As of October 2005, there were only 66 companies remaining—down from approximately 2,000 companies in the year 2000.

24. On the basis of this progress, the FATF de-listed Nauru in October 2005. The FATF indicated that it would continue to monitor progress, as part of the FATF's standard policy to monitor all de-listed jurisdictions for a period of time, and in particular, Nauru's oversight of its corporate registry. Since that time, the Nauru has continued to monitor its corporate registry, and only 56 companies remained as of June 2006. Nauru currently has no commercial banking facilities. The government is currently seeking technical assistance to update Nauru's financial sector legislation and regulations,

develop an FIU, and ensure than any new financial sector developments would occur within an adequate anti-money laundering and counter-terrorism financing regulatory regime.

Nigeria

Situation in June 2001

25. In 2001 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

26. The Government of Nigeria 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 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 AML obligations to non-bank financial institutions, and extending customer identification requirements to include occasional transactions of USD5,000 or more. In December 2002, Nigeria also enacted the Economic and *Financial Crime Commission (EFCC) (Establishment) Act*. The EFCC was inaugurated in April 2003 to investigate money laundering cases from predicate offences other than drug trafficking. (The National Drug Law Enforcement Agency investigates drug and drug money laundering offences). The *Banking and other Financial Institutions (BOFI) Amendment A*ct, also enacted in December 2002, improves licensing requirements for financial institutions.

27. Nigeria subsequently enacted the *Money Laundering (Prohibition) Act 2004* on 29 March 2004 and the *Economic and Financial Crimes Commission (Establishment) Act 2004* on 4 June 2004, which superseded and improved upon the previous versions of these laws. These laws establish: the framework for a broader STR and customer identification system, AML obligations for a broader range of financial and non-financial institutions, and a framework for the Nigerian FIU (NFIU) within the EFCC. On this basis, the FATF invited Nigeria to submit an implementation plan in June 2004. The NFIU became operational in January 2005.

28. Nigeria has made considerable progress in implementing its AML regime. The financial sector has undergone significant changes and restructuring resulting in the reduction of the number of commercial banks from 89 to 25. Nigeria also implemented a comprehensive compliance inspection program for banks and other financial institutions, and joint AML inspections are carried out by both the supervisory bodies and the NFIU. The NFIU now has a staff of 58 (up from 27 in June 2005), and received approximately 1,500 STRs and 3.5 million Currency Transaction Reports (CTRs) in 2005. The NFIU has referred 42 STRs to investigative agencies. The NFIU can cooperate fully with its foreign counterpart FIUs and continues to negotiate Memoranda of Understanding (MOUs) with these counterparts.

29. The Nigerian government continues to improve the funding to the authorities responsible for investigating and prosecuting money laundering and terrorist financing. The EFCC now has 750 staff, including 54 investigators in its Anti-Corruption/Money Laundering Unit and 56 in its Prosecution Unit. The EFCC prosecuted 29 money laundering cases in 2005, resulting in 12 convictions. For 2006, there were 8 additional convictions and 96 ongoing investigations as of May. In addition, the NDLEA prosecuted 30 money laundering cases in 2005, resulting in 22 convictions. The NDLEA currently has 8 pending money laundering cases with 4 individuals charged with money laundering.

30. On the basis of this progress, in June 2006 the FATF removed Nigeria from the NCCTs list. Moving forward, as is the case with other de-listed NCCTs, the FATF will monitor Nigeria's

implementation of its AML regime, in particular: investigations, prosecutions and convictions on corruption-related money laundering cases as well as concrete measures adopted to protect the staff of authorities responsible for AML compliance from the risk of corruption, steps taken in order to strengthen further the FIU's independence and its sustainability in the future, and progress in implementing judicial reforms in order to make the overall process for prosecuting ML cases more efficient.

B. COUNTRIES THAT HAVE MADE PROGRESS SINCE JUNE 2005

Myanmar

Situation in June 2001

31. 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. In addition, there was an 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.

Progress made since June 2001

32. 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 a number of predicate offences. The law created a framework for suspicious transaction reporting, customer identification, and record keeping. However, due to Myanmar's failure to address remaining deficiencies—the need for comprehensive mutual legal assistance legislation and the lack of implementing regulations for the CMLL—the FATF recommended that its members apply counter-measures to Myanmar on 3 November 2003.

33. The Government of Myanmar has enacted significant AML reforms since that time. It issued implementing rules for the CMLL in December 2003 (Notification 1/2003) and 3 orders in January 2004 that specify reporting requirements for financial institutions and property record offices (suspicious transactions and transactions exceeding approximately USD 100,000) and assign certain staff to an FIU. Myanmar adopted the Mutual Assistance in Criminal Matters Law (The *State Peace and Development Council Law No. 4/2004*) on 28 April 2004. On 14 October 2004, Myanmar adopted the Mutual Assistance in Criminal Matters Rules (Notification 5/2004), and Notification 30/2004, which adds fraud as a money laundering predicate offence. On the basis of this progress, the FATF withdrew counter-measures in October 2004. *The Law Amending the Control of Money Laundering Law No. 8/2004* was adopted on 2 November 2004 and prohibits persons from disclosing the fact that a suspicious or unusual report was filed. In 2004 the Central Bank of Myanmar (CBM) also issued 5 Instructions requiring banks to, *inter alia*, exercise customer due diligence, report suspicious and threshold transactions, and designate AML compliance officers. In February 2005, the FATF invited Myanmar to submit an implementation plan.

34. Myanmar has made progress in implementing its AML regime and continues to take active measures to implement their legal reforms. In August 2005, the CBM issued Instruction No. 2/2005, which specifies on-site inspection procedures. Authorities reported that since 2004, all domestic commercial banks had been inspected for AML compliance. Authorities also reported that the FIU received seven STRs in 2005, for a total of 19, as well as a total of over 16,000 cash transaction reports. Three banks were shut down in 2005 and their licenses revoked. The major shareholder of one bank was convicted of drug trafficking and also convicted under the CMLL on 15 May 2006, which is a significant achievement. Assets of the banks and individuals have also been seized. A

number of AML on-site bank inspections and follow-up have also taken place. The FATF has been encouraged by this progress and agreed that Myanmar has demonstrated adequate AML implementation. Based on this progress, the FATF has agreed to conduct an on-site visit. The Government of Myanmar should continue its efforts to implement an effective AML regime.

IV. COUNTRIES SUBJECT TO THE MONITORING PROCESS SINCE JUNE 2005

The Bahamas

35. 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. The Bahamas established a financial intelligence unit (FIU) that has been successfully operational and was admitted into the Egmont Group of FIUs in 2001[5]. 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 established and began to implement an ambitious inspection programme, and the Attorney General's Office established an international co-operation unit. Since de-listing, the Bahamian FIU has continued to function effectively—receiving, analysing and forwarding STRs to law enforcement, and effectively exchanging information with foreign counterparts.

36. The FATF continued to monitor the situation in the Bahamas in light of continuing concerns expressed by FATF members regarding other areas of international co-operation. By December 2004, The Bahamas had made progress in this area and responded to all outstanding regulatory requests from FATF members at that time and signed an agreement for future information exchange with the US Securities and Exchange Commission.

37. The Bahamas continued to implement ML provisions in 2005. As of September 2005, the FIU had received 125 STRs for the year, and was in the process of analysing 69. Twenty-nine had been passed to the Royal Bahamas Police Force for investigation. The two domestic regulators (the Central Bank and the Securities Commission) have made apparently steady progress in responding to requests. The Bahamas received 28 new regulatory requests for 2005 (up to August), and had resolved all but 8 outstanding cases at the end of August. As a result of this continued progress, in October 2005 the FATF ended formal monitoring. The Bahamas is a member of the Caribbean Financial Action Task Force (CFATF), an FSRB, which has mechanisms to review members' progress in implementing AML measures.

Cook Islands

Situation in June 2000

38. 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.

[5] See www.egmontgroup.org.

Progress made since June 2000

39. In August 2000, the Cook Islands' Parliament enacted the *Money Laundering Prevention Act 2000* (MLPA) which also established the basis for a financial intelligence unit (FIU). On 7 May 2003, the Cook Islands passed nine Acts that superseded the MLPA and broadened the anti-money laundering framework, including: 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* (FSC Act); the *Banking Act 2003*; and the *International Companies Amendment Act 2003* (ICAA). The legislation aimed to eliminate shell banks within one year through re-licensing under stricter requirements. In 2004, the Cook Islands enacted further amending legislation and regulations: the *Crimes Amendment Act 2004*, the *Financial Transactions Reporting Act 2004*, the *International Companies Amendment Act*, the *Proceeds of Crime Amendment Act 2004*, the Financial Transactions (Offering Company (No. 2) Regulations 2004, and the International Companies (Evidence of Identity) Regulations 2004.

40. The FIU became a member of the Egmont Group of FIUs in June 2004. As of February 2005, the FIU had received 36 STRs. The FSC, with a staff of nine, had also inspected all six trust companies and five (out of 6) international banks. The banks had established a physical presence under the new regulatory regime; trust companies were also now required to hold certified identifying documentation. On the basis of this progress, the FATF de-listed the Cook Islands in February 2005. At that time, the FATF indicated that it would continue to monitor the Cook Islands for a period of time, as part of the FATF's standard monitoring process for de-listed NCCTs. The FATF indicated that moving forward it would pay particular attention to the close monitoring of international banks to ensure continued effective compliance with the physical presence requirement, and the development of a comprehensive program for staff training and maintenance of adequate staffing levels for AML bodies.

41. Since February 2005, the Cook Islands' government has continued to implement its AML regime. In 2005, the FIU received 10 STRs, for a total of 47 STRs since reporting commenced in 2003, and 566 cash transaction reports, for a total of approximately 1,700. The FSC commenced a second round of on-site compliance examinations of each of the five remaining international banks and the FIU has appointed two full-time compliance officers to identify, educate, and audit the wide range of non-licensed reporting institutions. As a result of the Cook Islands' continued progress the FATF decided to end formal monitoring in June 2006. The Cook Islands is a member of the Asia Pacific Group on Money Laundering (APG), an FSRB, which has mechanisms to review members' progress in implementing AML/CFT measures.

Indonesia

Situation in June 2001

42. 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 in relation to banks but not to non-bank financial institutions.

Progress made since June 2001

43. 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) as the FIU. The law criminalised the laundering of illicit proceeds exceeding the threshold of 500 million rupiah and mandated the reporting of suspicious transactions. Rule number VD10 as amended by Bapepam

[6]Decree 02/PM/2003 of January 2003 contains KYC and STR requirements for securities companies, mutual fund companies and custodian banks. Ministry of Finance Decree 45/KMK.06/2003, of January 2003 contains the KYC and STR requirements for insurance, pension funds and financing companies. In October 2003, Indonesia enacted legislation amending Law 15/2002 that removed the threshold for defining the proceeds of crime, improved STR requirements by penalising the unauthorised disclosure of such reports, and enhanced measures for international co-operation. Bank Indonesia (BI) regulations 5/23/PBI/2003 and 6/1/PBI/2004 impose know your customer requirements on rural banks and money changers, respectively. The PPATK became operational in October 2003 and was admitted into the Egmont Group of FIUs in June 2004.

44. As of January 2005, PPATK had received a total of 1,374 STRs. 257 cases resulting from STRs had been disseminated to law enforcement agencies, and there had been 18 successful prosecutions on charges of terrorism, bank fraud and/or corruption—all based on STR referrals. And Bank Indonesia had also completed examinations of 32 commercial banks for AML compliance purposes. The Indonesian FIU had established MOUs with six foreign counterparts and anticipates signing with several others. On the basis of this progress, the FATF de-listed Indonesia in February 2005. At that time, the FATF indicated that it would continue to monitor Indonesia for a period of time, as part of the FATF's standard monitoring process for de-listed NCCTs.

45. Since February 2005, Indonesia has continued to implement its AML regime. The number of entities reporting STRs and the number of STRs reported increased significantly—the PPATK received 2,055 STRs in 2005. A total of 350 case referrals from PPATK to law enforcement resulted in 27 cases being successfully prosecuted. There were 3 convictions for the money laundering offence, 23 convictions of bank fraud and/or corruption, and 1 involving terrorism. PPTAK also audited 34 bank offices for AML compliance. In addition, on 7 February 2006, the parliament approved the Bill of *Mutual Legal Assistance in Criminal Matters*.

46. On the basis of this continued progress, the FATF ended formal monitoring of Indonesia in February 2006. Indonesia is a member of the APG, which has mechanisms to review members' progress in implementing AML measures.

The Philippines

Situation in June 2000

47. 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. Furthermore, a suspicious transaction reporting system did not exist in the country.

Progress made since June 2000

48. 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. *Republic Act No. 9194*, of 7 March 2003, amends and improved the AMLA. It requires the reporting of all suspicious transactions, grants Bangko Sentral ng Pilipinas (BSP) (the central bank of the Philippines, which has responsibility for financial supervision) 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.

[6] Bapepam is the capital market executive agency of Indonesia.

49. As of December 2004, the AMLC had received a total of 5,451 STRs. The BSP had 800 bank examiners, of which 78 were AML specialists. It had conducted 438 on-site examinations including 31 universal and commercial banks from September 2003 until December 2004. On 24 January 2005, the BSP issued a circular to formally regulate and supervise money services providers which are not subsidiaries or affiliates of banks. There were a total of 11 money laundering investigations related to terrorist financing, drug trafficking and other crimes, which were initiated as a result of STRs. The AMLC had signed MOUs with a number of foreign counterpart FIUs. On the basis of this progress, the FATF de-listed the Philippines in February 2005. At that time, the FATF indicated that it would continue to monitor the Philippines for a period of time, as part of the FATF's standard monitoring process for de-listed NCCTs, to ensure continued adequate implementation.

50. Since February 2005, the Government of the Philippines has continued to implement its AML regime. The AMLC issued a resolution in order to reduce the number of threshold transactions reported and allow greater focus on the analysis of suspicious transactions. For 2005, the AML received 2,951 STRs, a 10% increase from the previous year. Out of 34 money laundering cases, one had been submitted for decision, 23 were still being tried before special AML courts and 10 were under preliminary investigation at the end of the year. In June 2005, the AMLC was admitted to the Egmont Group of FIUs. On the basis of this progress, in February 2006 the FATF decided to end formal monitoring of the Philippines. The Philippines is a member of the APG, which has mechanisms to review members' progress in implementing AML measures.

Ukraine

Situation in September 2001

51. 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

52. The State Department for Financial Monitoring (SDFM) was established by a series of presidential Decrees and regulations in 2001 and 2002 to function as a financial intelligence unit. On 7 December 2002, Ukraine enacted the *Law of Ukraine on Prevention and Counteraction of the Legalization (Laundering) of the Proceeds from Crime*. The law and its amendments, which significantly improved the law's provisions, came into force on 12 June 2003. The legislation created an overall AML framework, including a comprehensive STR system, an expanded role of the SDFM, and improved measures for information sharing. Amendments to the *Criminal Code of Ukraine* clarified the money laundering offence. Resolutions 25/03 and 26/03, issued by the State Commission on Regulation of Financial Services Markets on 5 August 2003, completed the anti-money laundering regulatory framework for the non-bank financial sector. Because of significant implementation of these reforms, the FATF removed Ukraine from the NCCTs list in February 2004. At that time, the FATF indicated that it would continue to monitor Ukraine for a period of time, as part of the FATF's standard monitoring process for de-listed NCCTs, to ensure continued adequate implementation.

53. Since de-listing, Ukraine has continued to develop and implement its anti-money laundering reforms. The SDFM officially became a member of the Egmont Group of FIUs at its June 2004 Plenary. In 2004, the SDFM received more than 700,000 financial transaction reports (including threshold and suspicious transaction reports), and referred more than 200 cases to law enforcement. There were a total of 278 money laundering prosecutions and 69 convictions in 2004. The SDFM also began a significant increase in the size of its staff through the development of 27 regional SDFM offices. Under new legislation, the SDFM became the SCFM (State Committee for Financial Monitoring), reflecting its improved status as a fully independent body.

54. As of the 1 August 2005, the SCFM was staffed with 176 experts, including 145 in the central office and 31 in the regional subdivisions. Seven regional offices were operational. During January – July 2005 the FIU received 421,753 reports on financial transactions from financial intermediaries. The FIU submitted 330 total case referrals (including 148 in 2005) to the law enforcement agencies, which resulted in 104 criminal cases. In the first half of 2005 there were 73 convictions for the money laundering offence (Article 209 of the *Criminal Code*.) The FIU had received and responded to 91 requests from foreign FIUs. On 1 December 2005, Ukraine adopted further amendments to its AML law, which expand AML requirements and expand the ability for Ukrainian supervisory authorities to exchange information with foreign counterparts. As a result of this continued progress, the FATF ended formal monitoring of Ukraine in January 2006. Ukraine is a member of Moneyval, an FSRB, which has mechanisms to review members' progress in implementing AML measures.

V. CONCLUSIONS AND THE WAY FORWARD

55. The NCCTs exercise has proved to be a very useful and very efficient tool to improve worldwide implementation of the FATF 40 Recommendations. Of the 23 jurisdictions designated as NCCTs in 2000 and 2001, there is only one as of June 2006. All reviewed jurisdictions have participated actively and constructively in the process. The reviews of jurisdictions against the 25 criteria have revealed—and stimulated—many ongoing efforts by governments to improve their systems.

56. Following the progress made by the jurisdictions deemed to be non-cooperative in June 2000, June 2001, and September 2001, there is now only one country designated as an NCCT: **Myanmar**.

57. In accordance with Recommendation 21, the FATF recommends that financial institutions give special attention to business relations and transactions with persons, including companies and financial institutions, from Myanmar and in so doing take into account issues raised in the relevant summaries in Section III of this report and any progress made since being identified as an NCCTs. Myanmar is strongly urged to continue its efforts to fully implement AML reforms and take sufficient steps to ensure continued effective implementation of a comprehensive AML system.

58. The FATF remains committed to the current NCCT process for the NCCT and those subject to monitoring, and the FATF and its members will remain fully engaged with these countries. 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 and designation as warranted. 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.

59. 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 and the financing of terrorism. To this end, the FATF will continue its work to improve its members' and non-members' implementation of the FATF Forty Recommendations and 9 Special Recommendations on Terrorist Financing. It will also encourage and support the regional anti-money laundering bodies in their ongoing efforts.

60. The FATF has not decided to launch a new NCCT round since 2001. However, the FATF continues to monitor weaknesses in the global financial system that could be exploited for money laundering or terrorist financing purposes. The FATF will also ensure that it remains aware of new challenges where deficiencies in AML/CFT systems impede effective international co-operation against money laundering and terrorist financing, and the FATF will react appropriately. If need be the FATF will apply Recommendation 21 to jurisdictions identified as posing a particular money laundering or terrorist financing risk, and if necessary the FATF will recommend the application of additional counter-measures.

ANNEX 1

LIST OF CRITERIA FOR DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES[7]

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

[7] 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
Explanatory Comments

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[8] or judicial authorities[9] 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.[10]

(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 not, or insufficiently, checked. This raises a potential danger of financial institutions (banks and non-

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

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

[10] 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.

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 [11] 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[12] on identification[13] 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

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[11] 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".

[12] The agreements and self-regulatory agreements should be subject to strict control.

[13] 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.

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[14]). 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 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.

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

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.

ANNEX 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 and 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 FSRB, 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 updated 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;
- STR 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.

TIMELINES OF FATF DECISIONS ON NCCTS AND JURISDICTIONS MONITORED

Timeline on listing, counter-measures, and de-listing

DATE	DECISION
14 February 2000	Initial report on NCCTs lays out the framework and procedures.
22 June 2000	First review of NCCTs identified 15 jurisdictions as NCCTs: Bahamas, Cayman Islands, Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, Philippines, Russia, St. Kitts and Nevis, and, St. Vincent & the Grenadines.
22 June 2001	Bahamas, Cayman Islands, Liechtenstein, and Panama are de-listed.
	Second review of NCCTs identifies new NCCTs; Egypt, Guatemala, Hungary, Indonesia, Myanmar and Nigeria.
7 September 2001	Grenada and Ukraine are identified as NCCTs.
5 December 2001	FATF recommends that its members apply additional counter-measures to Nauru.
21 June 2002	Hungary, Israel, Lebanon, and St. Kitts & Nevis are de-listed.
11 October 2002	Dominica, Marshall Islands, Niue, and Russia are de-listed.
20 December 2002	FATF recommends that its members apply additional counter-measures to Ukraine.
14 February 2003	FATF withdraws counter-measures for Ukraine; however, it remains on the list.
	Grenada is de-listed.
20 June 2003	FATF de-lists St. Vincent & the Grenadines.
3 November 2003	FATF recommends that its members apply additional counter-measures to Myanmar.
27 February 2004	Egypt and Ukraine are de-listed.
2 July 2004	FATF de-lists Guatemala.
22 October 2004	FATF removes additional counter-measures for Nauru and Myanmar; however, they remain on the list.
11 February 2005	FATF de-lists Cook Islands, Indonesia, and Philippines.
13 October 2005	FATF de-lists Nauru.
23 June 2006	FATF de-lists Nigeria.

Timeline of decisions on listing, implementation plans, counter-measures, de-listing, and ending formal monitoring