Financial Action Task Force on Money Laundering

Groupe d'action financière sur le blanchiment de capitaux

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

21 June 2002

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EXECUTIVE SUMMARY OF THE JUNE 2002 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

- It recognises that Hungary, Israel, Lebanon, and St. Kitts and Nevis, listed as non-cooperative in the fight against money laundering in June 2000 and June 2001, have addressed the deficiencies identified by the FATF through the enactment of legal reforms. These countries have also taken concrete steps to implement these reforms and are therefore removed from the NCCT list. Consequently, the procedures prescribed in FATF Recommendation 21 are withdrawn. To ensure continued effective implementation of these reforms, the FATF will monitor the developments in these countries, in consultation with the relevant FATF-style regional bodies and particularly in the areas laid out in this NCCT report.

Identification of new NCCTs in September 2001

- Following an assessment of additional countries and territories, in September 2001, the FATF identified two new jurisdictions -- Grenada and Ukraine -- as non-cooperative in the fight against money laundering. The report contains a brief explanation of the issues or deficiencies identified in September and progress made since that time.

Progress made since June 2000 and June and September 2001

- It welcomes the progress made by the Cook Islands, Dominica, Egypt, Grenada, Guatemala, Indonesia, Marshall Islands, Myanmar, Niue, the Philippines, Russia, and St. Vincent and the Grenadines 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 Nauru and Ukraine, 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 Grenada, Niue, Russia, St. Vincent and the Grenadines 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 2001 and subject to the monitoring process from June 2001- June 2002, any future monitoring for the Cayman Islands and Panama will be conducted within the context of the Caribbean Financial Action Task Force's (CFATF's) relevant monitoring mechanisms. Future monitoring of Liechtenstein will be conducted within the Council of Europe's PC-R-EV and its relevant monitoring mechanisms.

Counter-measures

- In December 2001, due to the failure of the Nauru Government to enact appropriate legislative amendments by 30 November 2001, members of the FATF agreed they would apply additional counter-measures to Nauru. Due to the failure of Nauru since that time to address the main deficiencies of its offshore banking sector, FATF members will continue to apply counter-measures against this jurisdiction. The FATF believes that the existence of approximately 400

shell banks that have no physical presence is an unacceptable money laundering risk. Therefore Nauru should abolish them.

Jurisdictions potentially subject to counter-measures

- It recommended that its members apply counter-measures as of 31 October 2002, to Nigeria unless its government begins immediate, substantive communications with the FATF and takes concrete steps to address the money laundering deficiencies identified by FATF. The FATF urges Nigeria to place emphasis on the criminalisation of money laundering; the creation of a mandatory suspicious transaction reporting regime; the establishment of proper customer identification requirements; and international co-operation.

Jurisdictions that have not made adequate progress

- It noted with concern the failure by the government of Ukraine to enact any significant reforms to address its deficiencies. However, the FATF welcomed the statement by the President of Ukraine on 18 June 2002 indicating the importance of this issue and his intention to prioritise the approval of an anti-money laundering bill. The FATF urges Ukraine to prioritise the enactment and enforcement of comprehensive anti-money laundering legislation, which will be a fundamental first step in addressing the deficiencies previously identified by the FATF.

2. The FATF looks forward to adequate progress being made by Nigeria so that counter-measures can be avoided. The FATF also looks forward to progress by Nauru so that counter-measures can be rescinded. With respect to those countries listed in June 2000, June 2001, and September 2001 whose progress in addressing deficiencies has stalled, the FATF will consider the adoption of additional counter-measures as well.

3. In sum, the list of NCCTs is comprised of the following jurisdictions: **Cook Islands; Dominica; Egypt; Grenada; Guatemala; Indonesia; Marshall Islands; Myanmar; Nauru; Nigeria; Niue; Philippines; Russia; St. Vincent and the Grenadines; 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.

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

INTRODUCTION AND BACKGROUND

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

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

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

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

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

9. The goal of the FATF's work in this area is to secure the adoption by all financial centres of international standards to prevent, detect and punish money laundering. A major step in this work was the publication of the June 2000 Review[2] and June 2001 Review[3] to identify non-cooperative countries or territories, and the September 2001 news release[4]. This initiative has so far been both

[1] Available at the following website address : http://www.fatf-gafi.org/pdf/NCCT_en.pdf

[2] Available at the following website address: http://www.fatf-gafi.org/pdf/NCCT2000_en.pdf

[3] Available at the following website address: http://www.fatf-gafi.org/pdf/NCCT2001_en.pdf

[4] Available at the following website address: http://www.fatf-gafi.org/pdf/PR-20010907_en.pdf

productive and successful because most of the 23 jurisdictions identified as being non-cooperative have made significant and rapid progress.

10. At its Plenary meeting on 19-21 June 2002, the FATF approved this new review. Section I of this document summarises the review process. Section II highlights progress made by the jurisdictions that were deemed to be non-cooperative in June 2000, June 2001, and September 2001. Section III summarises additional jurisdictions reviewed in 2001 and found not to be non-cooperative. Section IV updates the situations in jurisdictions de-listed in June 2001 and subject to the monitoring process. Section V concludes the document and indicates future steps.

I. PROCESS

11. At its February 2000 Plenary meeting, the FATF set up four regional review groups (Americas; Asia/Pacific; Europe; and Africa and the Middle East) to analyse the anti-money laundering regimes of a number of jurisdictions against the above-mentioned twenty-five criteria. In 2000-2002, the review groups were maintained to continue this work and to monitor the progress made by NCCTs.

(i) Review process

12. The jurisdictions to be reviewed were informed of the work to be carried out by the FATF. The reviews involved gathering the relevant information, including laws and regulations, as well as any mutual evaluation reports, related progress reports and self-assessment surveys, where these were available. This information was then analysed against the twenty-five criteria and a draft report was prepared and sent to the jurisdictions concerned for comment. In some cases, the reviewed jurisdictions were asked to answer specific questions designed to seek additional information and clarification. Each reviewed jurisdiction provided their comments on their respective draft reports. These comments and the draft reports themselves were discussed between the FATF and the jurisdictions concerned during a series of face-to-face meetings which took place in 2001/2002. Subsequently, the draft reports were discussed by the FATF Plenaries. The findings are reflected in Sections II, III, and IV of the present report.

(ii) Assessing progress

13. The assessments of the jurisdictions identified as non-cooperative by the FATF were discussed as a priority item at each FATF Plenary meeting during 2001-2002 to determine whether any jurisdictions should be removed from the list of NCCTs. These assessments were discussed initially by the FATF review groups, including through face-to-face meetings, and then discussed by the FATF Plenary. In making such assessments, the FATF seeks to establish whether comprehensive and effective anti-money laundering systems exist in the jurisdictions concerned. Decisions to revise the list published in June 2000, June 2001, and September 2001, are taken in the FATF Plenary.

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

15. The FATF views the enactment of the necessary legislation and the promulgation of associated regulations as essential and fundamental first step for jurisdictions on the list. The jurisdictions which have enacted most, if not all legislation needed to remedy the deficiencies identified in June 2000, June 2001, and September 2001 were asked to submit implementation plans to enable the FATF to evaluate the actual implementation of the legislative changes according to the above principles. Finally, the FATF has further elaborated a process, which includes on-site visits to the jurisdiction concerned, by which jurisdictions can be de-listed at the earliest possible time.

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

16. To ensure continued effective implementation of the reforms enacted, the FATF has adopted a monitoring mechanism to be carried out in consultation with the relevant FATF-style regional body.

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

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

(iv) Implementation of counter-measures

18. In jurisdictions which have failed to make adequate progress in addressing the serious deficiencies previously identified by the FATF, the policy states that, in addition to the application of Recommendation 21, the application of further counter-measures should be applied 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 IDENTIFIED AS NON-COOPERATIVE IN JUNE 2000, JUNE 2001, AND SEPTEMBER 2001

19. 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 place 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.

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

Hungary

Situation in June 2001

20. In June 2001, Hungary met criteria 4 and 13 and partially met criteria 5, 7, 10, 11 and 12. Even though Hungary had a comprehensive anti-money laundering system, it still suffered major deficiencies. Though progress has been achieved in terms of supervision, identification requirements and suspicious transactions reporting, the existence of anonymous passbooks and the lack of clear plans to address this problem constituted a major deficiency of this system. Another deficiency was the lack of information about beneficial ownership in Hungary. This resulted from the absence of a corresponding requirement for financial institutions to identify the beneficial owners or to renew identification in cases in which it is doubtful whether the client is acting on his own account and no specific suspicious exists. This situation also reflected directly on criteria 7, and 12 to 14.

Progress made since June 2001

21. Since June 2001, Hungary has significantly enhanced its anti-money laundering regime. On 27 November 2001, Hungary enacted Act No. LXXXIII of 2001 on Combating Terrorism, on Tightening up the Provisions on the Impeding of Money Laundering and on the Ordering of Restrictive Measures. The law tightens customer identification by requiring the identification of the beneficial owner of a transaction and the renewal of identification during the course of a business relationship if doubts arise as to the beneficial owner. Most significantly, the new law abolishes anonymous passbooks by requiring registration, i.e., the identification of both the depositors and the beneficiaries. Existing passbooks must be converted to registered form. The legislation also extends anti-money laundering controls to non-banking sectors including casinos, real estate agents, and tax consultants.

22. In the future, the FATF will pay particular attention to the conversion of anonymous passbooks into registered ones, the verification of written statements on beneficial owners of accounts, the staffing of the FIU, and the filing of suspicious transaction reports.

Israel

Situation in June 2000

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

Progress made since June 2000

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

25. On 22 November 2001 Israel promulgated a regulation for members of stock exchanges, portfolio managers, insurance companies, and agents provident funds to identify, report and keep records of specified transactions for at least seven years. On 6 December 2001, Israel issued the regulation on the requirements of identification, reporting, and record-keeping by the postal bank as well as the order on the financial sanctions related to the anti-money laundering obligations. 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.

26. In the future, the FATF will pay particular attention to the supervision of financial institutions, the verification of the owners of accounts opened prior to the anti-money laundering legislation, adequate training and resources devoted to anti-money laundering bodies, and international co-operation.

Lebanon

Situation in June 2000

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

Progress made since June 2000

28. On 26 April 2001, Law no. 318 ("Fighting Money Laundering") was promulgated in Lebanon's Official Gazette. The law criminalises the laundering of the proceeds of crime specifically in relation to narcotics offences, organised crime, terrorist acts, arms trafficking, embezzlement/other specified frauds and counterfeiting of money or official documents. On 18 May 2001 the Lebanese central bank promulgated Decision no. 7818, the Regulation on the Control of Financial and Banking Operations for Fighting Money Laundering, which addresses issues relating to the check of the client's identity and the obligation to report suspicious transactions.

29. The new money laundering law and regulations address the FATF's major concerns with regard to bank secrecy, by creating Special Investigation Commission (SIC) to receive and review suspicious transactions. The SIC is empowered to lift bank secrecy, investigate suspicious transactions, and ensure compliance with Law no. 318.

30. In the future, the FATF will pay particular attention to coordination between the SIC, the Police, and the General Prosecutor and expect a more proactive approach to domestic law enforcement investigations and prosecutions. The FATF will also expect an increase in the number and quality of suspicious transaction reports filed by the financial institutions, particularly non-bank financial institutions, to the SIC.

St. Kitts and Nevis

Situation in June 2000

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

registration of their owners and there was no mutual legal assistance or international judicial co-operation (notwithstanding a treaty or convention) with respect to legal action against an international trust, or a settlor, trustee, protector, or beneficiary of such trust.

Progress made since June 2000

32. Since June 2000 St. Kitts and Nevis enacted significant legislation addressing the deficiencies identified by the FATF. St. Kitts and Nevis enacted: the Financial Intelligence Unit Act, No. 15 of 2000; the Proceeds of Crime Act No. 16 of 2000; and the Financial Services Commission Act, No. 17 of 2000. The Nevis Offshore Banking (Amendment) Ordinance, No. 3 of 2000, and Nevis Offshore Banking (Amendment) Ordinance No. 4 of 2001 address deficiencies in offshore bank licensing procedures. The Anti-Money Laundering Regulations 2001, n° 15 of 2001, were enacted on 22 May 2001 and amended on 29 November 2001 (no. 36 of 2001) and 30 May 2002 (no. 14 of 2002). These regulations require the financial institutions to establish specific customer identification procedures for new and continuing business, to maintain a record of transactions for at least five years, and to report suspicious transactions to the Reporting Authority.

33. The Companies (Amendment) Act, No. 14 of 2001 and the Nevis Business Corporation (Amendment) Ordinance, No. 3 of 2001 create a mechanism to register bearer shares that includes identifying the beneficial owners. The Eastern Caribbean Central Bank (ECCB) now vets offshore bank applications and supervises St. Kitts and Nevis' offshore banks for money laundering compliance. 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 establish a direct gateway.

34. In the future, the FATF will pay particular attention to adequate development, resources, and training devoted to the new anti-money laundering entities, especially the FIU. The FATF will also pay particular attention to international judicial, regulatory, and FIU co-operation.

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

Cook Islands *

Situation in June 2000

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

Progress made since June 2000

36. The Cook Islands have since enacted the Money Laundering Prevention Act, on 18 August 2000. The Act addresses the following areas: anti-money laundering measures in the financial sector, the money laundering criminal offence and international co-operation in money laundering investigations. The Money Laundering Prevention Regulations were promulgated 23 January 2002 and came into force 7 February 2002. The Regulations address customer identification, record keeping, and penalties in respect of non-compliance. The Cook Islands also issued Guidance Notes on Money Laundering Prevention on 10 April 2001.

37. The Cook Islands still need to establish an FIU, staff the relevant bodies to supervise the offshore sector, and review its offshore legislation to address the remaining deficiencies identified by the FATF in June 2000.

Dominica *

Situation in June 2000

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

Progress made since June 2000

39. Since June 2000, Dominica has enacted significant legislative reforms, including the Money Laundering (Prevention) Act in January 2001, which was amended in July 2001. Regulations under this Act were introduced in May 2001 and amended in September 2001. The enacted legislation and regulations address issues relating to the criminalisation of money laundering, the establishment of a Money Laundering Supervisory Authority (MLSA) and of a financial intelligence unit, and requirements on financial institutions concerning record-keeping, reporting of suspicious transactions, and customer identification.

40. Amendments to the Offshore Banking Act require all offshore banks to maintain a physical presence in Dominica. Amendments to the International Business Companies Act create a registration mechanism for bearer shares. Amendments to the International Exempt Trust Act establish a regulatory regime for those who seek to register trusts and grant government access to books, vouchers, and other documents of a licensee. The Exchange of Information Act, effective January 31, 2002, expands Dominica's authority to assist foreign regulatory authorities. Like other Eastern Caribbean jurisdictions, Dominica has placed its offshore banks under the direct supervision of the Eastern Caribbean Central Bank (ECCB).

41. Despite significant legislative and regulatory progress, the FATF remains concerned about Dominica's ability to respond in a timely manner to international mutual legal assistance requests. As the ECCB is currently limited in its ability to share information, the FATF is also concerned that there is no clear gateway to direct co-operation between the ECCB and foreign bank regulators. The FATF strongly encourages a prompt resolution of the efforts by the ECCB and Dominica to address this issue.

Egypt *

Situation in June 2001

42. 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

43. On 22 May 2002, Egypt made significant progress by enacting 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 an FIU within the Central Bank of Egypt; however, the legislation has not yet been reviewed in detail by the FATF.

Grenada *

Situation in September 2001

44. In September 2001, Grenada met criteria 8, 13 and 21, and partially met criteria 1, 2, 3, 7, 15 and 16. Grenadan supervisory authorities had inadequate access to the customer account information and inadequate authority to co-operate with foreign counterparts. Additionally, Grenadan financial institutions did not have adequate qualification requirements for owners of financial institutions.

Progress made since September 2001

45. Grenada has made significant legislative efforts to address the deficiencies identified in September 2001. Grenada enacted the International Financial Services (Miscellaneous Amendments) Act 2002, which amended the Offshore Banking Act to permit regulator access to account records and created criminal penalties for non-compliance. The International Financial Services Authority Act was amended to permit the regulator to communicate relevant information to other Grenadan authorities. An amendment to the International Trusts Act authorises the disclosure of information relating to international trusts, and an amendment to the International Companies Act creates a registration mechanism for bearer shares of certain companies. Additional amendments have improved qualification requirements for offshore banking licenses.

46. As the Eastern Caribbean Central Bank (ECCB) now supervises Grenada's offshore banks, the FATF is concerned with the ECCB's current limitations on co-operating with foreign regulators; the FATF strongly encourages the efforts by the ECCB and Grenada to address this issue. The FATF is also concerned about adequate resources devoted to Grenada's new anti-money laundering bodies.

Guatemala *

Situation in June 2001

47. 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

48. Guatemala has since 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) to receive and analyse suspicious transaction reports. The law's April 2002 implementing regulations improve suspicious transaction reporting and customer identification requirements. The IVE also has the authority to access other transaction information from financial institutions, exchange information with foreign counterparts pursuant to a written agreement, and support money laundering investigations.

49. In June 2002, Guatemala enacted the Banks and Financial Groups Law (No. 19-2002), which will place offshore banks under the oversight of the Superintendent of Banks; however, it does not become effective until December 2002. The FATF also remains concerned about adequate licensing procedures for Guatemala's offshore banks.

Indonesia *

Situation in June 2001

50. 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

51. 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 framework for an FIU. The law criminalises the laundering of illicit proceeds, however, only in relation to criminal proceeds exceeding a high threshold. The law also mandates reporting of suspicious transactions, although institutions are allowed 14 days to make a report. In addition, 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.

Marshall Islands *

Situation in June 2000

52. In June 2000, Marshall Islands met criteria 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 19, 23 and 25. It also indirectly met criteria 15, 16 and 17. It lacked a basic set of anti-money laundering regulations, including the criminalisation of money laundering, customer identification and a suspicious transaction reporting system. While the size of the financial sector in the Marshall Islands was limited with only three onshore banks and no offshore bank, the jurisdiction had registered about 3,000 IBCs. (Approximately 5,200 IBCs were registered as of early 2002.) The relevant information on those international companies was guarded by the excessive secrecy provision and not accessible by financial institutions.

Progress made since June 2000

53. Since June 2000, the Marshall Islands passed the Banking (Amendment) Act of 2000 (P.L. 2000-20) on 31 October 2000. The Act addresses the following areas: criminalisation of money laundering, customer identification for accounts, and reporting of suspicious transactions. On 27 May 2002 the Marshall Islands enacted a set of regulations that provide standards for reporting and compliance. FATF still notes that the record-keeping provisions relate only to high-threshold transactions. In addition, the Marshall Islands needs to improve the licensing procedures for non-bank financial institutions.

Myanmar *

Situation in June 2001

54. 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 in the Central Bank Regulations for financial institutions. Other serious deficiencies concerned the 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

55. Myanmar has since enacted The Control of Money Laundering Law (The State Peace and Development Council Law No. 6 /2002), on 17 June 2002. The law addresses areas including criminalisation of money laundering, record-keeping, and establishing an FIU; however, the law has not yet been reviewed in detail by the FATF.

Niue *

Situation in June 2000

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

Progress made since June 2000

57. Niue has enacted significant reforms to address the deficiencies identified in June 2000. Niue enacted the Financial Transactions Reporting Act 2000 on 16 November 2000. The Act addresses requirements dealing with reporting of suspicious transactions, the establishment of an FIU, and partly addressing customer identification.

58. The International Banking Repeal Act 2002, which was brought into force on 5 June 2002, eliminates Niue's offshore banks by October 2002. Although Niue will retain its IBCs, company registry information will be maintained in Niue so as to provide local access to current information. The FATF continues to discuss with the Niue authorities issues related to customer identification procedures.

Philippines *

Situation in June 2000

59. 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

60. 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 essentially functions as an FIU. The Act's

implementing rules and regulations took effect 2 April 2002. Although the Philippines' authorities interpret the regulations as requiring the reporting of all suspicious transactions, this nevertheless conflicts with the AMLA, which only requires reporting of high threshold suspicious transactions. A legislative measure is needed to address this issue.

61. The law allows the AMLC to access account information upon a court order, but a major loophole remains in that secrecy provisions still protect banking deposits made prior to 17 October 2001. Secrecy provisions also still restrict bank supervisors' access to account information.

Russia *

Situation in June 2000

62. In June 2000, Russia met criteria 1, 4, 5, 10, 11, 17, 21, 23, 24 and 25. It also partially met criterion 6. While Russia faced many obstacles in meeting international standards for the prevention, detection and prosecution of money laundering, the most critical barrier to improving its money laundering regime was the lack of a comprehensive anti-money laundering law and implementing regulations that meet international standards. In particular, Russia lacked: comprehensive customer identification requirements; a suspicious transaction reporting system; a fully operational FIU with adequate resources; and effective and timely procedures for providing evidence to assist in foreign money laundering prosecutions.

Progress made since June 2000

63. Russia has enacted significant reforms to address the issues identified in June 2000. On 16 May 2001, Russia enacted a federal law ratifying the 1990 Council of Europe Convention on Laundering, Search, Seizure and the Confiscation of the Proceeds from Crime. On 6 August 2001, Russia enacted the law "On Combating the Legalisation (Laundering) of Income Obtained by Criminal Means." This law came into effect 1 February 2002. The law includes customer identification requirements, institutes a suspicious activity reporting system, calls for the establishment of a financial intelligence unit (FIU) and outlines procedures for international co-operation. The FIU began operations 1 February 2002 and was admitted into the Egmont Group in June 2002. The FIU currently has a staff of approximately 130 who are largely dedicated to analysis of STRs. To date the FIU has received approximately 100,000 STRs. The Central Bank has issued a number of regulations to implement the STR program and has examined 650 banks regarding the level of their compliance with the law.

St. Vincent and the Grenadines *

Situation in June 2000

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

Progress made since June 2000

65. 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.

66. Amendments to the International Banks Act (No. 7 of 2000 and no. 30 of 2002) appear to address deficiencies in registration requirements for offshore banks. The Exchange of Information Act n° 29 of 2002 expands regulatory co-operation and repeals the previously restrictive Confidential Relationships Preservation (International Finance) Act.

67. The FATF remains concerned that the current regulations provide an overly broad exemption from customer identification requirements. As the ECCB now supervises St. Vincent and the Grenadines' offshore banks, the FATF is concerned with the ECCB's current limitations on its ability to co-operate directly with foreign bank regulators. The FATF strongly encourages a prompt resolution of the efforts by the ECCB and St. Vincent and the Grenadines to address this issue.

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

Ukraine *

Situation in September 2001

68. 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

69. Ukraine has adopted a series of presidential decrees, including: Decree No 1199/2001 (10 December 2001) "On the Measures Aimed at Elimination of Legalization (Money Laundering) of the Pofits Obtained by Illegal Ways), Resolution No. 35 (10 January 2002) "On Establishment of the State Department of Financial Monitoring," and Resolution No. 194 (18 February 2002). Regulation No. 700 (29 May 2002) provides guidance to what kinds of transactions financial institutions should consider as "doubtful and uncommon."

70. However, Ukraine has yet to enact anti-money laundering legislation that would address the deficiencies identified by the FATF in September 2001. The FATF notes the 18 June 2002 statement by the President of Ukraine that passage of money laundering legislation introduced on 14 June is a priority.

(iv) Jurisdictions subject to counter-measures

Nauru *

Situation in June 2000

71. 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

72. 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 Nauru's offshore banking activity. On 6 December, Nauru amended the law to apply to the offshore banks.

73. Nauru has taken no action to address the issues of licensing and supervision of the offshore sector, the main area of concern identified by the FATF in June 2000.

(v) Jurisdictions potentially subject to counter-measures

Nigeria *

Situation in June 2001

74. Nigeria demonstrated an obvious unwillingness or inability to co-operate with the FATF in the review of its system. In June 2001, Nigeria 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. Finally, corruption in Nigeria continues to be of concern.

Progress made since June 2001

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

76. Since June 2001, Nigeria has taken no actions to address the deficiencies in its anti-money laundering regime and continued to fail to adequately engage with the FATF in this process.

III. JURISDICTIONS REVIEWED IN 2001 BUT NOT FOUND TO BE NON-COOPERATIVE

Costa Rica

77. Costa Rica has recently strengthened its anti-money laundering system, including enacting Law 8204 in December 2001. This legislation expands the predicate offences for money laundering beyond drug trafficking to include all serious crimes. The legislation strengthens Costa Rica's ability to co-operate internationally by granting Costa Rica's financial intelligence unit explicit authority to share any information it receives with a wide range of judicial and administrative authorities, including foreign FIUs.

78. Costa Rican financial institutions are subject to money laundering requirements that include customer identification, record-keeping, and suspicious transaction reporting. Costa Rica also allows

foreign-domiciled banks to operate as part of Costa Rican financial groups; banking regulations require that they be incorporated from jurisdictions that have adequate powers to engage in information exchange agreements. When these foreign institutions conduct business within Costa Rican territory, such business must be conducted through regulated Costa Rican institutions pursuant to a service contract.

79. The FATF found several deficiencies, including the absence of specific sanctions against financial institutions that fail to report suspicious transactions, even if some general penal provisions do apply. In addition, the FATF remains concerned that foreign domiciled financial institutions operating as part of Costa Rican financial groups are not subject to a formal licensing process in Costa Rica, and the extent to which they are subject to supervision with regard to anti-money laundering requirements in unclear.

Palau

80. Palau has recently upgraded its anti-money laundering legislation; however, some deficiencies remain. In June 2001 Palau enacted the Financial Institutions Act, which created a Financial Institutions Commission (FIC) to license, regulate, and supervise all financial institutions. The Act requires all banks to maintain corporate and transaction records.

81. The Money Laundering and Proceeds of Crime Act 2001 requires: financial institutions to designate compliance officers, on-going training, and internal auditing procedures. Banks must verify customer identity before opening accounts; "casual customers" must be identified when conducting transactions over US $10,000 or when transactions appear to have no lawful purpose. The Act also mandates suspicious activity reporting for transactions of at least US $10,000 and which appear to have no lawful purpose.

82. Although these laws are a step forward, the FATF nevertheless found several deficiencies. They relate to the need to finalise the regulations concerning all financial institutions in Palau and the existence of a threshold for customer identification and the reporting of suspicious transactions. In addition, the Financial Institutions Commission and the FIU need to be fully staffed.

United Arab Emirates

83. In January 2002, the UAE passed Federal Law No (4) Regarding the Criminalization of Money Laundering, which criminalises the laundering of proceeds from narcotics, kidnapping, terrorism, arms trafficking, fraud, and other crimes.

84. In July 2000, the National Anti-Money Laundering Committee was established under the chairmanship of the Governor of the UAE Central Bank. The committee has overall responsibility for co-ordinating anti-money laundering policy in the UAE.

85. The UAE Central Bank's circular 24/2000, applicable to banks, money exchanges and finance companies, establishes customer identification procedures, record keeping obligations and procedures, suspicious transactions reporting procedures. The circular requires financial institutions to appoint compliance officers and train staff. Institutions are required to have an internal audit mechanism as part of their administrative structure, and they are required to appoint a compliance officer to deal specifically with anti-money laundering matters.

86. However, as FATF members have a limited experience in the area of international co-operation with the administrative authorities of the UAE, it was difficult to assess this aspect of the UAE's anti-money laundering regime.

IV. JURISDICTIONS SUBJECT TO THE MONITORING PROCESS

87. The following jurisdictions were identified as NCCTs in June 2000. After enacting and making significant progress towards implementing comprehensive anti-money laundering measures, these jurisdictions were removed from the NCCTs list in June 2001 and subjected to the monitoring process. The following paragraphs describe the results of the monitoring process between June 2001 and June 2002.

Bahamas

88. Between June 2000 and June 2001, the Bahamas enacted comprehensive anti-money laundering measures. The Bahamas also made important progress in terms of implementation of these measures, and hence was removed from the FATF NCCTs list in June 2001. It established a financial intelligence unit (FIU) and dedicated significant human and financial resources to make it operational. The Central Bank established and began to implement an ambitious inspection programme; for the year up to March 31 2002, a total of 165 on-site examinations were conducted. In addition, the Securities Commission has conducted 78 inspections of registrants and licensees since their inspections began in March 2001.

89. The Bahamas required banks to establish a physical presence in the jurisdiction, and has required all pre-existing accounts to be identified by 31 December 2002. From 2001 through May 2002, a total of 99 bank licenses were revoked. In the area of international co-operation, the Attorney General's Office established an international co-operation unit and the financial intelligence unit joined the Egmont Group.

90. The FATF will continue to monitor the situation in the Bahamas, with particular attention given to international co-operation with respect to foreign regulator requests.

Cayman Islands

91. Between June 2000 and June 2001, the Cayman Islands enacted comprehensive anti-money laundering measures and made important progress towards implementing these measures; hence, the Cayman Islands were removed from the FATF NCCTs list in June 2001. The Cayman Islands significantly increased the human and financial resources dedicated to financial supervision and to its financial intelligence unit. The Cayman Islands initiated an ambitious financial inspection programme, required the identification of pre-existing accounts by 31 December 2002, and required all banks licensed in the Cayman Islands to maintain a physical presence in the jurisdiction. The Cayman Islands also continued to co-operate with international requests from foreign FIUs and regulators.

92. The Cayman Islands has adequately addressed all the previously identified deficiencies and therefore will no longer require monitoring by the FATF. The Cayman Islands should continue to participate in the Caribbean Financial Action Task Force (CFATF) and its relevant monitoring mechanisms.

Liechtenstein

93. Between June 2000 and June 2001, Liechtenstein enacted comprehensive anti-money laundering measures. Liechtenstein also made important progress towards implementing its new legal framework and was therefore removed from the FATF NCCTs list in June 2001. Liechtenstein created an FIU, strengthened the resources (both financial and human) allocated to the fight against money laundering and significantly improved its international co-operation provisions, both in administrative and judicial matters. The Liechtenstein FIU also joined the Egmont Group. Liechtenstein also took comprehensive steps to identify accounts whose owners were not previously identified.

94. Through 2002 Liechtenstein also had an increase in the number of suspicious transaction reports filed and the number of institutions reporting. In May 2002, Liechtenstein formally adopted a law authorising the FIU, which had previously acted by a government Act.

95. Liechtenstein has addressed all previously identified deficiencies and therefore will no longer require monitoring by the FATF. Liechtenstein should continue to participate in the Council of Europe's PC-R-EV Committee and its relevant monitoring mechanisms.

Panama

96. Between June 2000 and June 2001 Panama enacted comprehensive anti-money laundering measures and made important progress in terms of the implementation of its new anti-money laundering regime; therefore, Panama was removed from the FATF NCCTs list in June 2001. Panama significantly increased the human and financial resources dedicated to its Bank Superintendency and financial intelligence unit. It enhanced its ability to co-operate internationally; as of May 2002, Panama had entered into written agreements to exchange information with 15 jurisdictions and was in the process of negotiating 4 others. Panama had also increased supervision of its Colon Free Zone.

97. Panama has addressed all previously identified deficiencies and therefore will no longer require monitoring by the FATF. Panama should continue to participate in the Caribbean Financial Action Task Force (CFATF) and its relevant monitoring mechanisms.

V. CONCLUSIONS AND THE WAY FORWARD

98. 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 in 2000, in 2001 many jurisdictions indicated that they would shortly submit anti-money laundering Bills to their legislative bodies and would conclude international arrangements to exchange information on money laundering cases among competent authorities. As of June 2002, many jurisdictions had enacted significant reforms and are well on their way towards comprehensive anti-money laundering regimes.

99. 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
Dominica
Egypt
Grenada
Guatemala
Indonesia
Marshall Islands
Myanmar
Nauru
Nigeria
Niue
Philippines
Russia
St. Vincent and the Grenadines
Ukraine

100. These jurisdictions are strongly urged to adopt measures to improve their rules and practices as expeditiously as possible in order to remedy the deficiencies identified in the reviews. Pending adoption and implementation of appropriate legislative and other measures, and in accordance with Recommendation 21, the FATF recommends that financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from the "non-cooperative countries and territories" mentioned in paragraph 99 and 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.

101. In addition, FATF recommends to its members the application of counter-measures as of 31 October 2002 to Nigeria unless it takes concrete steps to communicate with the FATF and address previously identified concerns.

102. The FATF notes with concern the failure by the government of Ukraine to make any substantive progress since being identified as non-cooperative in September 2001. Ukraine still lacks comprehensive anti-money laundering legislation, which will be a fundamental first step in addressing the deficiencies previously identified by the FATF.

103. 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.

104. 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.

105. 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.

106. The FATF intends to remain fully engaged with all the jurisdictions identified in paragraph 99. 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.

107. 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.

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

APPENDIX 1

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

A. Loopholes in financial regulations

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

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

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

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

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

(iii) Inadequate customer identification requirements for financial institutions

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

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

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

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

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

(iv) Excessive secrecy provisions regarding financial institutions

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

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

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

(v) Lack of efficient suspicious transactions reporting system

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

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

B. Obstacles raised by other regulatory requirements

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

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

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

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

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

C. Obstacles to international co-operation

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

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

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

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

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

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

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

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

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

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

D. Inadequate resources for preventing and detecting money laundering activities

(i) Lack of resources in public and private sectors

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

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

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

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

CRITERIA DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES

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

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

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

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

A. Loopholes in financial regulations

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

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

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

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

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

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

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

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

6. The following should therefore be considered as detrimental:

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

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

(iii) Inadequate customer identification requirements for financial institutions

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

8. Accordingly, the following are detrimental practices:

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

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

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

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

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

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

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

(iv) Excessive secrecy provisions regarding financial institutions

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

10. Accordingly, the following are detrimental:

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

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

(v) Lack of efficient suspicious transaction reporting system

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

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

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

B. Impediments set by other regulatory requirements

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

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

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

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

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

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

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

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

C. Obstacles to international co-operation

(i) At the administrative level

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

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

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

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

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

- exchange of information should be reciprocal.

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

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

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

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

(ii) At the judicial level

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

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

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

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

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

(i) Lack of resources in public and private sectors

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

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

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

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

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

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

APPENDIX 2

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

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

In order to be removed from the NCCT list:

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

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

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

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

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

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

   (a) clarifying that 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.