



**Financial Action Task Force  
on Money Laundering**  
Groupe d'action financière  
sur le blanchiment de capitaux

**ANNUAL REPORT  
2000–2001**

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# FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING

## ANNUAL REPORT 2000–2001

### SUMMARY

1. Spain<sup>1</sup> chaired the twelfth round (2000-2001) of the Financial Action Task Force on Money Laundering (FATF). According to the priorities agreed to in the review of the FATF's remit from 1999 to 2004 and approved by the Ministers of the FATF member countries on 28 April 1998, the activities of the Task Force focused on three main areas:

- to spread the anti-money laundering message to all continents and regions of the globe;
- to improve members' implementation of the Forty Recommendations;
- to strengthen the review of money laundering methods and counter-measures.

2. Major achievements of the twelve months included significant progress in the work on non-cooperative countries or territories (NCCTs), the development of FATF-style regional bodies, enhancing the collaboration with the international financial institutions and launching a review of the Forty Recommendations.

3. The FATF completed its second phase of the important initiative on non-cooperative countries and territories which resulted in the publication of an update to the review to identify NCCTs<sup>2</sup> which was carried out last year.

4. A significant development occurred in South America with the creation of GAFISUD (South American Financial Action Task Force) in Cartagena, Colombia, in December 2000. The FATF continued to support the various activities of regional bodies involved in the fight against money laundering, such as the Asia/Pacific Group on Money Laundering (APG), the Caribbean Financial Action Task Force (CFATF), the Council of Europe Select Committee of Experts on Evaluation of Anti-Money Laundering Measures (PC-R-EV), and the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG).

5. The FATF continued its work in the area of monitoring the implementation of the Forty Recommendations. The period was used to complete an in-depth assessment of the first two rounds of mutual evaluations. As in previous years, the Task Force continued to monitor members' implementation of the Forty Recommendations on the basis of the self-assessment procedure. In conjunction with the GCC, the FATF conducted several mutual evaluations of GCC member States -- Bahrain, Kuwait, Oman and the United Arab Emirates. Summaries of Bahrain, Kuwait and Oman can be found in Annex A.

6. The review of current and future money laundering threats has continued to be an essential part of the FATF's work. Under the chairmanship of Norway, the annual survey of money laundering typologies focused on a number of major issues: on-line banking and Internet casinos; trusts; other non-corporate vehicles and money laundering; lawyers, notaries, accountants and other professionals; the role of cash in money laundering schemes; and terrorist related money laundering.

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<sup>1</sup> The FATF President was Mr. José María Roldán Alegre, General Director of Financial Institutions (Regulation), Bank of Spain.

<sup>2</sup> See *FATF Review to Identify Non-Cooperative Countries or Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures*, 22 June 2001. This report is available at the following website address: <http://www.oecd.org/fatf>.

7. The Task Force initiated a comprehensive review of the Forty Recommendations, including the five issues of particular concern for anti-money laundering purposes identified in the June 2000 Report on NCCTs. The FATF continued to work on a Reference Guide to Procedures and Contact Points on Information Exchange and to examine the question of the transmission of the exchange of information between members' anti-money laundering authorities and their tax administrations.

8. Co-operation with the international organisations concerned with combating money laundering was marked by reinforced collaboration with the International Financial Institutions (IFIs) which generally recognised the FATF Forty Recommendations as the international anti-money laundering standard. Finally, the European Central Bank (ECB) and Europol were granted observer status within the FATF.

## INTRODUCTION

9. The Financial Action Task Force was established by the G-7 Summit in Paris in July 1989 to examine measures to combat money laundering. In 1990, the FATF issued Forty Recommendations to fight this phenomenon. The Recommendations were revised in 1996 to reflect changes in money laundering trends. The current membership of the FATF comprises twenty-nine governments<sup>3</sup> and two regional organisations,<sup>4</sup> representing the major financial centres of America, Europe and Asia. The delegations of the Task Force's members are drawn from a wide range of disciplines, including experts from the Ministries of Finance, Justice, Interior and External Affairs, financial regulatory authorities and law enforcement agencies.

10. In July 2000, Spain succeeded Portugal in holding the Presidency of the Task Force for its twelfth round of work. Three Plenary meetings were held in 2000-2001, two at the headquarters of the OECD in Paris and one in Madrid, Spain. A special experts' meeting was held at the end of 2000 in Oslo, Norway, to consider trends and developments in money laundering methods and counter-measures. Several meetings of specialised Ad Hoc Groups took place outside the regular meetings of the Plenary, including a meeting of the Ad Hoc Group on Non-Cooperative Countries or Territories. In March 2001, an informal contact meeting took place between the OECD's Committee on Fiscal Affairs (CFA) and the FATF.

11. The FATF fully supports the work of FATF-style regional bodies, namely the Asia/Pacific Group on Money Laundering (APG), the Caribbean Financial Action Task Force (CFATF), the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), the Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures of the Council of Europe (PC-R-EV) and South American Financial Action Task Force (GAFISUD). The FATF President and Secretariat, as well as members, attended the meetings of such groups. Finally, the FATF co-operates closely with international and regional organisations concerned with combating money laundering, and representatives of such bodies participated in the work of the FATF. Representatives from the Asia Development Bank (ADB), the Commonwealth Secretariat, the European Bank for Reconstruction and Development (EBRD), the European Central Bank (ECB), Europol, the International Monetary Fund (IMF), the Inter-American Development Bank (IADB), the Inter-American Drug Abuse Control Commission of the Organisation of American States (OAS/CICAD), Interpol, the International Organisation of Securities Commissions (IOSCO), the Offshore Group of Banking Supervisors (OGBS), the United Nations Office for Drug Control and Crime Prevention (UNODCCP), the World Bank, and the World Customs Organisation (WCO) attended various FATF meetings during the year.

12. Parts I, II and III of the report outline the progress made over the past twelve months in the following three areas:

- spreading the anti-money laundering message throughout the world;
- improving the implementation of the Forty Recommendations; and
- strengthening the review of money laundering methods and counter-measures

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<sup>3</sup> Argentina; Australia; Austria; Belgium; Brazil; Canada; Denmark; Finland; France; Germany; Greece; Hong Kong, China; Iceland; Ireland; Italy; Japan; Luxembourg; Mexico; the Kingdom of the Netherlands; New Zealand; Norway; Portugal; Singapore; Spain; Sweden; Switzerland; Turkey; the United Kingdom and the United States.

<sup>4</sup> European Commission and Gulf Co-operation Council.

## I. SPREADING THE ANTI-MONEY LAUNDERING MESSAGE THROUGHOUT THE WORLD

13. As the primary objective of its current mandate, the FATF is committed to promoting anti-money laundering initiatives in all continents and regions of the globe and to building a world-wide anti-money laundering network. This strategy consists of three main components: enlarging the FATF membership, developing credible and effective FATF-style regional bodies, and increasing co-operation with the relevant international organisations.

14. The FATF continued its collaboration with these relevant international organisations/bodies rather than launch new initiatives, and participated in several anti-money laundering events organised by other bodies. To increase the effectiveness of international anti-money laundering efforts, the FATF and the other organisations and bodies endeavour to co-ordinate their activities through an annual co-ordination meeting and meetings of various regional ad hoc groups which take place in the margins of the FATF Plenaries. During 2000-2001, co-operation with the international organisations was marked by discussions on enhancing the role of the IFIs in combating money laundering.

15. In addition, FATF continued its important and ongoing work on non-cooperative countries and territories by monitoring the significant progress made by NCCTs, by recommending that its members apply counter-measures to those NCCTs which had not made adequate progress and by reviewing a second set of jurisdictions.

### A. FATF EXPANSION

16. According to the objectives agreed upon in the review of the FATF's future, the FATF has decided to expand its membership to include a limited number of strategically important countries<sup>5</sup> which could play a major role in their regions in the process of combating money laundering.

17. The criteria for admission are as follows:

- to be fully committed at the political level: (i) to implement the 1996 Recommendations within a reasonable timeframe (three years), and (ii) to undergo annual self-assessment exercises and two rounds of mutual evaluations;
- to be a full and active member of the relevant FATF-style regional body (where one exists), or be prepared to work with the FATF or even to take the lead, to establish such a body (where none exists);
- to be a strategically important country;
- to have already made the laundering of the proceeds of drug trafficking and other serious crimes a criminal offence; and
- to have already made it mandatory for financial institutions to identify their customers and to report unusual or suspicious transactions.

18. Following the addition of Argentina, Brazil and Mexico to the world-wide network of anti-money laundering systems in June 2000, the overall effort in the Americas was thus reinforced. The FATF will now consider the possible membership of other strategically important countries from other regions in which the FATF wants to strengthen representation.

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<sup>5</sup> Irrespective of their level of economic development.

## B. DEVELOPMENT OF FATF–STYLE REGIONAL BODIES

19. Active efforts have continued to support or foster the development of FATF-style regional bodies in all parts of the world. These groups, which have similar objectives and tasks to those of the FATF, provide the same peer pressure which encourages FATF members to improve their anti-money laundering systems. Such groups now exist in the Caribbean, Central and Eastern Europe, Asia/Pacific and Southern and Eastern Africa, and in December 2000, a group was launched for South America. Further groups are in the process of being established for Western and Central Africa.

### Caribbean Financial Action Task Force

20. The Caribbean Financial Action Task Force (CFATF), which is the oldest FATF-style regional body, has a membership of twenty-five States from the Caribbean basin.<sup>6</sup> It was established as the result of meetings convened in Aruba in May 1990 and Jamaica in November 1992. The main objective of the CFATF is to achieve the effective implementation of, and compliance with the nineteen CFATF and Forty FATF Recommendations. The CFATF Secretariat monitors members' implementation of the Kingston Ministerial Declaration through the following activities: self-assessment of the implementation of the Recommendations; an on-going programme of mutual evaluation of members; co-ordination of, and participation in, training and technical assistance programmes; plenary meetings twice a year for technical representatives; and an annual Ministerial meeting.

21. Pivotal to the work of the CFATF is the monitoring mechanism of the mutual evaluation programme. In October 2000 in Aruba, the CFATF Council of Ministers adopted five mutual evaluation reports (Grenada, St. Kitts and Nevis, Dominica, Venezuela and Montserrat) and it is expected that the rest of the reports will be completed during 2001. The 2000 CFATF Council meeting also endorsed the decision to carry out a second round of mutual evaluations starting in the second half of 2001 and using as benchmarks the CFATF and FATF Recommendations as well as the 25 NCCTs criteria. To prepare for the second round of mutual evaluations, a training seminar for evaluators was held in May 2001 in Caracas, Venezuela.

22. The CFATF also organised a conference on international financial service centres in December 2000 and completed a typologies exercise on free trade zones in March 2001. The FATF continues to support the significant progress which has been made by the CFATF over the past twelve months. Mexico has joined the CFATF as a COSUN (Cooperative and Supporting Nation).<sup>7</sup>

### Asia/Pacific Group on Money Laundering

23. The Asia/Pacific Group on Money Laundering (APG), established in 1997, currently consists of twenty two members<sup>8</sup> from South Asia, Southeast and East Asia and the South Pacific. In May 2001, the APG held its fourth annual meeting in Kuala Lumpur, Malaysia. This meeting discussed four mutual evaluation reports (Samoa; Chinese Taipei; Labuan; and Macau, China). The APG plenary meeting also noted the enactment of anti-money laundering legislation in several jurisdictions.

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<sup>6</sup> The current CFATF members are: Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, Costa Rica, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, the Netherlands Antilles, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Turks and Caicos Islands, Trinidad and Tobago and Venezuela.

<sup>7</sup> The complete list of CFATF COSUNs now includes: Canada, France, Mexico, Netherlands, Spain, United Kingdom and United States.

<sup>8</sup> The members of the APG are: Australia; Bangladesh; Chinese Taipei; Cook Islands; Fiji; Hong Kong, China; India; Japan; Macau, China; Malaysia; New Zealand; Niue; Pakistan; Republic of Indonesia; Republic of Korea; Republic of the Philippines; Samoa; Singapore; Sri Lanka; Thailand; United States of America and Vanuatu.



24. The APG will continue and expand its typologies work in close consultation with the FATF and other regional bodies. A fourth typologies workshop will be held in Singapore in October 2001. The FATF welcomes the progress made by the APG, in particular the development of a mutual evaluation program. A mutual evaluation training workshop was conducted in Bangkok, Thailand, in March 2001 to increase the skills needed to conduct mutual evaluations.

25. The APG's Technical Assistance and Training strategy is continuing to expand with the support of international and regional organisations. As a consequence, the APG Secretariat will act as a focal point, where possible, for the coordination of anti-money laundering technical assistance and training in the region.

#### Council of Europe (PC-R-EV)

26. The Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV) was established in September 1997 by the Committee of Ministers of the Council of Europe, to conduct self and mutual assessment exercises of the anti-money laundering measures in place in the twenty-four Council of Europe countries which are not members of the Financial Action Task Force.<sup>9</sup> The PC-R-EV is a sub-committee of the European Committee on Crime Problems of the Council of Europe (CDPC).

27. Since the publication of the last FATF Annual Report, the PC-R-EV has pursued its significant mutual evaluation programme. At its plenary meeting in January 2001, reports were discussed on Latvia, San Marino, Russia and Ukraine. The first round of mutual evaluations of PC-R-EV members will be completed at its plenary meeting in June 2001.<sup>10</sup> Summaries of all adopted PC-R-EV reports carried out in 2000-2001 appear at Annex B. The PC-R-EV has in place a mechanism for written progress reports to be presented orally to the plenary by all countries one year after their report was adopted.

28. The PC-R-EV has decided to carry out a second round of mutual evaluations, starting during the Northern Hemisphere summer of 2001. In order to prepare for this, a training seminar was held in Lisbon, Portugal in November 2000. In June 2001 in Andorra, the PC-R-EV held its third typologies meeting to examine issues such as: suspicious transactions reporting, trusts and other non-corporate entities as facilitators of money laundering. In this way, the Council of Europe also contributes fully and effectively to the development of the world-wide anti-money laundering network.

#### The Eastern and Southern African Anti-Money Laundering Group (ESAAMLG)

29. The ESAAMLG, an FATF-style body of fourteen countries in the region,<sup>11</sup> was launched at a meeting of Ministers and high level representatives in Arusha, Tanzania, on 26-27 August 1999. A Memorandum of Understanding (MoU), based on the experience of the FATF and other FATF-style regional bodies was agreed. Pending the establishment of a permanent secretariat, a technical advisor was funded by the Commonwealth Secretariat to advance the work of the Group. The ESAAMLG will hold its second meeting of the Task Force of senior officials and Ministers in August 2001.

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<sup>9</sup> The membership of the Committee is comprised of the Council of Europe member States which are not members of the FATF: Albania, Andorra, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Hungary, Latvia, Liechtenstein, Lithuania, Moldova, Malta, Poland, Romania, Russian Federation, San Marino, Slovakia, Slovenia, "The Former Yugoslav Republic of Macedonia" and Ukraine. In addition, since January 2001, Armenia and Azerbaijan have also become members of the Committee PC-R-EV when these countries joined the Council of Europe.

<sup>10</sup> This meeting had to be postponed for budgetary reasons until a later date. It will likely be held in October 2001.

<sup>11</sup> Botswana, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

### South American Financial Action Task Force (GAFISUD)

30. The GAFISUD (*Grupo de Acción Financiera de Sudamérica Contra el lavado de Activos*) – the Spanish acronym for the South American Financial Action Task Force on Money Laundering – a new FATF-style regional body, was launched at a meeting of Ministers in Cartagena, Colombia on 8 December 2000. In the presence of the President of Colombia, Hon. Andrés Pastrana, and the President of FATF, a Memorandum of Understanding was signed by the nine members of the group (Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Peru, Paraguay and Uruguay). The objectives of the above-mentioned MoU are to recognise and to apply the Forty FATF Recommendations and any other recommendations that the GAFISUD may adopt in the future, as well as to establish and make GAFISUD operational.

31. Under the Chairmanship of Colombia, GAFISUD held its second plenary meeting on 4 and 5 June 2001 in Montevideo, Uruguay. Pending the establishment of a permanent secretariat which will be based in Buenos Aires, Argentina, the Ministry of Justice and Law of Colombia has been responsible for advancing the work of the Group. A first self-assessment exercise was carried out and GAFISUD has agreed to start mutual evaluations of its members before the end of 2001. In order to prepare for this mutual evaluation programme, a training seminar for future evaluators will be held in September 2001. This seminar is generously supported by the Government of Spain.

32. The FATF welcomes the establishment of GAFISUD and supports its work. With the creation of this new FATF-style regional body in South America, the overall effort towards the establishment of a world-wide anti-money laundering network is thus reinforced.

### Other initiatives in Africa

33. Following the December 1999 Summit of the Heads of State and Government of the Economic Community of West African States (ECOWAS) in Lomé (Togo), it was decided to establish an Inter-Governmental Action Group against Money Laundering (GIABA: Groupe Inter-gouvernemental d'Action contre le Blanchiment en Afrique). An Inter-Ministerial meeting was held in Dakar, Senegal in early November 2000 to prepare the GIABA statutes. The statutes were submitted for approval to the ECOWAS Heads of State meeting in Bamako, Mali in December 2000. However, no agreement was reached either on the location of the Secretariat or on the funding scheme.

34. On 14 December 2000, in N'Djamena, Chad, the Conference of the Heads of State of the Economic and Monetary Community (CEMAC: Communauté Economique et Monétaire d'Afrique Centrale) decided to create an Action Group against Money Laundering in Africa (GABAC: Groupe d'Action contre le Blanchiment d'Argent en Afrique Centrale).

## C. CO-OPERATION WITH OTHER INTERNATIONAL ORGANISATIONS

### International Financial Institutions

35. Due to the wide scope of their activities, the International Monetary Fund (IMF) and World Bank provide a great opportunity for raising awareness to, and support for the anti-money laundering message. Therefore, the FATF increased its contacts with the IFIs. At the very beginning of the current round in early July 2000, a high-level mission led by the FATF President visited the IMF headquarters in Washington, D.C. to assess common areas of interest and possible projects. The FATF decided to facilitate the IMF and World Bank access to its work on non-cooperative countries and territories. This was followed by additional contacts between the FATF and the IMF, including an invitation issued to the FATF President to address a joint IMF/World Bank Workshop on financial abuse, financial crime and money laundering in February 2001 at the IMF headquarters in Washington, D.C.

36. In April 2001, the Boards of the IMF and World Bank discussed money laundering and how their contributions to the global efforts could be enhanced. The IMF and World Bank generally recognised the FATF's Forty Recommendations as the appropriate international standards for combating money laundering (in a press communiqué issued in April 2001) and agreed that work should go forward to determine how the Recommendations can be adopted and made operational in their work. It was proposed that the IMF and World Bank should collaborate closely with the FATF to incorporate the relevant FATF Forty Recommendations into a ROSC (Report on the Observance of Standards and Codes) module. It was further agreed that the IMF, in collaboration with the World Bank should also provide, if requested, more technical assistance to member countries to strengthen their economic, financial and legal systems in the area of anti-money laundering.

### United Nations Office for Drug Control and Crime Prevention

37. The Global Programme against Money Laundering (GPML) is a technical co-operation and research and technical co-operation initiative implemented by the UN Office for Drug Control and Crime Prevention (ODCCP). Its aim is to increase the effectiveness of international action against money laundering through comprehensive technical co-operation services offered to governments. The Programme is carried out in co-operation with other international and regional organisations.

38. In the context of the GPML, the UNODCCP organised a number of anti-money laundering training and technical co-operation initiatives during 2000-2001, including a sub-regional workshop in Lima, Peru, for the Andean countries which focused on regional co-ordination and the implementation of anti-money laundering initiatives. In conjunction with the Egmont Group, the GPML hosted a workshop for FIU officers in January 2001. A workshop for West African states was held in Dakar, while one catering to Gulf states was convened in Abu Dhabi. In March the programme published a study entitled "Russian Capitalism and Money Laundering". In June 2001, it organised jointly with the Government of the Russian Federation, an International Conference in St. Petersburg, Russia, on illegal economy and money laundering. During the year GPML prosecution and FIU mentors worked in Antigua and Barbuda, Barbados and Jamaica. The programme is currently co-ordinating a study to establish the feasibility of establishing a regional FIU in the Organisation of Eastern Caribbean states. Work has also continued on the International Money Laundering Information Network (IMoLIN) website and the Anti-Money Laundering Information Database (AMLID), which the GPML co-ordinates on behalf of the United Nations, the FATF, the Commonwealth Secretariat, the Council of Europe, Interpol, the Organisation of American States and the Asia/Pacific Group on Money Laundering.

### European Union

39. In November 2000, the Economic Affairs / Finance Ministers of the European Union unanimously approved a text to update and extend the 1991 European Council Directive on prevention of the use of the financial system for the purpose of money laundering (91/308/EEC). This would greatly widen the range of predicate offences and would extend the obligations of the 1991 Directive (in particular, customer identification and obligatory suspicious transaction reporting) to a range of non-financial activities and professions (including, under certain conditions, the legal professions). A final version of this text has still to be agreed (under co-decision procedure) with the European Parliament.

40. Other recent work underway within the EU has included the extension of Europol's mandate to cover all forms of money laundering regardless of the underlying predicate offence, a Council Decision to improve co-operation between the financial intelligence units of member states, negotiation of a Framework Decision on money laundering and discussion on a Protocol to the EU Mutual Legal Assistance Convention covering, *inter alia*, banking secrecy.

## Offshore Group of Banking Supervisors

41. The conditions for membership in the Offshore Group of Banking Supervisors (OGBS)<sup>12</sup> include a requirement that a clear political commitment be made to implement the FATF's Forty Recommendations. The OGBS has continued to be actively involved in international initiatives concerned with international standards of financial regulation and anti-money laundering measures.

42. The OGBS has pursued its programme of mutual evaluations in accordance with the procedures followed by the FATF<sup>13</sup>. The on-site evaluations of Mauritius; Labuan; Macau, China; and Gibraltar were carried out during the first half of 2001 with evaluators drawn from FATF and OGBS members. The mutual evaluation reports of Labuan and Macau, China were discussed and approved at the annual meeting of the OGBS in Gibraltar on 7-8 June 2001, and the reports of Gibraltar and Mauritius will be discussed and approved later in 2001. The mutual evaluations of Labuan and Macau, China were conducted by a joint team comprising both APG and OGBS members and were also considered at that meeting.

## Organization of American States/Inter-American Commission for Drug Abuse Control (OAS/CICAD)

43. The Inter-American Drug Abuse Control Commission at its twenty-eighth regular session held in Port of Spain, Trinidad and Tobago in October 2000, decided to convene the Group of Experts to Control Money Laundering for the year 2001 and also approved the work-plan which will be considered in the Group of Experts' meeting to be held in Lima, Peru, in July 2001. Under the Presidency of Peru, the Group will consider the following topics: legal analysis of the crime of money laundering; typologies; financial intelligence units and the plan of Action of Buenos Aires.<sup>14</sup>

44. The CICAD has actively co-sponsored and co-ordinated a number of training seminars involving anti-money laundering measures. , The CICAD is also the advisor member of GAFISUD.

## World Customs Organisation

45. The World Customs Organisation (WCO), an independent intergovernmental body, addresses money laundering through a variety of its activities. In September 2000 in Brussels, the WCO held the fifth meeting of the Working Group on Money Laundering and Financial Assets to provide updated information on money laundering and to develop a professional customs enforcement response. The WCO Council Session (General Assembly) in June 2001 is expected to adopt the recommendation on the role of Customs administrations in tackling money laundering and in recovering the proceeds of crime, for Member administrations to consider, adopt and pursue the best practices. The WCO also organised a high-level regional seminar for the Heads of East and South African Customs Enforcement Services in Nairobi, Kenya, in May 2001. The WCO has provided technical assistance and training on commercial fraud and money laundering in addition to other activities.

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<sup>12</sup> The Membership of the OGBS includes Aruba; Bahamas; Bahrain; Barbados; Bermuda; Cayman Islands; Cyprus; Gibraltar; Guernsey; Hong Kong, China; Isle of Man; Jersey; Labuan; Macau, China; Mauritius; Netherlands Antilles; Panama; Singapore and Vanuatu.

<sup>13</sup> Summaries of the mutual evaluations of Jersey, Guernsey and the Isle of Man are included at Annex C.

<sup>14</sup> In December 1995, the Ministers responsible for addressing money laundering in the States of the Western hemisphere met in Buenos Aires where they endorsed a Statement of Principles to combat money laundering and agreed to recommend to their Governments a Plan of Action reflecting this Statement of Principles for adoption and implementation. The Plan of Action specifically provided that the Governments intended to institute on-going assessments of the implementation of the Plan of Action within the framework of the OAS. This and other activities identified in this Plan were remitted to the CICAD for action.

## Commonwealth Secretariat

46. In addition to its continued support to set up the ESAAMLG, the Commonwealth Secretariat organised a training workshop on “Combating Money Laundering: Best Practice for the Financial Sector” for Kenya, Tanzania and Uganda in Arusha, Tanzania in November 2000. This workshop was one of a series which the Commonwealth Secretariat intends to carry out for other member countries of the ESAAMLG. The Commonwealth Secretariat provided an adviser to the ESAAMLG Secretariat in March 2001 for a period of two years. The adviser is assisting with appropriate measures to make the ESAAMLG Secretariat fully functional to perform its role in the region.

## Various international anti-money laundering events

47. In addition to regular attendance at meetings of other international or regional bodies during 2000-2001, the FATF President and Secretariat accepted several invitations to participate in various international anti-money laundering events. In September 2000, the FATF President gave a keynote address on the FATF and the fight against money laundering at the 18th International Symposium on Economic Crime in Cambridge, United Kingdom. In October 2000, the Presidency of the FATF gave a presentation at the Ministerial meeting of the Pompidou Group in Sintra, Portugal. During the period, the FATF Secretariat also participated in several other international events, including the 2000 American Bankers Association/American Bar Association Money Laundering Conference, in October in Arlington, United States; and the Wolfsberg Group Conference in the Northern Hemisphere spring of 2001 in Switzerland.

## D. NON-COOPERATIVE COUNTRIES OR TERRITORIES

48. Since the end of 1998, the FATF has embarked on substantial work on the problems raised by countries and territories which do not co-operate in the combat of money laundering. The aim of the work is to enhance the level of protection for the world financial system and to prevent the circumvention of the anti-laundering measures introduced over the last ten years. The work which FATF has undertaken on non-co-operative jurisdictions is fully in line with measures elaborated by the international community to protect the global financial system from money laundering and render it more transparent.

49. To tackle this question, FATF established an Ad Hoc Group to discuss in more depth the action to be taken with regard to these countries and territories. During 2000-2001, the Ad Hoc Group met in the margins of all FATF Plenary meetings, and autonomously on 19-20 April 2001 in Paris. Four regional review groups (Americas; Asia/Pacific; Europe; Africa and Middle East) were also established to prepare the discussions in the Ad Hoc Group on NCCTs. The scope of the work extends to all major financial centres, offshore or onshore, whether they are fatf members or not.

50. Since 1999, the non-cooperative countries and territories process has been one of the most important issues the FATF has had to deal with. Throughout the NCCT process, the FATF has sought to ensure its openness, fairness and objectivity. When jurisdictions were being considered for review under this initiative, they were notified of this fact, had the opportunity to respond to the findings of the initial draft reports and later to meet with FATF experts in a face-to-face meeting to discuss any unresolved questions.

51. A year after the release of the first review of NCCTs, this initiative has triggered significant improvements in anti-money laundering systems throughout the world. The FATF has continued to monitor progress as a priority item at each Plenary meeting and has encouraged further action through public statements.

52. To decide whether a jurisdiction should be removed from the list, the FATF must first be satisfied that the jurisdiction has addressed the deficiencies identified in June 2000 by enacting significant legislation and regulations. In assessing progress by NCCTs, the FATF gives particular

importance to the relevant aspects of criminal law, financial supervision, customer identification, suspicious transactions reporting and international co-operation. Any new legislation or regulations must not only have been enacted but also have come into effect. Furthermore, the FATF also takes steps to ensure that the jurisdictions concerned are indeed implementing the necessary changes effectively. The FATF has also designed a rigorous monitoring mechanism to ensure sustained efforts in implementation.

53. FATF members continue to express their willingness to provide technical assistance to jurisdictions identified through the NCCT initiative as these jurisdictions attempt to improve their anti-money laundering systems. At the same time, the FATF has continued its effort to identify NCCTs by reviewing a second group of jurisdictions. The results of this second review – along with the progress made by NCCTs identified in June 2000 are contained in the June 2001 review on NCCTs<sup>15</sup>.

54. For those jurisdictions which were identified as non-cooperative in June 2000 and which had not made adequate progress, FATF decided, at their June 2001 Plenary meeting, to recommend further counter-measures in a gradual, proportionate and flexible manner. The purpose of the latter is to reduce the vulnerability of the international financial system and increase the world-wide effectiveness of anti-money laundering measures.

55. The NCCT initiative has caused a number of jurisdictions throughout the world to take steps to improve their anti-money laundering systems. From this perspective, the NCCT effort can be considered a success. However, the FATF recognises that this effort has also had the unintentional effect of straining the relationship between the FATF and the FATF-style regional bodies. The FATF has therefore discussed possible solutions to improve its relationships with the FATF-style regional bodies in the NCCT area. Possibilities include giving greater weight to the mutual evaluations conducted by FATF-style regional bodies when assessing potential NCCTs, provided the regional body takes into account the 25 NCCT criteria as part of its mutual evaluation process.

## II. IMPROVING MEMBERS' IMPLEMENTATION OF THE FORTY RECOMMENDATIONS

56. FATF members are clearly committed to the discipline of multilateral monitoring and peer review. The mutual evaluation procedure and the self-assessment exercise provide the necessary peer pressure for a thorough implementation of the Forty Recommendations. However, as no mutual evaluations of FATF members were undertaken in 2000-2001, the period was used to complete the in-depth assessment of the first two rounds of mutual evaluations which was initiated during FATF-XI. The FATF continued to focus on monitoring the implementation by its members of the Forty Recommendations on the basis of a self-assessment. The self-assessment exercise consists of a detailed assessment of members' compliance with the Forty Recommendations and an in-depth discussion at the final Plenary meeting. The period was also used to carry out a self-assessment exercise and mutual evaluations of GCC member States.

### A. ASSESSMENT OF THE TWO ROUNDS OF MUTUAL EVALUATIONS

57. The FATF first commenced the mutual evaluation process in 1992, and since that time, the evaluations have provided the principal method by which the FATF has monitored the implementation of the Forty Recommendations, and has assessed the effectiveness of the anti-money laundering systems in FATF member jurisdictions. Following the end of the second round of FATF mutual evaluations in 1999, it was decided that to review the progress that has been made by FATF members

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<sup>15</sup> See *FATF Review to Identify Non-Cooperative Countries or Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures*, 22 June 2001. This report is available at the following website address: <http://www.oecd.org/fatf>.

in implementing the Forty Recommendations, assess the effectiveness of the anti-money laundering systems in FATF member jurisdictions, and analyse the procedures that were adopted<sup>16</sup>.

58. In all members, since 1992, law enforcement, regulatory and other resources have been devoted to combating money laundering, and the level of compliance with the FATF Forty Recommendations has steadily increased. Compliance with the Recommendations increased substantially between 1993 and 1994, though thereafter the rate of progress was much slower. The most significant measures affecting compliance in recent years has been the need to apply appropriate preventative measures to bureaux de change and money remittance companies, and a number international co-operation measures. Standards are generally satisfactory, but several potential weak links need to be eliminated.

59. The most significant part of the review examines the anti-money laundering systems in FATF members, describes the types of measures that have been adopted, and draws some findings on the effectiveness of those measures. This assessment is based on both quantitative and qualitative factors, though the lack of statistics was a consistent weakness throughout the mutual evaluations, and hindered evaluations of the effectiveness of systems.

60. In relation to the money laundering offence, the main points were that the predicate crimes for money laundering are now broadly similar, and cover a wide range of serious offences. The most significant problems concerned the mental element of the offence being set at too high a standard, and the need in some countries to prove the underlying predicate offence. Without taking into account the differences in preventive and repressive systems, the limited statistics available suggest that money laundering is actively investigated and prosecuted in a limited number of countries, but elsewhere, the offence is not frequently prosecuted. In many members, relatively little attention had been paid to confiscation and provisional measures until comparatively recently, and thus it was noticeable that relatively small amounts had been seized and confiscated. The primary difficulties appeared to be the standard of proof, and linking proceeds to specific prior criminal activity. The two measures being adopted or considered in a number of members are reversing the burden of proof or non-conviction based confiscation. These measures, combined with a dedicated, multi-disciplinary body focussed on confiscation issues, appear to be the measures that could have the most significant effect.

61. An important issue in most countries is the scope of application of the anti-money laundering measures. In almost all members, a full range of measures apply to banks, but for certain non-bank financial institutions (NBFIs) such as bureaux de change or money remittance companies not all measures applied. The various classes of non-financial businesses, such as casinos, company formation agents, lawyers and accountants are largely unregulated and unsupervised. As regards specific measures, customer identification and record keeping have been generally well implemented, and the only common problem is the practical difficulty of identifying beneficial ownership.

62. Suspicious transaction reporting (STR) and the role of the financial intelligence unit (FIU) are among some of the key elements of anti-money laundering systems. The laws and regulations for STR were usually sound, and the FIU was focussed and committed to its functions, though improvements such as widening the scope of the reporting requirement to all serious criminal activity, and improving the level of both general and specific feedback, were found to be needed in several countries. The statistical data available suggests that in most countries the total number of STRs received is either increasing or constant, but that STRs are made almost entirely by banks, with very few reports from NBFIs or non-financial businesses. However, data was generally lacking on the use that was made of the STRs and this will need to be addressed.

63. As regards such issues as training, internal controls, guidelines and supervision, it was clear that significant steps had been taken in the banking sector, and that the securities and insurance industries were reasonably well regulated, but that very limited measures apply to other categories of financial institutions and non-financial businesses. The level of awareness and commitment of the

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<sup>16</sup> The review can be found on the FATF website at: [http://www.oecd.org/fatf/FATDocs\\_en.htm#Other](http://www.oecd.org/fatf/FATDocs_en.htm#Other).

industry varied depending on the degree of training, regulation and supervision that the government agencies had conducted, though generally the banking sector was much better informed about the risks, and had usually made significant commitments to implement the necessary preventive measures.

64. The FIU is a key body in the system, and an important factor in their functioning is an efficient information technology system, which can receive, analyse and distribute STRs and other intelligence as quickly and effectively as possible. Most FIUs did more than just process STRs, and it is desirable that FIUs take on a full range of reactive and proactive strategic and tactical intelligence functions. The mutual evaluation reports also noted the benefits of having multidisciplinary bodies that could call on a range of expertise (prosecutors, accountants, investigators, police officers, financial analysts etc.). Formal and informal co-ordination and co-operation should apply at several levels, and a useful extension of this is a strategic plan, that sets clear medium to long term objectives and timeframes, with well-defined roles for the various agencies. When combined with a regular review process, a country should be able to keep ahead of changing threats, and analyse and make its system more efficient.

65. The mutual evaluation reports did not cover the issue of international co-operation in much depth, partially due to the fact that this is a topic that extends beyond the issues specific to money laundering, and partially due to a lack of data. There has been a steady increase in the number of members that have signed and ratified the relevant international Conventions, and in the number of bilateral treaties and Memoranda of Understanding. Similarly, most countries had the basic legislation in place to allow them to give effect to requests. However, it was not possible in most cases to assess how well the system was working in practice, or whether it could be more efficient.

66. The mutual evaluation procedures were generally very satisfactory, with a process and product that was both fair and consistent. Similarly, the multi-step process of following up on mutual evaluation reports when serious weaknesses and deficiencies were identified was also reasonably successful, and the jurisdictions took action to improve their systems and remedy the most important defects identified. The second round of evaluations saw seven members providing reports to the Plenary, but steps were taken beyond this for only one member.

67. What overall conclusions can be drawn about the progress that has been made between 1992 and 1999? Some members are in full compliance with all the mandatory Recommendations, while the vast majority comply with more than 80% of the Recommendations. It is also noticeable that almost all members have made significant improvements to their anti-money laundering systems over the two rounds of mutual evaluations, both in terms of legislative amendments and administrative changes. The mutual evaluation reports have provided a blueprint for future action by the jurisdiction concerned, and in many cases the necessary action has been or is being taken. The mutual evaluation process has also proven to be, by and large, an effective and efficient one, which utilises relatively few resources to obtain significant results. However, there is still room for improvement in members' compliance with the Forty Recommendations. In this respect, it is expected that the third round of mutual evaluations, which is due to start in 2002, will contribute further to improve the anti-money laundering regimes of FATF members.

## **B. 2000–2001 SELF-ASSESSMENT EXERCISE**

68. Within the FATF, the mutual evaluation process was created as the primary measurement of the FATF member countries' progress in implementing anti-money laundering measures. It also serves as the principle means for evaluating the overall effectiveness of national anti-money laundering systems. Given the less frequent nature of mutual evaluations, however, the FATF has traditionally conducted regular self-assessment exercises to establish an annual record of its members' progress in implementing relevant measures. This exercise seeks to determine – based mainly on information provided by each jurisdiction – what measures have been put into place in a particular jurisdiction, and it thus represents a sort of inventory of measures implemented in any given year.



69. More than ten years after the initial issuance of the Forty Recommendations and having undergone two series of mutual evaluations, all FATF members have implemented most if not all of the Recommendations requiring specific action. This fact was already recognised two years ago when the FATF developed and started a new method for conducting its self-assessment exercise. The objective of the new process was to provide increased focus on those areas where FATF members had not yet fully implemented necessary counter-measures. It was intended to represent the primary means of monitoring progress toward full compliance in the period between the second and third round of mutual evaluations. It should also be noted that the self-assessment process has been the sole means used so far for measuring FATF members' compliance with the 1996 revisions to the FATF Forty Recommendations.

70. The self-assessment process focuses on the implementation of key legal, financial and international co-operation measures as related to the 28 FATF Recommendations requiring specific action.<sup>17</sup> Although information was gathered on other Recommendations, this material was not used in the assessment process. In the financial area, FATF members were judged on whether they had implemented measures both for banks and for four main categories of non-bank financial institutions (bureaux de change, stockbrokers, insurance companies and money remittance/transfer companies). Combining these five types of financial institutions into a single category has increased the focus on uniform application of anti-money laundering measures in the non-bank financial institution area.

71. With this year's assessment, ten FATF members have implemented all of the 28 Recommendations requiring specific action. Five additional countries fall short of full compliance by only one Recommendation. More than three-quarters of the FATF membership have fully implemented 24 or more of the 28 key Recommendations. It should be noted that for some of the jurisdictions with seemingly low numbers of Recommendations at full compliance – Japan, the United States, Mexico – the deficiency lies in failing to apply measures to certain categories of non-bank financial institutions. In the case of Canada, legislation enacted in 2000 (but not coming into full force until late 2001/early 2002) will considerably improve that country's compliance level. The level of compliance for individual FATF members, along with notes on each member country's particular situation, is included at Annex D.

72. The results of this year's self-assessment exercise appear to show that FATF member countries have had the least amount of difficulty in implementing the Recommendations dealing with legal and international co-operation issues (Recs. 1-5, 7, 32-34, 37, 38 and 40). There appears to be greater difficulty related to the financial Recommendations (Recs. 8, 10-12, 14-21 and 26-29). The major reason for this problem lies in the difficulty in applying anti-laundering measures uniformly to the categories of non-bank financial institutions referred to in paragraph 70. Recommendation 19 seems to be particularly problematic in this regard. During the course of the exercise, a number of other issues arose concerning interpretation or application of the FATF Recommendations. Many of these issues were presented to the FATF Plenary in October 2000, and it was then decided to examine them in the context of the review of the FATF Forty Recommendations.

### C. SELF-ASSESSMENT AND MUTUAL EVALUATION FOR GCC MEMBER STATES

73. The Gulf Co-operation Council (GCC) is in the unique position of being a member of FATF but with non-FATF countries as members.<sup>18</sup> Since 1999, GCC members States have made a noticeable effort to evaluate the level of implementation and effectiveness of anti-money laundering systems within the GCC. A self-assessment exercise for GCC member States was discussed at the October 2000 Plenary meeting. In addition, five members of the GCC (Bahrain, Kuwait, Oman, Qatar and the United Arab Emirates) have now undergone mutual evaluations (See Annex A).

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<sup>17</sup> The Recommendations requiring specific action are: Recommendations 1-5, 7, 8, 10-12, 14-21, 26-29, 32-34, 37, 38 and 40.

<sup>18</sup> Bahrain, Kuwait, Oman, Qatar Saudi Arabia and the United Arab Emirates (UAE).

74. Since the original commitment to undertake self-assessment of anti-money laundering systems in place in its member States, the GCC participated in a second series of assessments using the same form and standards as used for FATF member countries. The exercise began during FATF-XI; however, discussion of the results was delayed until the first Plenary meeting of FATF-XII. The individual self-assessment surveys also serve as an additional source of information for the conduct of mutual evaluations of the GCC member States.

75. Five of the six GCC members<sup>19</sup> completed self-assessment surveys for the 1999-2000 exercise. The overall results of the exercise indicate varying levels of compliance among participating States. For the 28 FATF Recommendations requiring specific action, the average number of Recommendations in full compliance is just over 13 (the highest number reached by the individual GCC States was 18 and the lowest was 6). It should be noted, however, that the situation found in these countries during the mutual evaluations performed since then was generally the same or better than the self-assessment surveys indicated. With completion of this self-assessment survey, the GCC Secretariat has agreed to assume responsibility for future surveys.

### III. STRENGTHENING THE REVIEW OF MONEY LAUNDERING METHODS AND COUNTER-MEASURES

76. The annual survey of money laundering methods and countermeasures provides a global overview of trends and techniques and focuses on selected major issues. However, an important initiative was the launching of an in-depth review of the FATF's Forty Recommendations. Other areas of work included the preparation of a Reference Guide to procedures and contact points on information exchange to financial regulators and law enforcement agencies, and the continuation of the informal dialogue between the OECD's Committee on Fiscal Affairs to examine the question of exchange of information between members' anti-money laundering authorities and their tax administrations, as well as other issues.

#### A. 2000–2001 SURVEY OF MONEY LAUNDERING TRENDS AND TECHNIQUES

77. The purpose of the annual FATF typologies exercise is to bring together experts from the law enforcement and regulatory authorities of FATF member countries to exchange information on significant money laundering cases and operations. It thus provides a critical opportunity for operational experts to identify and describe current money laundering trends and to comment on the effectiveness of counter-measures. Based on the work of earlier studies and input from FATF member countries, the yearly exercise also examines a series of special money laundering topics from the operational perspective. The meeting of experts for FATF-XII took place on 6-7 December 2000 in Oslo, Norway, under the chairmanship of Mr. Lars Oftedal Broch, Supreme Court Judge, and focused on five areas of concern. This year marked the second in which experts from the member jurisdictions of FATF-style regional bodies also contributed to and participated in the FATF meeting.

78. Last year's typologies exercise raised concerns over the increased anonymity and geographic separation that a launderer could have if operating through the Internet. This finding, although not corroborated by case examples at the time, led to another, broader examination of the subject this year. Further consideration of the subject reinforced the belief among experts that customer identification, know your customer policies and jurisdictional issues must be addressed again as the use of on-line banking grows. The role of the Internet itself, especially with respect to other web-based laundering schemes, also became clearer through this year's work. One key aspect for dealing with potential misuse of the system is to find ways of addressing access to records that are maintained by Internet

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<sup>19</sup> Bahrain, Kuwait, Oman, Qatar and the UAE are the five GCC members, which participated in the 1999-2000 Self-Assessment Exercise. Since this exercise, Saudi Arabia has prepared and submitted a self-assessment to the GCC Secretariat.

service providers. The rapid evolution of Internet use means that development of appropriate policies cannot be delayed.

79. Trusts, along with various forms of corporate entities, are increasingly perceived as an important element of large-scale or complex money laundering schemes, despite their legitimate use and long tradition in many jurisdictions. FATF experts looked at this issue by briefly examining the nature of the trust as a legal relationship, its uses and the variety of its forms. It became clear from this examination that the concern for anti-money laundering authorities is the seemingly impenetrable anonymity which a trust may provide to the true owner or beneficiary. This anonymity is enhanced by the fact that documentation of trusts is not public information. The experts noted that certain types of trust are more often misused than others (the blind or black hole trust and the asset protection trust) and may therefore warrant specific action to address their use. Other possible solutions range from establishing a strict regulatory regime for trust formation agents (i.e., subject them to licensing, customer identification, record keeping and reporting requirements) to imposing some sort of public or semi-public registration requirement on trust creation.

80. Lawyers, notaries, accountants and other non-financial professionals often play the role of “gatekeepers”. FATF experts looked at this issue this year and found that, through their specialised expertise, such professionals do indeed have the ability to create the corporate vehicles, trusts, and other legal arrangements that facilitate money laundering. Moreover, professional confidentiality, which has traditionally applied to the relationship between the lawyer and the client for advocacy purposes, now is often extended to other non-advocacy “gatekeeper” functions. This makes the use of these professionals attractive to those individuals wishing to hide assets or launder money. One solution offered by the experts this year is to encourage including these professions under the same anti-money laundering obligations as financial intermediaries when they perform similar functions.

81. This year’s exercise provided the opportunity to study the current role of cash in money laundering operations. Despite the increasing development of cashless payment systems such as the Internet, bank and wire transfers, etc., the experts found that a large portion of criminal proceeds is still generated in cash form. Reasons for this vary. For example, certain criminal activities – such as the drugs trade – remain more likely to produce cash proceeds. Cash transactions continue to be the norm in many countries of the world. Laundering still takes place through the purchase of high-value or luxury items for cash (thoroughbred racehorses, for example) or, in certain instances, through the cash payment for services (leasing contracts). Some jurisdictions have actually reported increases in the number of STRs dealing with cash despite a decrease in the number of banknotes in circulation. Cash movements across borders is a growing phenomenon in a few locations as launderers find it too difficult to place cash proceeds directly into the financial system. Nevertheless, some experts warned that overemphasising typologies involving criminal proceeds in cash form means that typologies for other forms of payment are not being developed, such as for wire or bank transfers. It appears therefore that, although a continued focus on cash as the weak point in the laundering process is still valid, it is nevertheless vital that work be done to develop typologies for other payment methods.

82. The FATF attempted to examine the ways that terrorist groups move or conceal funds in order to support their operations. One purpose of this examination was to see whether there were significant differences between the methods used by terrorists and those used by organised crime groups. Material discussed by the experts appeared to indicate that there is little difference, first, in the source of funding for both types of groups. Terrorists generate proceeds to support their activities through criminal activity (and sometimes from contributions or donations) in virtually the same way that organised crime does. The methods used for laundering funds in both cases are also virtually the same. Moreover, many countries consider that terrorist acts or even affiliations with such groups constitute a serious crime. There is not agreement on whether anti-money laundering laws could (or should) play a direct role in the fight against terrorism. Some countries, for example, are not able to use anti-money laundering legislation for tracking or restraining suspected terrorist money if the source of the funds was a voluntary contribution and not a criminal act. There are also differences between jurisdictions as to which groups are classified as terrorist organisations. Certain of the FATF experts were of the opinion that terrorist related money laundering is a distinct sub-category of money

laundering. Others held the opposite view and believed that terrorism can be adequately targeted under existing laws.

83. As in previous years, the FATF experts considered other money laundering methods and techniques beyond the five specialised topics. They saw a continued trend for previously identified laundering methods to be found in new locations, or what appear to be new techniques – upon closer examination – turn out to be merely clever refinements of the old “tried and true” methods. Although this year’s work revealed few truly new money laundering methods, the case examples and the material provided by the experts demonstrated the imagination and the tenacity of launderers in combining various techniques and mechanisms in order to legitimise criminal funds and to avoid detection. It also shows that, in spite of the differences among the anti-money laundering programmes of individual jurisdictions, all countries are faced with the similar problem of finding effective counter-measures. The better understanding of the characteristics, the evolution, and the world-wide reach of money laundering as derived from typologies analysis can only reinforce efforts to promote global anti-money laundering principles.

## B. REVIEW OF THE FORTY RECOMMENDATIONS

84. The FATF decided at its meetings in FATF-XII to commence a review of the FATF Forty Recommendations, which are now widely accepted as the global anti-money laundering standard. The Forty Recommendations were last revised in 1996. There were a number of reasons why this is necessary, including the changes in money laundering techniques and trends, the need to strengthen or clarify areas of weakness identified through the mutual evaluation process, and to address in priority the five “issues of particular concern” identified in the non-cooperative countries and territories report issued in June 2000.

85. It was agreed that the review process should be an open and transparent one, with involvement from FATF members, observers and FATF style regional bodies, as well as seeking input from the financial sector. As it was apparent at an early stage that a number of detailed issues would need to be considered, it was also agreed that it would need to be a thorough exercise, and that the process should take the time required to complete the review properly. The review of the Forty Recommendations will be one of the major pieces of work for the FATF during FATF-XIII, and the process of consultation, discussion and formulation is likely to continue throughout the year.

86. The review will focus primarily on the possible changes that are required for the Forty Recommendations, but consideration will also be given to any necessary amendments to the Interpretative Notes, and to the possible creation of guidelines that could analyse the practice in FATF members and then set out international guidance and sound practice for various specialised topics. Although all decisions will be made through the FATF Plenary, three working groups have been created to deal with the following major issues:

- (a) Customer identification and suspicious transaction reporting. This group will examine important topics such as electronic and Internet financial services, enhanced due diligence, the financial intelligence unit, feedback to reporting institutions and certain issues of particular concern identified in the NCCT process.
- (b) Corporate vehicles. Recent FATF reports on money laundering trends and techniques have identified an increase in the misuse of corporate vehicles such as companies, foundations, and trusts for money laundering purposes. The FATF will examine the rules governing the registration and regulation of these entities, as well as certain specific issues identified in the NCCT process, such as bearer shares and international business companies.
- (c) Gatekeepers. Another major issue of concern in recent years has been the increased use by criminals of professionals and other intermediaries to provide advice or otherwise

assist in laundering criminal funds. The working group will carefully analyse whether the FATF Forty Recommendations should be extended to cover certain categories of non-financial businesses and professions, and other financial intermediaries.

87. In addition to these issues, the FATF will also review other aspects of the Forty Recommendations, including topics such as the scope of Recommendation 4 dealing with the offence of money laundering, how to enhance the Recommendations dealing with international co-operation, and the need for adequate resources and specialised units to combat money laundering.

### C. OTHER AREAS OF WORK

#### *(i) Reference guide on procedures and points of contact for exchanging information*

88. The FATF has continued to work on a reference guide based on a similar initiative developed by the G7 in 1998. The guide will contain information on the key features of each country's privacy and secrecy laws, its ability to share information and the conditions under which such information might be exchanged, and the position of each country on mutual legal assistance. The guide will also provide a list of contact agencies in the area of financial regulation, law enforcement, and relevant ministries, departments or administrative authorities. Additional FATF members submitted material for the guide and / or revised previously obtained information. Due to the size of the total compilation and the fact that not all jurisdictions had provided the necessary information, it was decided to place elements of the reference guide information on the FATF website.

#### *(ii) Exchange of information between anti-money laundering authorities and tax administrations*

89. The dialogue between FATF and the OECD Committee on Fiscal Affairs (CFA) continued during FATF-XII. The original objectives of this co-operation were twofold: (1) to ensure that suspicious transaction reporting obligations were not undermined by the use of the so-called "fiscal excuse" and (2) to permit, to the fullest extent possible, the exchange of information between anti-money laundering and tax authorities without jeopardising the effectiveness of anti-money laundering systems. Since the first objective was met by the FATF in 1999, further discussion between the FATF and the CFA has focused on the second. Following the second informal meeting between the two bodies in February 2000, the respective Secretariats have sought to reconcile differences in information on the possibilities for co-operation.

90. The FATF and OECD/CFA held an informal contact meeting on 9 March 2001 to examine further the issue of information exchange between anti-money laundering and tax authorities. Participants at the meeting discussed money laundering and tax evasion techniques and established that there may be some common issues in this regard for further consideration, especially regarding the misuse of trusts and the issue of beneficial ownership. It was suggested that specific mechanisms for exchanging information between anti-money laundering authorities and tax administrations should be examined at the national level for the time being, as dialogue at this level seems to have the most potential for success in the short term. The meeting highlighted once again the different priorities of the two bodies but also indicated that a continuing dialogue in some form – at least between respective Presidents and Secretariats – would be useful.

## CONCLUSION

91. During the 2000-2001 round, the FATF continued to focus its work on spreading the anti-money laundering message throughout the world. This task will continue to be the priority of FATF's activities until 2004. FATF-XII was marked by the significant progress made in the initiative on non-cooperative countries or territories, the continuing development of FATF-style regional bodies, and enhanced collaboration with the IFIs in the fight against money laundering

92. The issues of enlarging FATF membership, improving the relationship between the FATF and the FATF-style regional bodies, the review of the Forty Recommendations and the ongoing work on non-cooperative countries or territories remain challenges which will be pursued in 2001-2002. These essential tasks will be carried out under the Presidency of Hong Kong, China, which will commence on 1 July 2001.



**Financial Action Task Force  
on Money Laundering**  
Groupe d'action financière  
sur le blanchiment de capitaux

**Annexes**

## ANNEX A

### SUMMARIES OF JOINT FATF / GCC MUTUAL EVALUATIONS OF THE GULF COOPERATION COUNCIL COUNTRIES

#### *Bahrain*

1. There have been no money laundering cases brought in Bahrain, and information on the predicate crimes and methods is limited. Drug trafficking, together with some types of economic crimes, remain the most significant sources of illegal proceeds, however the scale of the criminality is small. In the last three years there have been no cases in Bahrain which have involved criminal proceeds in excess of Bahraini Dinar (BHD) 20,000 (USD 53,000). There have been two cases where the proceeds of foreign crimes had been laundered through the Bahrain financial system, though these did not give rise to any local prosecutions. These cases tended to involve the use of bank accounts in Bahrain as a conduit for foreign criminal proceeds, and it was acknowledged that the greatest risk of money laundering stemmed from the foreign criminal proceeds transiting Bahrain.

2. There is no specific offence criminalising money laundering offence under current Bahrain law<sup>1</sup>. Though it may be possible to use the “receiving” type offence of Article 398 Penal Code, the language of that provision is not well adapted for criminalising money laundering, and no prosecutions have been brought. There have been a limited number of changes to the law and to Bahrain’s anti-money laundering system in recent years. Notably, Bahrain is currently drafting a new law to combat money laundering. Two drafts of this new law were provided to the examiners, one in June 2000 and a substantially revised draft in October 2000. Both drafts establish a new offence of money laundering, provide further powers of confiscation and provisional measures, create a new agency to receive STRs, and allow for better international co-operation. The proposed law also establishes a new government Committee<sup>2</sup>, which will be responsible for developing anti-money laundering policies and guidelines.

3. Specifically, the draft law creates a strongly worded new offence, which extends to all predicate offences, has a broad mental element, and also covers foreign predicate offences. The existing confiscation provisions are worded in a straight-forward manner, but do not appear to provide a full range of possibilities for seizing and confiscating the proceeds of crime, and have not been used. The provisions in the draft law extend the powers to seize and confiscate, and are to be welcomed. However, these provisions only apply to the crime of money laundering, and still contain a number of weaknesses. It is therefore proposed that the Bahrain Government review the powers that currently exist to seize, confiscate, realise and manage the proceeds of crime, or their equivalent value. It could then consider introducing additional provisions which are in line with current international best practice, and which would apply seizure and confiscation measures to all serious offences.

4. The current anti-money laundering measures in the financial sector are based on administrative circulars issued principally by the BMA, but also by the Ministry of Commerce and the Bahrain Stock Exchange. The circulars have provided a first step in addressing money laundering, but there is now an urgent need to introduce a comprehensive law or regulation that establishes the basic obligations for all financial and other appropriate institutions or firms. These laws and regulations should then be combined with detailed circulars and guidance notes issued by the BMA and other regulators setting out instructions as to the practical steps that banks and other financial institutions should adopt. The obligations to identify the customer, including the beneficial owner, are partial and indirect, and new, precise obligations need to be introduced, which should require financial institutions to verify the identity of the customer when: (a) there is a new business relationship, (b) there is a large

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<sup>1</sup> This summary was adopted in October 2000. On 31 January 2001, Bahrain enacted a law that criminalises money laundering.

<sup>2</sup> The National Anti-Money Laundering Policy Committee was established in June 2001, which includes members from the Ministries of Finance, Interior, Justice, Commerce, the Bahrain Monetary Agency and the Bahrain Stock Exchange.



single transaction, (c) a nominee is acting on behalf of the beneficial owner, and (d) money laundering is suspected. Detailed requirements and guidelines should also be issued setting out the types of documents that are acceptable, the sanctions for non-compliance, the practices and procedures.

5. Suspicious transaction reporting requirements are imposed by a BMA circular on BMA supervised institutions for unusual or suspicious transactions equal to or greater than BHD 10,000 (USD 26,500). These obligations have produced very limited results, and significant changes should be made to the whole system. The most important step is to require all financial institutions by law to report any suspicious transaction, with appropriate sanctions if they fail to do so. Such an obligation must be complemented by providing the reporting institution and its employees with explicit immunity from criminal or civil action when reporting a suspicious transaction in good faith to BMA or when providing information to the police<sup>3</sup>. In addition, the level of general and specific feedback to reporting institutions needs to be improved considerably.

6. A number of internal control measures have been imposed on financial institutions through the BMA circulars, and many institutions also appear to impose their own controls. These could be supplemented by some additional measures such as written policies and procedures, screening of employees, ongoing training and internal audits. New guidelines should also be created which would illustrate potentially suspicious activity, different money laundering techniques, activities and patterns, and which would offer guidance on how to detect those activities. Such guidelines could also provide guidance on the primary anti-money laundering obligations, and set out the detailed practices and procedures which should be followed. The checks conducted by the BMA through its programme of off and on-site supervision appear to be generally thorough.

7. The BMA has already taken a leading operational role in combating money laundering, both as principal regulator, and as the recipient of STR. The proposed creation of a new central body to receive, store, analyse and disseminate STR is an important move towards having a national FIU, and will require additional resources and expertise. This function also needs to be complemented by increased focus and a more proactive role from the police and the Public Prosecutor in preparing a structure and developing skills to deal with money laundering, proceeds of crime, and confiscation. In particular, the development of financial intelligence and investigations expertise would make Bahrain more secure against international crime. These developments could be combined with a review of the system of co-operation and co-ordination and consideration of a strategic plan to combat money laundering, which would set some objectives and timeframes. To be fully effective, co-operation should be considered at all three levels – the operational level, across government, and with the financial and private sector.

8. Bahrain has taken the important initial step of signing and ratifying the Vienna Convention, and can provide assistance on the basis of reciprocity even without a treaty. The new draft law will facilitate such assistance by providing further explicit powers to exchange information and assist. However, Bahrain should verify that it can provide a full range of assistance, and if there are any weaknesses, remedial action should be taken. Similarly, the new enforcement entity proposed under the draft law should ensure that it can exchange STR information with its neighbours in the Gulf and elsewhere, both spontaneously and upon request.

9. Overall, Bahrain has taken a number of steps to address money laundering, and has shown through the new draft law and the statements of Government Ministers and their officials that it has made the political commitment to build a more comprehensive system. The criminal and money laundering problems in Bahrain appear to be small, and there is a commensurate absence of results in terms of prosecutions, monies confiscated and suspicious transaction reports. Despite this, Bahrain has a relatively well developed financial system, and is not immune from international organised crime. It therefore needs to reinforce the current laws, regulations and practices by implementing a

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<sup>3</sup> The Money Laundering Law has imposed legal obligations on all financial institutions to report any suspicious transaction to the Enforcement Unit. Failure to do so is subject to penalties. This law also provides immunity from criminal or civil action for those who report suspicious transactions in good faith.

comprehensive set of penal and financial laws, regulations and guidelines, which will prevent its financial system being misused by money launderers.

### *Kuwait*

10. Drug trafficking, together with some types of economic crime, remain the most significant sources of illegal proceeds, however the scale of the criminality is small. Kuwait is neither a producer nor a transit country for drugs, and there have been few importation cases. The incidence of economic crime is said to be low, with the average proceeds from such a case being about USD 20-30,000. As regards the proceeds of foreign offences, Kuwait has not identified any cases where there have been attempts to launder the proceeds of foreign crimes through the Kuwait financial system, and there have not been any local prosecutions. There is little information on the methods used to launder illegal proceeds in Kuwait, though the authorities acknowledged that the greatest risk of money laundering stems from foreign criminal proceeds. Despite this, Kuwait's reasonably small population (of whom 65% are expatriates), low reported crime rate and modern but small financial sector, reduces the risk of money laundering for the time being.

11. Kuwait's first anti-money laundering measures were issued in 1993, when the Central Bank of Kuwait (CBK), which regulates and supervises banks and other financial institutions in Kuwait, issued a circular requiring banks, investment companies and money exchange companies to take steps to combat money laundering. More detailed instructions were issued in 1997 and 1998, and a further step was taken in 1998 with the formation of a national committee to combat money laundering. To date, Kuwait has concentrated on increasing the level of awareness of money laundering in the business community, and on protecting the financial sector. It has now prepared a new Draft Law to combat money laundering (the Draft Law)<sup>4</sup>.

12. Although initial anti-money laundering measures have been implemented, in particular by the Central Bank of Kuwait, the current laws, regulations and practices need to be considerably reinforced, and Kuwait has started this process by preparing a Draft Law. It is very encouraging that a high level of support and commitment for the importance of fighting money laundering activities was shown by Government Ministers and their officials. They demonstrated and expressed their willingness to cooperate with international organisations and to pass the necessary legislation so as to complete and perfect Kuwait's anti-money laundering system.

13. There is no money laundering offence under current Kuwait law. This situation will be rectified by article 3 of the Draft Law. This will create a new offence, which extends to all predicate offences, including foreign predicate offences, and is generally strongly worded, consideration could be given to widening the mental element of the offence. The existing confiscation provisions contain the basic measures that are required to confiscate the proceeds of crime, but do not appear to provide a full range of possibilities for seizure and confiscation, and have not been used. The provisions in the Draft Law extend the powers to seize and confiscate, and are to be welcomed. However, these provisions only apply to money laundering, and Kuwait should review the powers that currently exist to seize, confiscate, realise and manage the proceeds of crime, or its equivalent value, in relation to all crimes.

14. The current anti-money laundering measures in the financial sector are based on the requirements imposed by the CBK, through the circular and instructions that were issued to banks, investment companies and money exchange companies. Other financial institutions are subject to limited anti-money laundering requirements, and the proposal in the Draft Law to extend measures to all financial institutions is a positive and very necessary step towards the creation of a full anti-money laundering system in Kuwait. Further subsidiary legislation setting out more precise requirements will then be required. The CBK instructions currently impose obligations on banks, investment companies and money exchange companies to identify their customers, both personal and corporate, either usual

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<sup>4</sup> The FATF was advised that the draft law was introduced into the Parliament in June 2001.

or occasional, but there is no obligation on personal customers to identify the beneficial owner of an account or a transaction. The Draft Law will need to include such provisions for other types of institutions, and detailed instructions will need to be given on how the law is to be complied with.

15. Under existing requirements, banks, investment companies and money exchange companies are obliged to report suspicious transactions; currently to the CBK and subsequently to the Ministry of Finance; which then co-ordinates with the institution and suggests what further action should be taken. It appears preferable that any new financial intelligence unit (FIU) should have the obligation to pass on to the Public Prosecutor the suspicious transaction reports (STR) which needs to be further investigated. A specific provision could also be introduced to protect institutions and their employees from the consequences of any breach of confidentiality rules, regardless of whether an illegal activity has actually occurred, while enhanced efforts to provide general and specific feedback could also be useful. In the period 1997-2000, the number of STR (71) was very moderate, and most reports were actual or attempted advance fee fraud. This was probably due to the factors mentioned in paragraph 10 above.

16. A proposed new system for reporting importations of cash greater than Kuwaiti Dinar (KWD) 10,000 could be useful, though the threshold is a high one, and the obligation should also cover monetary instruments, and exports. Kuwait will need to ensure that appropriate software exists to analyse the various types of reports that will be made in the future. The internal control measures and training undertaken by banks, and the supervision applied by the CBK to banks, investment companies and money exchange companies regarding money laundering appears to be generally in line with international standards, and these sectors are focussing on the issue.

17. The CBK, through a unit in its Supervision Department, currently receives all STR and performs an initial investigation and analysis. The limited number of STR and the lack of money laundering type investigations makes it hard to assess how the current system is working and how the proposed new system might work. However, it will be important for the proposed new FIU style body in the Ministry of Finance to have staff with the appropriate expertise, access to all necessary government databases, good contacts with the financial sector, and close co-operation with all other relevant government bodies. The police and prosecution authorities have had little experience to date concerning money laundering and proceeds of crime issues, and will want to consider their capability to deal with these issues more generally. The Money Laundering Control Committee should continue to provide a focal point for co-ordination at a policy level across government as well as developing channels of communication and creating regular forums for discussion with financial sector representatives.

18. As regards international co-operation, Kuwait has taken the important first step of signing and ratifying the Vienna Convention, and can provide assistance on the basis of reciprocity even without a treaty. This will be supplemented by further explicit powers in the Draft Law to assist in cases of confiscation or provisional measures. Kuwait has received a small number of requests for international co-operation concerning money laundering, which it has responded to, though it should check that it can provide a full range of assistance, and if there are any weaknesses, remedial action should be taken. Similarly, the FIU type unit that is to be created should ensure that it can exchange STR information with its neighbours in the Gulf and elsewhere, both spontaneously and upon request.

19. Overall, Kuwait has taken initial steps to deal with money laundering, but a further series of measures are required. The Draft Law shows that the government has the political commitment to build a more comprehensive system. The criminal and money laundering problems appear to be small, and there is a commensurate absence of results in terms of prosecutions, monies confiscated and suspicious transaction reports. Despite this, Kuwait should proceed expeditiously to enact and implement a comprehensive set of penal and financial regulatory laws, regulations and guidelines, which will prevent its financial system from being misused by money launderers in the future. It is therefore important that the Draft Law reflects the measures suggested in the report, and that it is enacted by the Parliament as soon as possible.

### *Oman*

20. Narcotics trafficking and some types of economic crimes remain the only potential sources of illegal proceeds. Oman is not a producer of narcotics nor is there any significant importation of narcotics into the country, though the number of narcotics offences has increased substantially in recent years. According to the authorities, the incidence of fraud and other economic crimes that could generate illegal proceeds is very small – the most significant offences being embezzlement, counterfeiting and, to a limited extent, smuggling of gold and diamonds. In relation to the proceeds of foreign criminal offences, there have not been any cases of illegal proceeds passing through Oman, and only two requests for assistance have been received from foreign authorities. None of the suspicious transaction reports that have been made have resulted in money laundering cases, though some reports are still under investigation. The result is that, because of the absence of money laundering cases, there is no information available on money laundering methods, techniques or trends in Oman.

21. Oman's anti-money laundering laws are currently limited in scope to offences under the Law of Combating Drug and Psychotropic Substances (the Law on Drugs). Government policies and programs are aimed at creating increased awareness of money laundering among all concerned government agencies and financial institutions. Oman also intends to enhance its current system through the enactment of a new, comprehensive anti-money laundering law (the draft law). This law will establish a new offence of money laundering; provide increased powers of confiscation and international co-operation; and establish a new government committee, which shall be responsible for developing anti-money laundering policies and guidelines. This draft law is expected to enter into force during 2001.

22. Article 38 of the Law on Drugs makes it an offence to transfer or move money; for the purpose of concealing the illegal source of the money, aiding a person to commit the offence or evading the legal consequences of the act; if one had actual or constructive knowledge that the money was the proceeds of drug trafficking. Knowledge of the illegal source of money shall be presumed unless the owner proves the legality of the money. The offence also extends to prosecuting the laundering of foreign predicate offences, provided there is dual criminality, and certain other conditions, and the penalty for the offence is not less than five years imprisonment and a fine. The new offence proposed in article 2 of the draft law covers all criminal activity, wherever it may occur; the mental element of the offence can be proved on the basis of suspicion or reasonable grounds to suspect, and in any event, the defendant must prove the legitimate origin of the property. It is a very strongly worded offence, which has the potential to be most effective.

23. The existing confiscation provisions are relatively simple and have not been used to any great extent. The provisions in the draft law considerably extend the powers to seize and confiscate, but only for the crime of money laundering. It is suggested that the Government review the current powers that exist to seize, confiscate, realise and manage the proceeds of crime, consider the provisions in the new draft law and the suggestions in the mutual evaluation report, and formulate a law that provides for confiscation of all proceeds of crime. In relation to international co-operation, Oman has signed and ratified the Vienna Convention in 1991, and can provide assistance in a number of ways through bilateral agreements, MOUs or on the basis of reciprocity, and the draft law will provide further explicit powers. Despite this, enactment of comprehensive mutual legal assistance legislation could be considered. At the operational level, Oman will be able to exchange STR and other information with its neighbours in the Gulf and elsewhere, both spontaneously and upon request.

24. Oman took early steps to counter money laundering in the financial sector through a circular issued by the Central Bank of Oman (CBO) in 1991. This applied almost all of FATF Recommendations 10-21 to banks, money exchange companies and other CBO supervised institutions – thus ensuring that a large part of the financial sector was covered by the fundamental anti-money laundering measures. Controls have since been implemented to cover the insurance and securities

sectors, and the draft law will extend the basic controls to other potentially vulnerable sectors such as real estate and precious metal dealers. This provides a wide scope of coverage. The current customer identification obligations apply all the fundamental requirements, both in relation to the account holder and any beneficial owner, personal and corporate customers, whether usual or occasional. The draft law will also institute identification requirements, and Oman will need to ensure that there is consistency between the law and the circulars.

25. The present requirements to report suspicious transactions (STR) that are imposed by law or circular apply to any transactions suspected to involve criminal proceeds, and a similar obligation will be imposed under the draft law, though this should be extended to require reporting when there is an attempted transaction. The necessary ancillary provisions, such as a prohibition on tipping-off, and protection for reporting institutions either already exist or are planned under the draft law. It is also important that the government ensure that there is adequate feedback to the reporting institutions. Virtually all STR to date have been made by banks, and though there has been an upward trend in the last two years, the number of STRs is still moderate. The government will need to work with the financial sector and continue its awareness raising and training, and otherwise seek to develop the reporting system.

26. The range of internal control measures that are required under the regulatory circulars are generally satisfactory, and these will be reinforced, though not widened by the draft law. Supervision of financial institutions consists of both off-site analysis and annual on-site inspections for most institutions, and a range of sanctions are available if institutions fail to comply with their obligations. There have been increasing levels of training and awareness raising, particularly in the banking sector, and this should be continued, with increased emphasis in NBFIs sectors that are potentially more vulnerable to misuse. Detailed guidelines on the anti-money laundering obligations, the practices and procedures that should be followed, and the types of potentially suspicious activity, have been prepared for several sectors, but this needs to be completed for the remaining financial sectors. The government could also consider a system of reporting or monitoring cross border movements of cash, monetary instruments or other valuables by individuals, in addition to the current obligations that apply for commercial importation.

27. The Royal Oman Police (ROP) is responsible for receipt, analysis and investigation of STR, as well as the investigation of possible money laundering offences, and a more general financial intelligence role. The responsible unit has 10 staff, made up of police officers and analysts, and currently their resources appear to be adequate for the task. However, consideration should be given to also providing them with specialist functions related to the proceeds of crime more generally, including the operational aspects of confiscation and provisional measures. This would create a more specialised and effective resource within the ROP to deal with these issues, and could be considered in conjunction with the role of the Public Prosecution in this area. The limited number of STR and cases prevents a full analysis of the effectiveness of the ROP's work. The ROP is working closely with the CBO, MOCI and CMA but needs to have greater access and closer co-ordination with the financial institutions including direct access for follow-up inquiries. The current limited role of Customs will be enhanced under the new law.

28. Oman has proactively taken a considerable number of steps to combat money laundering, including the implementation of many of the preventive measures in a large part of the financial sector as early as 1991, and the creation of a drug money laundering offence. Oman has now prepared a draft law that fills most of the remaining legislative gaps, and which in some respects could serve as a model for the region. It has shown a high level of support and commitment towards the fight against money laundering, and Government Ministers and their officials demonstrated their willingness to pass the necessary legislation and to perfect the anti-money laundering system. Money laundering and underlying predicate crimes currently appear to be small scale, at a global level the financial sector is relatively small with few cross border transactions, and the economy is still closed in certain respects. Despite this, it is important that Oman expeditiously completes its legislative anti-money laundering system, and works to improve results in terms of prosecutions, monies confiscated and suspicious transaction reports. The speedy implementation of a comprehensive set of penal and financial

regulatory laws, regulations and guidelines, will help prevent its financial system from being misused by money launderers in the future.

## ANNEX B

### SUMMARIES OF MUTUAL EVALUATIONS UNDERTAKEN BY THE COUNCIL OF EUROPE SELECT COMMITTEE OF EXPERTS ON EVALUATION OF ANTI-MONEY LAUNDERING MEASURES (PC-R-EV)

#### *Latvia*

1. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited Latvia between 7-10 March 2000.
2. The Republic of Latvia is situated by the Baltic Sea and has a land border with Estonia, the Russian Federation, Belarus and Lithuania.
3. There is increasing drug related and economic crime: Latvia's geographical position makes it attractive as a transit country inter alia for narcotics. In the last three years smuggling offences generated the most criminal proceeds. Other than smuggling, the main sources of illicit proceeds are considered to be trafficking in drugs, trafficking in counterfeit banknotes, banking and financial fraud, corruption, unlawful business activities, racketeering, trafficking in stolen vehicles and prostitution. Approximately 2/3 of all criminality is considered to involve organised crime. These groups operate mostly in the areas of drugs offences, smuggling, car theft, prostitution, trafficking in human beings, fraud, extortion and counterfeiting.
4. The economy is still largely cash based. Particular vulnerabilities at the placement stage are the country's 228 exchange offices and 21 casinos. The Central Bank is alert to the possibilities of money laundering at the layering and integration stages given that in the banking sector half the accounts are non-resident. At the integration stage there are also vulnerabilities to money laundering arising from the privatisation process, and in respect of traders in high value goods (such as car dealers) and real estate.
5. Latvia has taken a number of significant steps to counter money laundering. They have put together a very comprehensive structure for the protection of the financial system in a regime based on suspicious and unusual transaction reporting, the latter with a range of different reporting thresholds for various institutions. This is embodied in the Law on Prevention of Laundering of Proceeds derived from Criminal Activity (the LPL), which came into force on 01.06.98. Under the LPL an administrative or intermediary FIU (the Control Service) was created, under the oversight of the Prosecutor's office for receiving, storing and analysing the suspicious and unusual transaction reports. The major elements of a separate criminal offence dealing with money laundering are set out in the LPL though it is penalised under the Criminal Law, with severe penalties.
6. It is to Latvia's credit that it has signed and ratified the 1988 UN Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention). This Convention has been effective in Latvia since 25.05.94. Likewise Latvia has signed and ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention). It has been effective in Latvia since 01.04.99.
7. The money laundering offence appears to have several strengths, though at the time of the on-site visit there were no convictions for money laundering and, indeed, no indictments had been preferred for the money laundering offence. The Latvian authorities indicated that it was implied from the legislation that money laundering can be prosecuted even if the predicate offence is committed abroad. The Latvian authorities also indicated that in theory the perpetrator of the predicate offence could be prosecuted for laundering his own proceeds. These issues are yet to be tested in the courts. The "actus reus" follows closely the language of the Strasbourg Convention – so that the range of activities capable of constituting money laundering is appropriately wide. Article 4 of the LPL lists 14 categories of predicate crime, which is said in total to comprise 39 offences referred to in the

Criminal Law<sup>1</sup>. The list is therefore extensive but not exhaustive. Though the enumerated list approach meets the basic requirements of the Vienna and Strasbourg Conventions in this area the Latvian authorities are strongly encouraged to consider the “all crimes” approach of the Strasbourg Convention, which would provide clarity and certainty that all serious offences which generate criminal proceeds in Latvia are adequately covered. The level of proof required to prove the predicate offence was considered to be a problem and guidance on this important practical aspect is needed for police and prosecutors. A further potential problem is that a very high standard seems necessary to establish the required intention. The examiners consider that the prospects for successful prosecutions for money laundering would be greatly enhanced if the mental element of the offence is reviewed. It should at least be made clear that inferences can be drawn from objective factual circumstances. Additionally allowing for prosecutions based on reasonable suspicion and negligence would improve the prosecutorial regime.

8. The Article 42 confiscation provision, taken together with Article 66 confiscation, may in theory be capable of meeting some of the policy objectives of the Strasbourg Convention. However, in practice, the examiners were not convinced that there is an effective confiscation regime in place which fully meets all the objectives of the Strasbourg Convention. The Latvian authorities should review the confiscation regime to ensure that it is capable, in a broad range of criminal offences, of depriving offenders of the proceeds of their crimes (as “proceeds” is widely defined in the Strasbourg Convention) or property the value of which corresponds to such proceeds. Equally the regime should not be capable of being frustrated by transfer to third parties (subject to the rights of the bona fide purchaser for value). Serious consideration should be given to a reversal of the onus of proof in order to establish [post conviction] to the necessary standards what are direct or indirect proceeds of crime.

9. The current regime of provisional measures appears to be used infrequently. In the pending money laundering investigations no provisional measures had been taken. Articles 120 and 121 of the Criminal Procedure Code appear to inhibit the obtaining of provisional measures either by police or prosecutors in appropriate cases. The Latvian authorities need to address this issue urgently to ensure that there is a workable provisional measures regime and in particular that the legal structure does not prevent necessary action being taken quickly to freeze accounts. The Control Service should also be given legal power to postpone transactions for a suitable period, in order for preliminary examinations and procedural decisions to be taken, without reliance on the provision of advice to the banks to this effect (which may not always be followed).

10. Latvia is a party to a large number of multilateral agreements which should provide them with a firm basis for international co-operation. However the widening of the range of predicate offences may also assist in the context of international assistance. A considerable number of international requests for judicial assistance have been received and none have so far been refused.

11. The number of authorities covered by anti-money laundering obligations is very wide and goes much further than the present international standards. There is an extended definition of financial institution which catches all those conducting financial transactions. While this formula provides for flexibility it does, in the examiner’s view, require additional clarification in order to list those undertakings which clearly have reporting obligations. The all-embracing coverage presupposes that substantial efforts should be made and ample resources should be made available for ensuring all those relevant undertakings are made aware of their obligations. The Latvian authorities need to satisfy themselves that they do have the large resources and adequate structures comprehensively to supervise and enforce such a wide obligation. The Control Service, in particular, needs to be properly resourced for its critical work on outreach as well as all its other tasks.

12. Between 01.06.98 and 01.01.00 the Control Service received 1634 unusual and 424 suspicious transaction reports, 90% of which emanated from banks. The Bank of Latvia should consider carefully the spread of reporting in the banking sector and the lack of reporting so far from the exchange houses.

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<sup>1</sup> Further amendments were brought into force after the on-site visit on 11.07.00 extending the list of predicate crimes to 41 including a further refinement of the bribery predicate offences.



The Latvian authorities might also like to reflect on whether some of the information currently received as unusual transactions could now be better focused in the light of experience.

13. The reporting obligation needs underpinning to ensure that failure to report attracts criminal liability and that senior management in obliged entities are made fully responsible and answerable for their internal systems. Responsibility for compliance issues is generally vested in a compliance officer whose status is not currently in line with FATF Recommendations.

14. Basic customer identification requirements are in place. The examiners were advised that it is impossible to keep anonymous accounts. However numbered accounts are permissible, though their extent is unknown. The Latvian authorities will need to have regard to the risk that comprehensive control procedures for identifying suspicious transactions can be greatly restricted by the handling of numbered accounts. Customer identification of corporate customers needs to be reviewed to ensure full compliance with FATF Recommendation 10. Equally legal requirements with regard to customer identification where a credit or financial institution is aware or suspects that accounts are being opened or transactions conducted on behalf of third parties should be strengthened in order to fully comply with FATF Recommendation 11 to ensure underlying beneficiaries are identified.

15. The Supervisory authorities should be assigned the duty of assessing the level of compliance of the entities falling under their responsibility with anti-money laundering obligations under the LPL. Programmes for regular inspections should be commenced quickly. Consideration should be given to including exchange offices in such examinations. Guidance should be developed on warning signs and indicators of suspicious transactions to assist financial institutions in detecting suspicious patterns of behaviour by their customers.

16. The commitment of the Control Service is beyond doubt. However, it is important that they develop direct access to police databases. The focus of the Control Service in the future should be on prioritising suspicious transaction reports and the speedy processing of financial intelligence into actual criminal cases. At the time of the on-site visit only 39 files had been passed to the prosecutor for further consideration and examination.

17. The legal process appeared to be slow and was described as “bureaucratic”. Work needs to be done to speed up the investigation and prosecution process. Latvia urgently needs some completed money laundering enquiries, some successful prosecutions and major confiscation orders. Where the legal structure is impeding police investigation unnecessary obstacles to the full use of investigative and special investigative techniques at the earliest possible stage should be removed.

18. A number of the cases passed to the police involve predicate offences of unregistered business. While this is doubtless important, more effort needs to be devoted by law enforcement generally in the money laundering context to more traditional criminal activity that generates significant proceeds, such as drug trafficking and other profit generating crimes perpetrated by organised crime.

19. Much has been done by Latvia in a very short time for which credit is given. There is still, however, more to do, building on the solid progress that has so far been made, to make the system fully operational. The Advisory Council, bringing together most of the main players in the anti-money laundering regime at a senior level, is one of the several very positive features of the system. It would, however, benefit from adopting a more strategic role, to include the periodic review of how the system as a whole is operating. The monitoring of the speed with which money laundering investigations move through the system and are turned into prosecution cases is an issue which could usefully be taken up by this body, as the anti-money laundering regime develops.

### *The Russian Federation*

20. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF), visited the Russian Federation between 27-30 June 2000.

21. The Russian Federation has had to address many interrelated difficulties during the transition to a modern free market economy. A very rapid privatisation process, particularly in 1992-1993, was accompanied by capital flight on a massive scale. Equally throughout the transition cash has remained the most important means of payment. Moreover the 1998 banking crisis, which undermined popular confidence in the banking system, increased the volume of cash savings. Coupled with this is the problem of non-declaration of income, which is a major concern of the Russian authorities.

22. The years immediately following the dismantling of the Soviet regime saw a rise in criminality which presented, and continues to present, an enormous challenge to the law enforcement authorities. Organised Crime represents a serious threat. The detection and suppression of economic crime and corruption (often associated with the privatisation process), whether perpetrated by organised crime groups or individuals alone, has been an important priority for law enforcement. Economic crime is said to have risen by 25% in the last 4 years.

23. While cash smuggling across the borders (for placement outside the Russian Federation) is known to occur, more typically, money laundering is through the financial system – particularly via the large number of banks. Frequently money laundering involves the movement of illicit proceeds through “butterfly” companies (which exist only for short periods). Their bank accounts are used to transfer money for non-existent financial transactions to offshore centres. The laundered money is then returned for integration in the Russian Federation by investment in legal commercial business, the purchase of real estate, and the purchase of shares of enterprises, particularly in the privatisation process.

24. The most critical deficiency is the absence of comprehensive laws and regulations giving effect to international standards on the prevention of the use of the financial system for the purpose of money laundering. The authorities of the Russian Federation have recognised their vulnerability to money laundering and have taken several initiatives, particularly in the last 5 years, to address this issue. At the time of the on-site visit some of the foundations for an anti-money laundering system were being put in place but there are significant gaps which urgently need to be addressed. High-level commitments to rectify this situation urgently need following through with action on a number of fronts. At the time of the on-site visit the drafting of relevant preventive legislation and discussions concerning its content were under way. It was not clear, however, what the nature, scope and ambition of the proposed enactment and associated regulations would eventually be. It is of paramount importance that a comprehensive anti-money laundering law which meets FATF standards is adopted swiftly.

25. The Central Bank has taken some positive steps to address anti-money laundering issues through the promulgation of various guidance documents (notably Directive N°500, which may be helpful in identifying some potentially suspicious outward movements of capital). It has also made some efforts to encourage the banks to perform their own risk analyses, and made efforts through its Methodological Recommendations to encourage the banks to consider themselves what are suspicious transactions, from their knowledge of their own clients. The banks have not moved forward in this area and the current Methodological Recommendations do not meet FATF Recommendation 15, including the requirement of a mandatory suspicious transaction reporting regime, which should be incorporated into the preventive law for credit and financial institutions without any monetary threshold. Consequential provision should be made for the lifting of bank confidentiality where suspicion of money laundering exists. Moreover there remains in the banking sector (and in the financial sector generally) much work to be done in education and training in order fully to sensitise all the players to the risks inherent in the money laundering threat and to build a real compliance culture. The development of an active partnership with the private sector, based on a common

understanding of the money laundering threat, is crucial. At present the banking sector, like most other organisations were unwilling to acknowledge that money laundering took place in Russian banks. The financial sector's acceptance of due diligence and the concept of "increased diligence" as described in the FATF Recommendations will be critical.

26. The Russian authorities frankly admitted that their customer identification requirements do not meet the international standards. It is understood steps will be taken to remedy this. They are urgently needed, as the lack of clear and comprehensive customer identification requirements, especially the requirements to identify the real beneficial party, leaves the Russian Federation dangerously exposed to money laundering. The Russian Federation is strongly advised to put the prohibition on anonymous/bearer accounts (and possibly coded accounts) beyond doubt in legislation. They should also introduce clear and comprehensive customer identification and beneficial ownership requirements and 5-year record retention requirements, particularly in respect of accounts opened and transactions conducted on behalf of third parties. Action is needed to develop compliance inspection regimes with anti-money laundering obligations in the forthcoming preventive law (and with regard to customer identification and record keeping rules) by the existing supervisory authorities for undertakings for which they have responsibility. Consideration should be given to the creation of other supervisory authorities where none exist at present with similar inspection functions so far as anti-money laundering obligations are concerned. Auditors and bank examiners need to have access to all documents in the bank, including access to all transaction documents.

27. The Russian authorities should also review the licensing (and revocation) procedures for credit institutions (including exchange houses) and the insurance sector. In particular the Central Bank must have an extended right to deny/revoke licences. Stricter controls need to be introduced on company formation bearing in mind the ease with which butterfly companies can be created. The examiners support efforts being made in the Russian Federation to probe more deeply into proposals for new businesses.

28. The Russian Federation signed the 1990 Council of Europe Convention ETS N°141 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention) on 07.05.99 but have not yet ratified this Convention. The Russian Federation criminalised money laundering for the first time in Article 174(1) of the new Penal Code, which entered into force on 01.01.97. It did so, in line with general international trends, on a broad basis and did not restrict the concept to drug trafficking. Article 174(1) envisages money laundering as capable of being committed in respect of funds (or possessions) acquired by knowingly illegal means. On one view this is capable of encompassing not only those actions which give rise to criminal charges but also those involving civil and administrative law liability. The examiners view this formulation as unnecessarily broad and very difficult to administer. Existing resources are unlikely to permit adequate investigative and prosecutorial resources to be devoted across the full range of predicate offences.

29. Article 174 appears to have been utilised in practice. Numerous investigations have been undertaken. The Russian authorities have advised that [Article 174] offences were registered and investigated as follows: in 1997, 241; in 1998, 1003; in 1999, 965. As a result 149 cases were submitted to the courts in 1997; 745 in 1998 and 679 in 1999. There were said to be 15 convictions involving money laundering in 1998 and 21 in 1999. The nature of the predicate offences in these cases was not known. The wide disparity between the numbers of investigations compared with the numbers of convictions raises doubts as to the practical overall effectiveness of the current legal framework. Notwithstanding the above the examiners consider the language of Article 174 should be revisited urgently as part of the ratification process of the Strasbourg Convention to ensure that the criminal offence fully reflects the requirements of Articles 1 and 6 of that Convention. Indeed consideration should be given to the introduction of a comprehensive money laundering statute clearly focused on criminal proceeds. Equally the use of the "knowledge" standard in proving the mental element of the offence constitutes a major difficulty and should be revisited. Consideration should also be given to utilising negligent money laundering, as is envisaged in the Strasbourg Convention.

30. A positive feature is that Article 174 covers “own funds” laundering. However, a number of the prosecutions, of which the examiners were aware, appeared to involve charges of “own funds” laundering, brought together with charges against the same defendant for the predicate crime. The appropriate authorities must guard against prosecuting self-laundering at the expense of bringing money laundering proceedings independently against and affording priority to separate investigations involving professional money launderers.

31. The Russian Federation has in place an established system of confiscation though it does not fully correspond with the concept as it is envisaged in the major multilateral treaties. In any event the system appeared not to be routinely used in money laundering and other relevant cases. It is necessary therefore to identify what legislative changes are required to ensure that the confiscation and provisional measures regime corresponds to the wide concept of “proceeds” in the Strasbourg Convention and the 1988 UN Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention). Thereafter, in the process of ratification of the Strasbourg Convention, action should be taken in a timely fashion to ensure there is in place a system which enables the Russian Federation to identify, trace, freeze or seize and eventually confiscate criminal proceeds in their widest sense. As part of this process it should be ensured that effective and timely international co-operation can be granted and received in all cases and especially in relation to the tracing, seizing, freezing and confiscation of the proceeds of crime.

32. The Russian Federation is a party to the Vienna Convention and several other important multilateral instruments including the 1957 European Convention on Extradition and its First and Second Protocol. The 1959 European Convention on Mutual Assistance came into force in the Russian Federation in March 2000. The Russian Federation has designated a multiplicity of channels of communication in respect of requests for assistance by Letters Rogatory. It is recommended that the adequacy in practice of the current administrative arrangements in this regard be subject to consideration at the end of their first full year of operation.

33. On the law enforcement side generally the Russian Federation still has a long way to go before it can be said to have a real operational system in place to fight money laundering. At the time of the on-site visit the “Interagency Centre for preventing Legalisation (Laundering) of Illegally Acquired Income” (the Centre), established by an order of 14.05.99, and affiliated to the Ministry of the Interior, was acting as the focal point in the anti-money laundering effort. The Centre is an operating unit, drawing on representatives of relevant agencies, though in its present transitional state it appeared in some ways more akin to a working group of delegates from individual departments than a central FIU. That said, since its creation, it has achieved a considerable amount of financial analysis. It was understood to have initiated, as a result of its analyses, 442 criminal investigations for a variety of offences, including 132 criminal cases under Article 193 of the Penal Code (which criminalises capital flight), as well as money laundering. It was by no means certain however that the Centre would become the Russian Federation’s FIU. While the decision on the structure and site of the FIU is a domestic matter the examiners urge a speedy final decision on the creation of a permanent and independent FIU, which should meet the Egmont definition, and be properly resourced in terms of personnel and IT to refer cases to law enforcement.

34. Investigation of money laundering matters is within the competence of many different agencies, each with their own perceptions of the money laundering problem. The examiners were left with the overall impression of investigative resources being spread thinly, which needs to be addressed. Consideration needs also to be given to the provision of additional gateways for law enforcement to obtain at an earlier stage banking information which is currently protected by bank secrecy.

35. It is necessary also to address the apparently common view that money laundering is an issue primarily related to economic, fiscal and revenue offences, as well as capital flight and non-declaration of income derived therefrom. Greater emphasis needs to be given on the investigative side (and resources to be provided) in order to ensure that the financial aspects of all major criminal proceeds generating offences are routinely investigated. Consideration should also be given to the provision of

guidance to prosecutors on the use of Article 174, which, as well as encouraging them to use Article 174 independently of a charge for a predicate offence, should also ensure that proper priority is given to money laundering prosecutions and investigations in cases which arise in the context of serious crime beyond the economic/tax/revenue predicate. Priority needs to be afforded to investigations and prosecutions of money laundering cases which arise in the context of drug trafficking, organised crime and other serious profit generating criminal activities. Indeed, attacking organised crime and its profits through money laundering prosecutions (and the obtaining of significant confiscation orders) in respect of serious proceeds generating offences will be critical indicators of success.

36. The Russian authorities may also wish to set up a high-level co-ordination body *inter alia* to review periodically how the whole system is operating and to assess the effectiveness of new initiatives.

37. In this way the Russian Federation can make further progress towards the creation of an anti-money laundering system which meets international standards.

### *The Republic of San Marino*

38. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited the Republic of San Marino between 21-24 February 2000.

39. Due to the small size of the country, San Marino does not experience the common forms of domestic organised crime, such as drugs trafficking or alien smuggling. Crime rates are rather low compared to other European countries. Nevertheless, its open borders with Italy and its developed financial system, combined with a very attractive business sector, make San Marino vulnerable to money laundering operations, e.g. by international organised crime.

40. The relevant policy objectives of the San Marino Government in the area of money laundering control at present include the ratification<sup>2</sup> of the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime [the Strasbourg Convention], as well as the adoption of corresponding domestic legislation in the area of criminal procedural law. San Marino also contemplates stepping up its efforts to enhance international police and judicial co-operation and, in this context, it plans to sign and ratify the relevant Council of Europe treaties on mutual assistance in criminal matters<sup>3</sup> and extradition<sup>4</sup>.

41. Though San Marino has not yet ratified the Strasbourg Convention<sup>5</sup>, nor the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances [the Vienna Convention]<sup>6</sup>, it has taken steps to criminalise money laundering by adopting the Law N°123/1998 Against Money Laundering and Usury [Law 123], which introduced the offence of money laundering in the Criminal Code as Article 199 bis.

42. The scope of application of the money laundering offence under Article 199 bis of the Criminal Code is broad: it penalises any person who conceals, substitutes, transfers, co-operates or intervenes in order that others may conceal, substitute or transfer money obtained by others, for the purpose of concealing its true origin, derived from the commission of a non-negligent and non-contraventional offence, knowing or being evident that such money is proceeds. It also penalises those who use, co-operate or intervene to obtain the use, in economic or financial activities of money

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<sup>2</sup> San Marino signed the Strasbourg Convention on 16 November 1995 and ratified it on 12 October 2000.

<sup>3</sup> San Marino signed the European Convention on Mutual Assistance in Criminal Matters on 29 September 2000.

<sup>4</sup> San Marino signed the European Convention on Extradition on 29 September 2000.

<sup>5</sup> See footnote 2.

<sup>6</sup> San Marino signed the Vienna Convention on 10 October 2000 and acceded to it on the same date.

obtained by others from the commission of a non-negligent and non-contraventional offence, knowing or being evident that such money is proceeds. The predicate offences under Article 199 bis include any intentional criminal offences, i.e. criminal offences which are not involuntary or contraventional in nature. The list of predicate offences is therefore an open one. The examiners were advised that fiscal offences are also predicate offences, provided that the fiscal dues and relative administrative fine have not been previously paid, because such a payment extinguishes punishability for the offence. The laundering of “own-funds” is excluded from the scope of the offence, since the text refers to “money obtained by others”. The money laundering offence remains punishable even if the predicate offence has been committed in a foreign jurisdiction, provided the fact constituting the predicate offence is criminally actionable in San Marino. The examiners observe that there have so far been no convictions obtained under Article 199 bis of the Criminal Code. The examiners recommend that consideration be given to the introduction of negligent money laundering. The possibility of introducing corporate criminal liability also deserves close consideration.

43. Confiscation in general is provided for in Article 147 of the Criminal Code. As a rule, confiscation is a consequence of the offender’s conviction for an offence and it applies to the instrumentalities and intended instrumentalities of the offence, being the property of the offender. It also applies to things which represent the price, the product or “the profit” of the offence. Special confiscation provisions apply with respect to money laundering offences under Article 3 of Law 123, which provides that conviction for an offence established under Law 123 results in the confiscation of the money and other assets or proceeds derived from the offence, without prejudice to the other provisions on confiscation in the Criminal Code. The examiners were told that property acquired with money derived from a criminal offence is also liable to confiscation, provided a sufficient link with the predicate offence is proved. Where confiscation is not possible, then the judge imposes an obligation on the offender to pay a sum of money, up to the value of the proceeds. Money laundering-related confiscation can therefore be property-based and value-based.

44. There are no special provisional measures provided for in the Anti-money Laundering Law. The applicable provisions are therefore the general provisions in the Code of Criminal Procedure. The provisions especially pointed out to the examiners in this context were Articles 59 (arrest and seizure), 68 (search) and 78 (seizure) of the Code of Criminal Procedure. Coercive measures require a warrant from a judge or law commissioner under Article 53 of the Code of Criminal Procedure. Decisions concerning arrest and seizure may be contested within ten days from service or execution, but in cases of urgency, the police may seize the *corpus delicti*, instrumentalities and related objects. Such seizures are notified within 48 hours to a law commissioner, who must validate the measure within the next 96 hours, failing which, the measure is deemed revoked. These measures allow the identification, tracing and evaluation of assets subject to confiscation.

45. As far as international co-operation is concerned, San Marino has not yet ratified<sup>7</sup> either the Strasbourg or the Vienna Conventions, nor the European Convention on Mutual Legal Assistance in Criminal Matters<sup>8</sup> or the European Convention on Extradition<sup>9</sup>. The examiners were informed that San Marino was seeking to accede to the Vienna Convention as soon as possible and that this had not been done yet not for lack of will but because of the limited human resources available. It was pointed out that San Marino has been a member of the United Nations only since 1992.

46. San Marino can, however, co-operate with other countries, on the basis of bilateral treaties or reciprocity. Bilateral extradition treaties exist with a limited number of States, including the United States of America, Belgium, the Netherlands, the United Kingdom, France and Italy. All these treaties, with the exception of that with Italy, take the “list approach” to extraditable offences. Therefore, extradition for money laundering offences under these treaties does not appear possible. The treaty with the United Kingdom does contain a provision which allows extradition at the discretion of the

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<sup>7</sup> See footnotes 2 and 6.

<sup>8</sup> See footnote 3.

<sup>9</sup> See footnote 4.

requested country for other unlisted offences, provided the offence is extraditable, according to the laws of both States. The treaties with Italy and France also contain provisions on mutual legal assistance in criminal matters. Neither of them is specifically concerned with money laundering.

47. In the absence of bilateral or multilateral mutual assistance treaties, San Marino's judicial authorities may provide general investigative assistance in criminal matters to other states provided they receive the go-ahead from the political authorities, which, in the absence of a treaty or other agreement, make a political assessment of whether the request should be processed or not. A similar position exists as regards extradition: in the absence of an extradition treaty, a person may still be extradited to the requesting country, subject to the necessary political authority to proceed. However, the extradition of nationals is in general prohibited, unless it is otherwise expressly agreed by treaty. In so far as existing treaties are concerned, the extradition of own nationals is only prohibited by the treaty with Italy, but in this case, there is an obligation to prosecute. In the other treaties, the extradition of own nationals is discretionary and, in the case of France, there is an obligation to prosecute if extradition is refused.

48. The authorities of San Marino can also provide legal assistance to foreign states seeking the production and seizure of records of financial institutions, legal persons, and private persons, and for searches in the offices or homes of such persons. Assistance may also be given where the foreign state is seeking the identification, freezing, seizure and confiscation of the proceeds of money laundering, of a predicate offence or of property corresponding in value to such proceeds. With respect to confiscation, San Marino can only co-operate in the enforcement of confiscation orders, if they are based on a conviction. San Marino, however, does not have the legal means to share with another country the assets confiscated as a result of a co-operative investigation, nor does it have the legal means to receive shared assets from another country.

49. The San Marino authorities can spontaneously and upon request pass on suspicious transaction information to competent foreign authorities. Such information is channelled through the Office of Banking Supervision (the OBS) to the FIUs of other States subject to a Memorandum of Understanding having been concluded between them. Even if the wording of Article 10(4) of Law 123 explicitly provides that the Office of Banking Supervision may collaborate "with the supervising authorities of other States to mutually facilitate the prevention of and the fight against money laundering", San Marino authorities assured<sup>10</sup> the examiners that the OBS could exchange information with such foreign FIUs, without a supervisory function over banks but with a supervisory function over anti-money laundering activities. The examiners recommend to put this beyond doubt through a legislative amendment.

50. On the preventive side, all credit and financial institutions<sup>11</sup>, whether bank or non-bank, subject to the supervision of the OBS ("authorised intermediaries") are obliged, under Law 123, to identify customers when opening an account, accepting deposits or entering into business relations with them (including the rental of safety boxes), transferring or using of payment instruments for amounts exceeding ITL 30 million, or when carrying out, in a given period of time, a series of transactions below this threshold, but considered as part of a single transaction. If such transactions are carried out on behalf of a third party, the latter has to be identified. Customer identification data and data relating to the above transactions have to be recorded and kept for 5 years. In addition, "authorised intermediaries" are legally bound to report suspicious transactions to the OBS. Law 123

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<sup>10</sup> Such an assurance was given during the on-site visit, but in its comments to the draft of Report, the San Marino Government could not support the above language, as it suggests firmly that the OBS already has the capability of exchanging information with any type of foreign FIU. As a result of this situation, a new recommendation has been added in the report by the evaluation team so as to ensure that San Marino "removes all obstacles to the OBS exchanging information with any foreign FIU, even if it might not have a supervisory function over banks."

<sup>11</sup> The non-financial sector is not covered by Law 123. Insurance companies are therefore not subject to the supervision of OBS, but those which operate in San Marino are all foreign (Italian) branches, which through their mother companies are subject to Italian supervision. There are no casinos in San Marino.

also provides a limitation on the use of cash, as transactions exceeding ITL 30 million (15,500 euros) have to be carried out through the “authorised intermediaries”. According to Article 10 of Law 123, the OBS is granted supervisory powers over the banking sector and, as such, is responsible for ensuring compliance, e.g. with the anti-money laundering regulations. It is also authorised to issue implementing circulars in respect of Law 123. Thus, Circular N°26 of the OBS, issued on 27 January 1999, further specifies the “due diligence” obligations imposed upon “authorised intermediaries”, particularly as far as customer identification, recording and record-keeping, reporting of suspicious transactions and issuing bank drafts and cheques are concerned. Sanctions for non-compliance with the “due diligence” obligations under Law 123 include administrative fines imposed by the OBS.

51. The OBS is the main supervisory authority responsible for the implementation of Law 123. In this capacity, it is empowered to carry out general or sectorial inspections in all credit and financial institutions subject to its supervision, including inspections related to the implementation of anti-laundering regulations. In consideration of the many functions of the OBS under the legislation in force, the examiners deem it necessary to strengthen this body, most of all with a view to creating a unit specifically responsible for carrying out anti-money laundering inspections. The OBS is also the disclosure-receiving agency and, as such, is obliged, under Law 123, to report to the Civil and Criminal Court any facts that may constitute a crime under this law. The OBS has a duty to ascertain that the disclosure is “well-grounded” and obtain further information for its investigations. Since 1996<sup>12</sup>, the OBS has received 5 disclosures, but they were all received after the entry into force of Law 123 (January 1999). Three of these disclosures are likely to be transmitted to the judicial authorities. No conviction for money laundering has yet occurred in San Marino, nor were any proceeds confiscated. The examiners consider that the OBS’s multiple functions prevent it from playing effectively its role as an FIU, and either a separate FIU should be set up, or the OBS’s powers and resources should be strengthened with regard to its anti-money laundering functions.

52. On the law enforcement side, the three different law enforcement agencies do not seem to be sufficiently involved in the fight against money laundering and in this context have a rather passive attitude. Police powers are not specifically tailored to helping financial investigations and there seem to be co-ordination problems as no specific agency is designated to deal with money laundering.

53. In the light of the above, the examiners consider that the overall San Marino anti-laundering system has a solid legislative basis, but it so far has produced rather limited operational results in terms of number of disclosures (in total 5, out of which 3 were likely to be transmitted to the judicial authorities). These rather limited operational results are partly due to the recent introduction of the relevant legislation in San Marino, together with the rather high level of suspicion required to trigger a disclosure, the limited financial intelligence work and reactive policing in the field of economic crime. International co-operation, which is still subject to political control in the area of non-treaty based mutual assistance, is hampered by San Marino’s lack of adherence to multilateral treaties and to the small number of bilateral treaties. The San Marino authorities therefore need to take stock of the existing arrangements, machinery and legal provisions under the current anti-laundering regime. While many building blocks for a sound anti-laundering regime are in place, there is a need to take positive action in each sector to develop a system which works as a whole, both to meet the challenges San Marino faces and to fully conform to the applicable international standards. In this regard, the recent ratification<sup>13</sup> by San Marino of the Strasbourg Convention is welcomed by the examiners.

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<sup>12</sup> Under Decree N°71 of May 1996, credit and financial institutions subject to the OBS supervision were required to “report, under specific circumstances, on transactions” carried out in cash or bearer instruments exceeding ITL 80 million.

<sup>13</sup> See also footnote 6.



## *Ukraine*

54. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF), visited Ukraine between 22-25 May 2000.

55. Most criminal activity in Ukraine appears to have an economic purpose. While drug use is increasing, the Ukraine remains primarily a transit route in view of its geographical situation at the centre of Europe. Three primary areas of criminal activity are thought broadly to generate illegal proceeds: smuggling (of drugs, human beings and arms); fraud and tax evasion including the illegal manipulation of the privatisation process; and corruption. It is believed that most crime is conducted by groups, as opposed to individuals. Tackling organised crime is a major law enforcement priority.

56. The Ukraine is seriously vulnerable to money laundering. While some limited steps have been taken, there is still much work to be done to create an anti-money laundering system. There are currently significant deficiencies in all sectors. Paramount among these is the absence of a comprehensive anti-money laundering preventive law.

57. The economy is primarily cash-based, with limited use of non-cash financial instruments. This exposes Ukraine to money laundering at the placement stage. The commercial banks have therefore been the focus of Ukraine's first efforts at addressing money laundering through development of some rules on customer identification. There are also clear vulnerabilities at the placement stage in the exchange houses (of which the precise numbers are uncertain but which are estimated at about 5000) and in the casinos, which have money remitting services and currency exchange services attached to them. The number of casinos is not known. The casinos were not at the time of the on-site visit subject to any registration or licensing regime. The Ukrainian authorities reported that money laundering is often achieved through "payments" by front companies, under fictitious external contracts with fictitious companies overseas via offshore banks. Such money is often reinvested in Ukraine through the privatisation process. The purchase of real estate and luxury cars can also offer opportunities for money laundering at the integration stages.

58. It was generally accepted that some of the main outflows of money from Ukraine were unpaid taxes, facilitated by the use of front companies. It was, however, less clear to the examiners how far all the relevant authorities had fully analysed the extent and movement of proceeds, which are in fact produced by major non-revenue profit-generating offences. The examiners perceived that there is, at present, an incomplete understanding of the money laundering problem in the Ukraine by the Ukrainian authorities. Numerous agencies were seeking to craft responses to the money laundering threat without a real sense of the overall problem. The examiners strongly advise therefore that, as a first step, consideration is given to convening a seminar of all relevant ministries, regulators, bank representatives, prosecutors and investigators to develop a greater understanding of how criminals launder their money in Ukraine and how they move their funds into foreign accounts.

59. On the legal side, Ukraine has signed and ratified the 1988 United Nations Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), which came into force in 1991 and the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention), which came into force on 01.05.98. The examiners were advised that both these Conventions were directly applicable in Ukrainian law. Nonetheless concerns were expressed that national legislation had not been brought into conformity with those Conventions at the same time, and work is ongoing to supplement the Conventions with further domestic legislation. As a result of the ratification of the Vienna Convention, Article 229 (12) of the Criminal Code was introduced in 1995, criminalising drug money laundering. Cases of drug money laundering have been investigated, though there have been no convictions. A new article in the Draft Criminal Code is intended to widen the range of predicate offences the proceeds of which can be the subject of money laundering investigations and prosecutions. The examiners urge speedy introduction of such a provision, and it is important that it covers all the physical aspects of the offence, as envisaged in the existing international conventions. The mental

element of the offence would benefit from revisiting in the light of experience with the provisions. In the passage of the new criminal offence it may be helpful to consider additionally a mental element based on reasonable suspicion with lesser penalties. Consideration should also be given to the introduction as envisaged in the Strasbourg Convention of the concept of negligent money laundering.

60. The examiners were advised that there have been some successful confiscations, but the basis of these orders and their extent were not clear. In the view of the examiners, the confiscation regime should be carefully reviewed by the Ukrainian authorities to satisfy themselves that it is capable of confiscating both proceeds (with the wide meaning that is attached to the term by the Strasbourg Convention) and instrumentalities. The regime should not be capable of frustration by transfer of proceeds to third parties. It should be ensured that value confiscation orders can be made.

61. The examiners were also advised that the Ukrainian authorities have had some success in obtaining provisional measures in criminal cases. It was noted, however, that no provisional measures had been taken in any of the 39 drug money laundering investigations that had been opened. The examiners consider that the provisional measures regime should also be revisited to ensure there is full legal provision to identify, trace and seize property and freeze accounts with a view to confiscation of proceeds, as widely defined in the Strasbourg Convention.

62. Criminalisation of failing to report and “tipping off” is urged when a preventive regime is in force. Careful consideration should also be given to the introduction of corporate criminal liability.

63. The number of international legal instruments signed in a relatively short period of time by the Ukrainian authorities and the growing number of bilateral agreements demonstrate the country’s willingness to co-operate internationally. Presently, the range of mutual assistance in money laundering cases is limited only to drug money laundering cases, and early enactment of a broader based money laundering offence is urged in this context also. It would be helpful in particular to the international co-operation regime if the Ukrainian authorities inserted into their law the procedure for the enforcement of foreign confiscation orders in case problems arise in the implementation of the Strasbourg Convention.

64. The preventive side is a very long way from being in line with the 40 FATF Recommendations and the European Union Directive of 10 June 1991 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering (91/308/EEC). It is critical that the Ukraine demonstrates its political will to fight money laundering by passing a comprehensive anti-money laundering law quickly, which meets FATF standards, and that a preventive system becomes fully operational rapidly. Currently the banks, and the other main actors in the financial system, are not required to detect and/or report suspicious transactions. Indeed, the detection of suspicious transactions appears at present not to be within the priorities of the banks.

65. The examiners have seen a draft of a preventive law but the timescale for its enactment was not clear. Similarly it was unclear whether the draft seen was the final one. In any event it would broadly apply to a range of natural and legal persons conducting “financial operations”, as defined. The examiners strongly recommend that a mandatory suspicious transaction reporting regime is incorporated into the law without any monetary threshold.

66. There is much work to be done in building the co-operation of the financial sector in order that the preventive law does not fail for lack of compliance, as was understood to be the case with a reporting system in respect of dubious cash movements set up under the 1993 Law on the Principles of Combating Organised Crime. The examiners consider the development of a partnership approach between the authorities and the financial sector will be critical to the success of the Ukraine’s fight against money laundering. To support this, it is necessary to establish clear legal provisions protecting financial institutions and their staff from criminal and civil liability in respect of disclosures made in good faith and to design systems for appropriate feedback. A supervisory regime for anti-money laundering obligations needs to be introduced (where there are existing supervisory authorities) with supervisors who are sensitised to the money laundering threat. Active consideration needs to be given

to the regulation and supervision of anti-money laundering obligations in the exchange houses and the casinos.

67. Some action has been taken to stop the opening of anonymous accounts by a Presidential Decree in 1998, which annulled an earlier decree which allowed anonymous accounts to be held by residents and non-residents. Coded accounts are permitted, though their extent is unknown. When the preventive law is passed, the Ukrainian authorities will need to have regard to the risk that comprehensive control procedures for identifying suspicious transactions can be greatly restricted by the handling of numbered accounts. Moreover, customer identification and record-keeping obligations for the opening of normal accounts currently apply only to banks and these need to be extended to all financial institutions. Clear provision should be made to ensure steps are taken to verify beneficial owners when an account is opened (or a transaction is conducted).

68. Stricter controls on the licensing of banks and exchange houses need to be put in place, and consideration is urged of a requirement whereby the source of original capital is checked as part of the licensing process. The National Bank of Ukraine should have powers to revoke licences if money laundering or criminal infiltration has been established. The Ukrainian authorities will also wish to satisfy themselves that they have a proper system in place to guard against criminal involvement in the ownership of casinos. Given the concerns expressed to the examiners about the use of “front” and “shell” companies as vehicles for money laundering, the company licensing regime should be urgently considered with a view to the development of strengthened powers on business licensing.

69. A range of law enforcement agencies are pursuing anti-money laundering matters. Some, such as the Tax Administration, are working hard, according to their own priorities and perspectives on money laundering, and are having some modest successes. However the current lack of convictions and restraint orders in drug money laundering cases indicates an ineffective response so far to the overall money laundering threat by law enforcement. The Ukraine urgently needs some successful money laundering prosecutions and confiscation orders arising from traditional criminal activities associated with organised crime. Proper priority should be given to investigations and prosecutions in serious profit-generating criminal activities. Any unnecessary obstacles in the investigative process caused by banking secrecy should be identified and removed. Prosecutors and investigators, as well as needing to develop a clearer understanding of the techniques involved in money laundering, need to agree a common approach to the minimum evidential requirements for launching money laundering prosecutions, and receive more training and support in the techniques of financial investigation.

70. In the absence of an FIU there is no one body at the centre of the national anti-money laundering effort. Consequently there was inadequate communication and co-ordination across the law enforcement agencies. The creation of an FIU will therefore be central to the success of the Ukraine’s overall fight against money laundering. The FIU, when it is established, should meet the definition for Egmont Group Membership and in due course apply to join that group. Planning for the FIU needs to start immediately and consideration should be given to making it a multi-agency unit. Indeed, the process for implementing the law as a whole should begin in advance of its enactment and it is recommended, additionally, that a co-ordination body is set up at a suitably senior level, including all the main players in the anti-money laundering regime, to develop joint ownership of an action plan.

71. By pursuing these recommendations urgently, the Ukrainian authorities can make progress towards rectifying the current deficiencies and make progress towards meeting the international standards.

## ANNEX C

### SUMMARIES OF MUTUAL EVALUATIONS UNDERTAKEN BY THE OFFSHORE GROUP OF BANKING SUPERVISORS (OGBS)

#### *Jersey*

1. Jersey has in place a robust arsenal of legislation, regulations and administrative practices to counter money laundering. The authorities clearly demonstrate the political will to ensure that their off-shore financial institutions and the associated professionals maximise their defences against money laundering, and co-operate effectively in international investigations into criminal funds. The standards set by Jersey are close to complete adherence with the FATF's 40 Recommendations with a few remaining areas where the appropriate changes will allow these standards to be met.
2. Jersey ratified the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1997, and in 1999 extended its legislation on money laundering to all serious crimes. Jersey is now largely in line with the legal system that exists in the United Kingdom, but this system is still relatively new, and to some extent Jersey is a jurisdiction in transition. The money laundering offences are broad, and cover a wide range of offences (all offences with a maximum of over one year imprisonment). There is a requirement to report suspicious transactions, backed up with effective measures to prevent tipping off, and to provide the necessary protections to those who submit reports. There is no banking secrecy legislation, and the requirement for confidentiality is overridden by the anti-money laundering legislation and other relevant laws. The Evaluation Team noted that the 1999 legislation includes an obligation to report suspicious transactions but which appears to set a lower level of obligation than the longer-standing legislation related to drugs and terrorism. This report recommends that Jersey impose a direct and unambiguous mandatory reporting obligation in all cases involving criminal activity. The 1999 Law also provides the Jersey authorities with wide ranging powers for the confiscation of criminal assets. The Evaluation Team endorses the authorities' intention to enhance these further in order to meet the requirements of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation. Jersey should also consider enhancing its powers to confiscate suspicious cash imports.
3. Recent legislative developments have removed the most significant constraints on co-operation between Jersey and other jurisdictions, and the Jersey authorities now have a good record of co-operation with overseas requests for assistance, on both regulatory and criminal matters. The wide range of predicate offences in Jersey law prevents the requirement for "dual criminality" from hindering co-operation, including cases involving tax crimes. To ensure that intelligence can be passed more readily to overseas authorities, this report recommends removal of the provision in the 1999 legislation which requires the Attorney General to authorise the passage of financial intelligence overseas. The law enforcement authorities are also encouraged to develop a wider range of international contacts, and to sign more Memoranda of Understanding with their most important partners.
4. Jersey does not appear to have been totally successful at pro-active investigation of money laundering, and examples where investigations have been initiated on the Island are rare. The creation of a new financial crime unit, with new resources, provides an excellent opportunity to implement a new, pro-active enforcement strategy - bringing together the expertise of the police, customs and regulators. This strategy would involve more effective analysis of the financial intelligence available to the authorities, and closer co-operation with other jurisdictions. The authorities need to provide sufficient resources to ensure this strategy can be implemented effectively.
5. The system of financial regulation is comprehensive and effective. The Money Laundering Order 1999 sets a high standard, and applies that standard to a very wide range of financial institutions and professionals. The money laundering guidance notes provided by the Financial Services Commission (FSC) give clear advice to the financial sector on the risks they face from money

launderers. The FSC is stepping up its anti-money laundering compliance activities, and enhancing its visibility amongst the regulated institutions. It can employ wide-ranging sanctions for non-compliance, although Jersey should consider supplementing these with a power to levy administrative fines.

6. The compliance culture of the financial sector in Jersey - judged principally by the number and pattern of suspicious transaction reports - appears mixed. The majority of reports are submitted by a small number of institutions - generally branches of UK banks. The authorities need to do more to analyse the cumulative intelligence provided by these reports, and to use that information to direct their regulatory efforts and to co-ordinate their efforts to raise awareness of money laundering issues.

7. The Jersey authorities propose to tighten up regulation in the company and trust sectors, which they regard as the most vulnerable to money laundering. This report strongly endorses the authorities' plans to regulate, license and supervise company and trust service providers. This measure places Jersey at the forefront of international efforts to prevent the abuse of company structures for criminal purposes. To ensure this legislation succeeds in reducing the extent to which company service providers and other financial intermediaries can be used for the purpose of money laundering, the authorities need to remove an important loop-hole in the system. Under the arrangements for introduced business, where the owner is represented by a regulated intermediary - such as a company service provider, lawyer or accountant - there are circumstances in which a financial institution need not verify the beneficial owner of funds. In the view of the evaluators, this represents a potentially serious gap in the system, and the report proposes that the authorities set out an over-riding obligation on all financial institutions in Jersey to know the beneficial owner of the funds with which they deal.

8. The evaluators consider that the Jersey authorities have constructed a comprehensive anti-money laundering system whose success will be measured by the effectiveness of its implementation, and that the adoption of the proposals contained in this report will ensure it complies with the best international standards. Finally, the evaluation team would like to repeat their thanks to the authorities on the island for the constructive way in which they participated in the mutual evaluation process.

### *Guernsey*

9. The Bailiwick of Guernsey, encompassing Guernsey, Alderney and Sark, now has in place a robust arsenal of legislation, regulations and administrative practices to counter money laundering. The introduction of all-crimes money laundering legislation and regulations (subsequent to the evaluation visit) at the beginning of the year 2000 marked a major step forward. In the steps they have taken to deter and detect money laundering the authorities have demonstrated the political will to ensure that their off-shore financial institutions and the associated professionals, maximise their defences against criminal funds. The authorities are also determined to co-operate effectively in international investigations into criminal funds. Although the standards set by Guernsey are close to complete adherence with the FATF's 40 Recommendations, there are a number of important areas where appropriate changes would allow these standards to be met unambiguously.

10. The all-crimes anti-money laundering system is still very new, and to some extent Guernsey is a jurisdiction in transition. The money laundering offences are broad, and cover all indictable offences – including tax evasion. The suspicious transaction reporting system is backed up with effective measures to prevent tipping off, and to provide the necessary protections to those who submit reports. There is no banking secrecy legislation, and the requirement for confidentiality is overridden by the anti-money laundering legislation and other relevant laws. The Evaluation Team noted that the new legislation includes an obligation to report suspicious transactions, rather than a direct obligation to report. This provides a defence from the money laundering offences in circumstances where a report has been made. The evaluation report recommends that the authorities impose a direct and unambiguous mandatory reporting obligation in all cases involving criminal activity.

11. Recent legislative developments have removed the most significant constraints on co-operation between Guernsey and other jurisdictions, and the Guernsey authorities have a positive record of co-operation with overseas requests for assistance, on both regulatory and criminal matters. The wide range of predicate offences in Guernsey law prevents the requirement for dual criminality from hindering co-operation, even in cases involving tax crimes. However, Guernsey is not yet able to ratify the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, or the Council of Europe Convention on Laundering, Seizure and Confiscation of the Proceeds of Crime. The evaluators endorse Guernsey's proposals to plug the remaining gaps which prevent them from ratifying these important conventions. Guernsey should also consider enhancing its powers to confiscate suspicious cash imports.

12. To ensure that intelligence can be passed more readily to overseas authorities, this report recommends removal of the provision in the 1999 legislation which requires the Attorney General to authorise the passage of financial intelligence overseas. The law enforcement authorities are also encouraged to develop a wider range of international contacts, and to sign more memoranda of understanding with their most important partners.

13. Although Guernsey responds effectively in cases instituted overseas, the authorities do not appear to have been as successful at pro-active investigation of money laundering, and examples where investigations have been initiated on the Island (in respect of off-Island activity) are rare. This report recommends a package of measures to improve the capacity of the authorities to mount successful investigations at their own initiative, by bringing together the expertise of the police, customs and regulators within the context of a new, pro-active enforcement strategy. This strategy would involve more effective analysis of the financial intelligence available to the authorities, and closer co-operation with other jurisdictions. The authorities need to provide sufficient resources to ensure this strategy can be implemented effectively.

14. The system of financial regulation appears to be comprehensive and effective. The Criminal Justice (Proceeds of Crime) Regulations set a high standard, and apply that standard to a very wide range of financial institutions and professionals. The money laundering guidance notes produced by the Financial Services Commission (FSC) give clear advice to the financial sector on the risks they face from money launderers. The evaluators propose that the customer identification requirements are extended to business relationships formed before the introduction of the 1999 law, and that the record-keeping requirements are clarified, to ensure that all relevant records are held for a full 5 years. This report supports the FSC's programme to step-up its anti-money laundering compliance activities, through greater use of on-site inspections. The FSC can employ wide-ranging sanctions for non-compliance, although they should consider supplementing them with a power to levy administrative fines.

15. The compliance culture of the financial sector in Guernsey - judged principally by the number and pattern of suspicious transaction reports is not easily assessed. The authorities are encouraged to initiate an analysis of the pattern of suspicious transaction reporting, and to address areas - such as the legal and accountancy profession - where reporting is low.

16. Abuse of corporate and trust vehicles has been a significant problem for Guernsey, most notoriously through the Sark Lark. Sark, which has no company law, has 575 residents holding 15,000 company directorships between them. Arrangements for the oversight of the fiduciary sector in the Bailiwick as a whole have also been insufficiently rigorous, with the result that the sector has been particularly vulnerable to money laundering. The Guernsey authorities have proposed significant changes to tighten up regulation in the company and trust sectors. This report strongly endorses the authorities' plans to regulate, license and supervise company and trust service providers. If enacted in Guernsey, Alderney and Sark, these measures would place the Bailiwick of Guernsey at the forefront of international efforts to prevent the abuse of company structures for criminal purposes. To ensure this legislation succeeds in reducing the extent to which company service providers and other financial intermediaries can be used for the purpose of money laundering, the authorities need to remove what the evaluators consider to be an important loop-hole in the system. Under the arrangements for

introduced business, where the owner is represented by a regulated intermediary - such as a company service provider, lawyer or accountant - there are circumstances in which a financial institution need not verify the beneficial owner of funds. In the view of the evaluators, this represents a potentially serious gap in the system, and the report proposes that the authorities set out an over-riding obligation on all financial institutions in Guernsey to "know" the beneficial owner of the funds with which they deal.

17. The evaluators consider that the Guernsey authorities have constructed a comprehensive anti-money laundering system, and that the adoption of the proposals contained in this report will ensure it complies with the best international standards. Finally, the evaluation team would like to repeat their thanks to the authorities on the island for the constructive way in which they participated in the mutual evaluation process.

### *Isle of Man*

18. The Isle of Man has a robust arsenal of legislation, regulations and administrative practices to counter money laundering. Perhaps more importantly, the authorities clearly demonstrate the political will to ensure that their off-shore financial institutions and the associated professionals maximise their defences against money laundering, and co-operate effectively in international investigations into criminal funds. The standards set in the Isle of Man are close to complete adherence with the FATF's 40 Recommendations. There are a few areas where the appropriate changes would allow these standards to be met unambiguously.

19. The legislation to criminalise money laundering on an all-crimes basis is still relatively new, and to some extent the Isle of Man is a jurisdiction in transition. The Isle of Man is now largely in line with the legal system that exists in the United Kingdom. The provisions meet, and in some areas exceed, the relevant international standards. The money laundering offences are broad, and cover all indictable offences. The requirement to report suspicious transactions applies universally, and not simply to specified sectors. The lack of legal constraints on domestic and international co-operation is particularly notable, as is the broad range of powers to confiscate criminal assets, and the powers to investigate serious or complex fraud. This report recommends removal of the provision in the new all-crimes legislation which requires the Attorney General to authorise the passage of financial intelligence overseas. The Isle of Man should move to a position in which relevant information is passed overseas on a routine basis. The all-crimes legislation includes an obligation to report suspicious transactions which appears to set a lower level of obligation than the longer-standing legislation related to drugs and terrorism. This report recommends a rationalisation of these provisions, to impose an unambiguous mandatory reporting obligation in all cases involving criminal activity.

20. The Isle of Man authorities have a good record of co-operation with overseas requests for assistance, on both regulatory and criminal matters, and the new legislation allows this co-operation to be enhanced. They have been less successful at pro-active investigation of money laundering, and examples where investigations have been initiated on the Island are rare. The creation of a new financial crime unit, with new resources, provides an excellent opportunity for the Isle of Man authorities to implement a new, pro-active enforcement strategy - bringing together the expertise of the police, customs and regulators. This strategy would involve more effective analysis of the financial intelligence available to the authorities, and close co-operation with the Channel Islands. The authorities need to provide sufficient resources to ensure this strategy can be implemented effectively. The law enforcement authorities should also be more willing spontaneously to send relevant financial intelligence overseas, and should develop a wider range of international contacts. They should sign more Memoranda of Understanding with their most important contacts. Investigative powers are comprehensive, although the Isle of Man should consider enhancing its powers to confiscate suspicious cash imports into the jurisdiction.

21. The system of financial regulation is comprehensive and effective. The Anti-Money Laundering Code sets a high standard, and applies that standard to a very wide range of financial institutions and professionals. The money laundering guidance notes provided by the Financial Supervision Commission (FSC) give clear advice to the financial sector on the risks they face from money launderers. Regulation of the insurance sector is the responsibility of the Insurance and Pension Authority. Their guidelines on money laundering are less comprehensive than those issued by the FSC. Their approach to supervision does not involve them directly in routine assessment of anti-money laundering compliance; they rely instead on the endorsement of anti-money laundering standards by external auditors. This report proposes that a comprehensive and consistent set of anti-money laundering procedures is enforced throughout the Isle of Man's financial sector. The system would be even more robust if the regulators were given the power to levy administrative fines for non-compliance.

22. The financial sector in the Isle of Man demonstrates a good compliance culture. The number of suspicious transaction reports made by the financial sector is relatively high, although there are areas - particularly amongst professionals - where compliance needs to be significantly improved. The authorities should provide more feedback on the results generated by suspicious transaction reports, and should better co-ordinate their efforts to raise awareness of money laundering issues.

23. The Isle of Man authorities propose to tighten up regulation in the company sector, which they regard as the most vulnerable to money laundering. This report strongly endorses the authorities' plans to regulate, license and supervise company formation agents. This measure places the Isle of Man at the forefront of international efforts to prevent the abuse of company structures for criminal purposes. To ensure this legislation succeeds in reducing the extent to which company service providers and other financial intermediaries can be used for the purpose of money laundering, the authorities need to remove an important loop-hole in the system. Under the "eligible introducers" arrangements, where the owner is represented by a regulated intermediary - such as a company service provider, lawyer or accountant - a financial institution need not know the beneficial owner of funds. In the view of the evaluators, this represents a potentially serious gap in the system, and the report proposes that the authorities set out an over-riding obligation on all financial institutions in the Isle of Man to know the beneficial owner of the funds with which they deal.

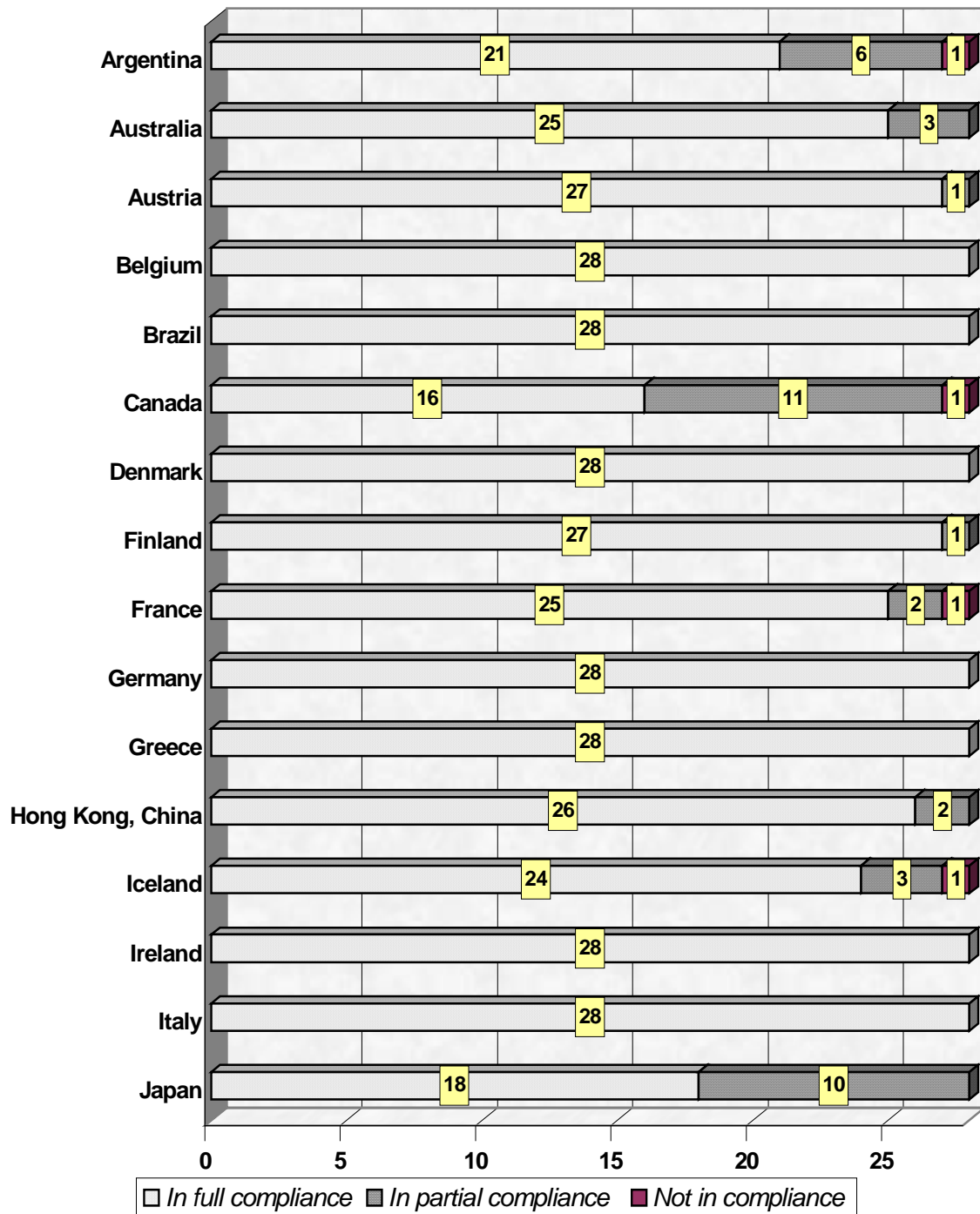
24. The evaluators consider that the Isle of Man authorities have constructed a comprehensive anti-money laundering system, and that the adoption of the proposals contained in this report will ensure it complies with the best international standards. Finally, the evaluation team would like to repeat their thanks to the authorities in the Isle of Man for the constructive way in which they participated in the mutual evaluation process.



# ANNEX D

Chart (a)

## Compliance with FATF 40 Recommendations 2000-2001 Self-Assessment Survey\* (for 28 Recommendations requiring specific action)



**\*SEE EXPLANATORY NOTE STARTING ON PAGE 3**

Chart (b)

**Compliance with FATF 40 Recommendations  
2000-2001 Self-Assessment Survey\***  
(for the 28 Recommendations requiring specific action)



**\*SEE EXPLANATORY NOTE STARTING ON PAGE 3**

## COMPLIANCE WITH THE FATF 40 RECOMMENDATIONS 2000–2001 SELF-ASSESSMENT SURVEY

### Explanatory Note

#### *General*

1. The FATF self-assessment exercise is designed to establish an annual record of FATF members' progress in implementing the Recommendations. It seeks to determine – based mainly on information provided by each jurisdiction – what steps a member jurisdiction has taken to implement the Recommendations during a particular year. However, the self-assessment results should in no way be construed as the measure of the effectiveness of any individual anti-money laundering system. Individual FATF members use data – such as the number of suspicious transaction reports filed, the amount of assets forfeited, or arrests made – to evaluate the effectiveness of their anti-money laundering systems. Within the FATF, the mutual evaluation process was created as the primary measurement of the FATF member countries' progress in implementing anti-money laundering measures and evaluation of the overall effectiveness of anti-money laundering systems. For a judgement concerning effectiveness, the summaries of the individual mutual evaluations of FATF members should be consulted.<sup>1</sup>

2. The self-assessment process focuses on the implementation of key legal, financial and international co-operation measures as related to the 28 FATF Recommendations requiring specific action.<sup>2</sup> Although information was gathered on other Recommendations, this material was not used in the self-assessment process. In the financial area, FATF members were judged on whether they had implemented measures both for banks and for four main categories of non-bank financial institutions (bureaux de change, stockbrokers, insurance companies and money remittance/transfer companies). Combining these five types of financial institutions into a single category has increased the focus on uniform application of anti-money laundering measures in the non-bank financial institution area.

#### *Notes on Specific Results*

3. The following countries were assessed for 2000-2001 as having fully implemented the 28 FATF Recommendations requiring specific action: **Belgium, Brazil, Denmark, Germany, Greece, Ireland, Italy, Luxembourg, New Zealand and Norway.**

4. For other FATF members, brief descriptions of the results are as follows:

**Argentina** is in full compliance with 21 Recommendations. It achieves less than full compliance for R. 14, 19, 21, 26 and 28 because current measures only apply to some but not all of the full range of non-bank financial institutions.<sup>3</sup> Argentina is in partial compliance with R. 38 because of limitations in its seizure and confiscation measures. R. 20 has not been implemented yet.

**Australia** is in full compliance with 25 Recommendations. It is at less than full compliance with R. 19 and 20 because there are no formal obligations imposed on financial institutions regarding these

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<sup>1</sup> These summaries can be found in the FATF Annual Reports for the year in which a particular evaluation was conducted. The summaries may also be consulted through the FATF website at the following address: [http://www.oecd.org/fatf/Members\\_en.htm](http://www.oecd.org/fatf/Members_en.htm).

<sup>2</sup> The Recommendations requiring specific action are: Recommendations 1-5, 7, 8, 10-12, 14-21, 26-29, 32-34, 37, 38 and 40. The text of the Forty Recommendations may be consulted at the following website address: [http://www.oecd.org/fatf/40Recs\\_en.htm](http://www.oecd.org/fatf/40Recs_en.htm).

<sup>3</sup> The full range of non-bank financial institutions for the self-assessment process includes: bureaux de change, stockbrokers, insurance companies and money remitters/transfer companies.

measures, although institutions have voluntarily implemented certain measures in practice. Australia is in partial compliance with R. 7 due to limitations in its ability to confiscate the instrumentalities intended for in money laundering.

**Austria** is in full compliance with 27 Recommendations. It has enacted legislation that will effectively eliminate anonymous passbook savings accounts by July 2002. No new accounts have been permitted since November 2000. While the process for eliminating existing anonymous accounts is underway, the accounts continue to exist – albeit with reduced capability. Austria therefore remains in partial compliance with R. 10.

**Canada** is in full compliance with 16 Recommendations. It enacted comprehensive legislation in 2000, which imposes anti-money laundering obligations on the full range of financial institutions. The various implementing regulations have been proposed; however, they have not yet come into effect. Consequently, it achieves less than full compliance for R. 8, 11, 12, 15, 18- 20, 21, 26, 28 and 29. With regard to R. 38, Canada cannot yet enforce a foreign order to seize, freeze or confiscate the proceeds of crime; it therefore is in partial compliance with this Recommendation.

**Finland** is in full compliance with 27 Recommendations. It has not yet extended certain measures under R. 29 to bureaux de change or money remitters; therefore, it is in partial compliance with this Recommendation.

**France** is in full compliance with 25 Recommendations. It does not have a specific screening requirement for the employees of financial institutions and is thus in partial compliance with R. 19. It has also not yet issued guidelines to financial institutions on suspicious transaction reporting and is therefore not in compliance with R. 28. France is in partial compliance with R. 33 because it may not provide mutual legal assistance when the intentional element of the money laundering offence is negligence.

**Hong Kong, China** is in full compliance with 26 Recommendations. It does not have a specific screening requirement for the employees of bureaux de change and money remittance agents and is thus in partial compliance with R. 19. It is in partial compliance with R. 20 because it has not extended the provisions of the Recommendation to all categories of non-bank financial institutions.

**Iceland** is in full compliance with 24 Recommendations. The provisions of R. 14, 19 and 28 have not been fully implemented; therefore, Iceland is in partial compliance with these Recommendations. R. 21 has not been implemented yet.

**Japan** is in full compliance with 18 Recommendations. It is in partial compliance with R. 8, 10-12, 14, 19-21, 26 and 28 due to the fact that it has not extended necessary anti-money laundering measures to bureaux de change.

**Mexico** is in full compliance with 12 Recommendations. It is in partial compliance with R. 8, 10-12, 14-21, 26, 28 and 29 due to the fact that it has not extended necessary anti-money laundering measures to money remitters<sup>4</sup>. With regard to R. 38, seizure and confiscation measures may only be applied against the actual proceeds or property derived from crime and not property or assets of corresponding value. Mexico is therefore in partial compliance with this Recommendation.

The **Kingdom of the Netherlands** consists of three components (Netherlands, Aruba and Netherlands Antilles). The assessment made for the Kingdom combines the results from the three parts. In this combined assessment, the Kingdom is in full compliance with 24 Recommendations. The results for the individual components are as follows:

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<sup>4</sup> On 1 June 2001, the Mexican Congress enacted modifications to its anti-money laundering laws that extend relevant requirements to money transmitters. This new legislation will change Mexico's compliance levels for certain of the FATF Recommendations and will be reflected in next year's results.

- The *Netherlands* is in full compliance with 27 Recommendations. It is in partial compliance with R. 19. To reach full compliance, a law will be enacted that regulates the supervision of money transfer companies by the Central Bank of the Netherlands.
- *Aruba* is in full compliance with 26 Recommendations. It is in partial compliance with R. 21 because it has not extended certain provisions of the Recommendation to all categories of non-bank financial institutions. Aruba is not yet able to exchange information related to suspicious transaction reports, although work is underway to make this possible in the near future. Therefore, R. 32 has not yet been implemented.
- The *Netherlands Antilles* is in full compliance with 26 Recommendations. It is in partial compliance with R. 19 and 29 because it has not extended certain provisions of these Recommendations to money remitters.

**Portugal** is in full compliance with 27 Recommendations. It is in partial compliance with R. 33 because it may not provide mutual legal assistance when the intentional element of the money laundering offence is negligence.

**Singapore** is in full compliance with 27 Recommendations. It has not extended the provisions of R. 19 to all categories of non-bank financial institutions and is therefore in partial compliance with this Recommendation.

**Spain** is in full compliance with 26 Recommendations. Suspicious transaction reporting guidelines have not been issued for bureaux de change; therefore, Spain is in partial compliance with R. 28. With regard to R. 38, Spain is in partial compliance because of limitations in its seizure and confiscation measures.

**Sweden** is in full compliance with 26 Recommendations. It has not applied provisions of R. 29 to money transmitters and is therefore in partial compliance with this Recommendation. It is at less than full compliance with R. 19 because there are no formal obligations imposed on financial institutions regarding screening procedures for employees, although institutions do this in practice.

**Switzerland** is in full compliance with 27 Recommendations. It is in partial compliance with R. 1 because it has not yet formally ratified the 1988 UN Convention Against the Illicit Traffic in Narcotics and Psychotropic Substances. It should be noted, however, that the relevant legislative measures to counter money laundering have been enacted into Swiss law.

**Turkey** is in full compliance with 24 Recommendations. It is at less than full compliance with R. 19 because some of the necessary provisions of this Recommendation have not been extended to stockbrokers, insurance companies or money remitters. It is also at less than full compliance with R. 33 because it may not provide mutual legal assistance when the intentional element of the money laundering offence is negligence or “should have known standard”. Turkey has not yet implemented R. 16 and 20.

The **United Kingdom** is in full compliance with 24 Recommendations. It is in partial compliance with R. 19, 26 and 29 because some of the necessary provisions of these Recommendations have not been extended to bureaux de change and money remitters. It is at less than full compliance with R. 20 because there are no legal obligations imposed on financial institutions regarding these measures, albeit that appropriate measures are clearly set out in guidance issued by the industry.

The **United States** is in full compliance with 17 Recommendations. It is in partial compliance with R. 8, 10-12, 14, 15, 19-20, 26 and 29 due to the fact that it has not extended necessary anti-money laundering measures to insurance companies. Additionally with regard to R. 14, 15, 28 and 29, the

United States has not yet imposed all necessary obligations on bureaux de change and money transmitters (in particular concerning suspicious activity reporting).