Financial Action Task Force on Money Laundering

Groupe d'Action Financière sur le Blanchiment de Capitaux

Report on Non-Cooperative Countries and Territories

14 February 2000

REPORT OF THE FATF
ON NON-COOPERATIVE COUNTRIES OR TERRITORIES

Introduction

1. In today's open and global financial world, characterised by a high mobility of funds and the rapid development of new payment technologies, the tools for laundering the proceeds of serious crimes as well as the means for anonymous protection of illegal assets in certain countries or territories make them even more attractive for money laundering. Existing anti-money laundering laws are undermined by the lack of regulation and essentially by the numerous obstacles on customer identification, in certain countries and territories, notably offshore financial centres.

2. Recent years have witnessed a sharp increase in the number of jurisdictions offering financial services without appropriate control or regulation and protected by strict banking secrecy. The proliferation of such non-co-operative countries or territories, which do not, or only marginally, participate in international co-operation against financial crime, also exacerbates competition between these centres and so contributes to worsen existing practices.

3. In order to ensure the stability of the international financial system and effective prevention of money laundering, it is desirable that all financial centres in the world should have comprehensive control, regulation and supervision systems. It is also important that all financial intermediaries or agents be subject to strict obligations, notably as regards the prevention, detection and punishment of money laundering.

4. As already agreed during the review of the FATF's future, our main task must therefore be to continue to spread the principles contained in the forty Recommendations throughout the world. In this respect, it should be noted that the criteria for defining non-cooperative countries or territories are consistent with the forty Recommendations.

5. In this context, FATF members first identified the detrimental rules and practices which impair the effectiveness of their money laundering prevention and detection systems, as well as the results of their judicial enquiries in this area, so as to determine criteria for defining the non co-operative countries or territories. The next step will be to draw up a list of countries and territories which meet those criteria (the latter are set out in Part I and at the Annex of the present report). FATF members also agreed on a process for identifying the non-cooperative jurisdictions and on the necessary international action to encourage compliance by the identified non-cooperative jurisdictions. Finally, FATF members agreed on counter-measures to protect their economies against money of unlawful origin.

I. CRITERIA DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES[1]

6. International co-operation in the fight against money laundering not only runs into direct legal or practical impediments to co-operation but also indirect ones. The latter, which are probably more numerous, include obstacles designed to restrict the supervisory and investigative powers of the relevant administrative[2] or judicial authorities[3] or the means to exercise these powers. They deprive the State of which legal assistance is requested of the relevant information and so prevent it from responding positively to international co-operation requests.

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

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1 The list of criteria is to be found in the Annex.

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

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

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

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

A. Loopholes in financial regulations

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

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

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

10. The conditions surrounding the creation and licensing of financial institutions in general and banks in particular create a problem upstream from the central issue of financial secrecy. In addition to the rapid increase of insufficiently regulated jurisdictions and offshore financial centres, we are witnessing a proliferation in the number of financial institutions in such jurisdictions. They are easy to set up, and the identity and background of their founders, managers and beneficial owners are frequently not, or insufficiently, checked. This raises a potential danger of financial institutions (banks and non-bank financial institutions) being taken over by criminal organisations, whether at start-up or subsequently.

11. The following should therefore be considered as detrimental:

- possibility for individuals or legal entities to operate a financial institution[5] without authorisation or registration or with very rudimentary requirements for authorisation or registration; and,

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

(iii) Inadequate customer identification requirements for financial institutions

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

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

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

13. Accordingly, the following are detrimental practices:

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

- lack of effective laws, regulations or agreements between supervisory authorities and financial institutions or self-regulatory agreements among financial institutions[6] on identification[7] by the financial institution of the client, either occasional or usual, and the beneficial owner of an account when a client does not seem to act in his own name (Recommendations 10 and 11), whether an individual or a legal entity (name and address for individuals; type of structure, name of the managers and commitment rules for legal entities...);

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

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

(iv) Excessive secrecy provisions regarding financial institutions

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

15. Accordingly, the following are detrimental:

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

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

(v) Lack of efficient suspicious transaction reporting system

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

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

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

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

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

B. Impediments set by other regulatory requirements

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

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

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

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

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

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

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

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

C. Obstacles to international co-operation

(i) At the administrative level

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

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

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

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

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

- exchange of information should be reciprocal.

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

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

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

27. Restrictive practices in international co-operation against money laundering between supervisory authorities or between FIUs for the analysis and investigation of suspicious transactions, especially on the grounds that such transactions may relate to tax matters (fiscal excuse[8]). Refusal only on this basis is a detrimental practice for international co-operation against money laundering.

(ii) At the judicial level

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

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

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

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

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

(i) Lack of resources in public and private sectors

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

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

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

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

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

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

II. STEPS TO ENCOURAGE CONSTRUCTIVE ANTI-MONEY LAUNDERING ACTION

35. On the basis of the above-mentioned detrimental rules or practices, the Ad Hoc Group may identify countries and territories which should be considered as not fully participating in international co-operation. No specific criteria can be considered a litmus test of a particular jurisdiction's level of co-operation in the international fight against money laundering. Rather, each jurisdiction must be judged by the overall, total effect of its laws and programmes in preventing abuse of the financial sector or impeding efforts of foreign judicial and administrative authorities.

36. Ideally, these jurisdictions should have the political will to adopt and implement the forty FATF Recommendations unambiguously. One of the FATF's objectives should, therefore, be to establish contact with these countries and territories in order to foster a dialogue likely to make them change their position. They should be urged to modify existing measures that hamper anti-money laundering efforts.

37. To encourage constructive action by non-cooperative countries and territories, the following steps should be considered. Likewise, nations equipped with comprehensive anti-money laundering systems (e.g. FATF members) may feel the need to protect their economies and financial systems against criminal money. In this respect, a set of counter-measures is also designed for consideration.

A. Identification of non-cooperative jurisdictions

38. The establishment of a list of "non-cooperative jurisdictions" is the next logical step in the work of the Ad Hoc Group. The list should contain all countries and territories, both inside and outside FATF membership, whose detrimental practices seriously and unjustifiably hamper the fight against money laundering. However, in drawing up the list, we should focus our attention on financial centres whose activities are of such character or significant size that, if there are shortcomings in their systems, they could undermine existing anti-money laundering regimes. The list should also reflect the level of compliance with the criteria so as to treat jurisdictions with distinct detrimental rules and practices differently. In practice, this implies that the list of non-cooperative countries or territories should include several sub-categories of non-cooperative countries or territories which could be as follows: clearly non-cooperative (severe deficiencies in many areas); partly non-cooperative (impediments in various areas) and de facto non-cooperative (no significant impediments in laws and regulations but ineffective regime in practice). Each category should trigger different degrees of action. However, the first step to take should be to identify jurisdictions which should be subject to further review under the criteria contained in the first part of the report.

(i) Countries or territories for examination

39. On the basis of financial factors as well as law enforcement/typologies data regarding involvement in money laundering investigations, FATF members have been invited to mention those jurisdictions where, in the recent past, there have been difficulties, with an explanation of the nature of the difficulties that were encountered. The Ad Hoc Group should first undertake a fact-finding survey of each jurisdiction which has been mentioned for review. The factual surveys could be made by several review groups which should include several FATF members and the Secretariat. The review groups may include FATF members outside the region. Where applicable, the review groups are also open to the Secretariats of the relevant FATF-style regional bodies. The

role of the FATF Secretariat is to ensure consistency in approach and process among the review groups. Each of these groups should be assigned to review the detrimental rules and practices of several jurisdictions.

(ii) Survey of individual jurisdictions

40. To ensure that the Ad Hoc Group bases its conclusions on accurate information, the review groups should examine the available information giving particular weight to the mutual evaluation reports or self-assessment surveys or progress reports in the context of FATF and FATF-style regional bodies and, where necessary, request additional information or clarification from the jurisdictions being reviewed. This additional information could be sought by requesting the jurisdictions to answer specific questions and if necessary, by organising face-to-face meetings. If a jurisdiction is not timely in responding, then the process will proceed immediately.

41. Once a review group had completed its survey of a jurisdiction, it should produce a report which, after the jurisdiction in question had been given an opportunity to comment, should be examined by the Ad Hoc Group. The information contained in the jurisdiction report will only be of a factual nature. The reports should indicate the presence or absence of each of the criterion referred to in the Annex to the Report. The assessment on whether a jurisdiction is non-cooperative will be made by the Ad Hoc Group but should be endorsed by the Plenary.

(iii) List of non-cooperative jurisdictions

42. Once the Plenary has determined its conclusions as to the status of the reviewed jurisdictions under the twenty-five criteria, a list of non-cooperative jurisdictions should be drawn up. The list should state the reasons of the determinations made by the Ad Hoc Group and the Plenary. Finally, it should also mention the steps that the jurisdictions identified as non-cooperative should take to eliminate the detrimental aspects of their rules and practices.

43. Since the work on this issue can be expected to take some time, it will be necessary to make sure that the criteria and especially the list of non-cooperative jurisdictions remain relevant and useful over time. A regular update of the list could therefore be contemplated. In other words, this list should take into account the legislative, regulatory and behavioural changes observed in the countries and territories concerned.

B. Action to put an end to the detrimental rules and practices

(i) Actions designed to encourage non-cooperative jurisdictions to adopt laws in compliance with FATF Recommendations

44. The FATF and its members can implement focussed efforts, country by country, to convince non-cooperative jurisdictions to improve legislation and domestic practices and to participate actively in international co-operation.

45. These efforts could take the form of a dialogue, in conjunction with the relevant FATF-style regional body or appropriate international organisation/body, with the identified jurisdictions in order to check that their situation has been estimated correctly and to establish whether improvements are already being undertaken. The dialogue could be pursued by a letter from the FATF President to the concerned government explaining the purpose of the FATF's work in this area once the consolidated list of non-cooperative jurisdictions has been established.

46. This dialogue should prompt them to amend their laws and change their practices. To do so, they could be helped through advice and technical co-operation by FATF, its members, a FATF-style regional body, or an appropriate international organisation/body to implement the necessary changes.

47. Specific actions could also be taken by other multi-lateral fora (e.g., the G-7, the OECD, the Basle Committee, IOSCO[9] and the International Financial Institutions) to seek the issuance of public statements or other appropriate action. In particular, the World Bank and the International Monetary Fund, could examine the consequences of a particular jurisdiction's failure to take appropriate corrective action, in connection with their activities.

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[9] International Organisation of Securities Commissions.

(ii) Application of Recommendation 21

48. In the event of a failure to remedy the detrimental rules and practices, the FATF should consider applying Recommendation 21 to countries or territories which are unwilling to take constructive action.

C. Counter-measures designed to protect economies against money of unlawful origin

49. It would of course be ideal if all the countries and territories identified as non-cooperative were to adopt and implement effectively laws and regulations in accordance with the forty FATF Recommendations or at least to abolish those laws and regulations that hamper the international fight against money laundering. However, such progress is most likely to be slow, and in the short and medium term, certain of the countries and territories identified may decide to maintain their non-cooperative rules or practices.

50. FATF members could therefore develop a new type of counter-measures to better protect their financial systems and economies against money of unlawful origin. Collective and co-ordinated action by FATF members is clearly most desirable and should be pursued whenever possible. However, individual members could ultimately make decisions on whether to implement counter-measures on an independent basis. The following counter-measures should be applied according to the gravity of the identified deficiencies.

(i) Customer identification obligations for financial institutions in FATF members with respect to financial transactions carried out with or by individuals or legal entities whose account is in a "non-cooperative jurisdiction"

51. In order to make it difficult for individuals and legal entities established or registered in non-cooperative jurisdictions to enter into the financial systems of FATF members, the latter should make sure that financial institutions within their jurisdiction fully satisfy the obligation to identify their clients before starting business relations. It should be forbidden to open an account if the applicant fails to supply really valid documentation enabling the financial institution to know without ambiguity the true identity of the owner/beneficial owner of such an account.

(ii) Specific requirements for financial institutions in FATF members to pay special attention to or to report financial transactions conducted with individuals or legal entities having their account at a financial institution established in a "non-cooperative jurisdiction"

52. Additional counter-measures could consist in requiring financial institutions to pay special attention to any transaction having a link to a country or territory previously identified as non-cooperative. It could also consist in requiring financial institutions to report systematically transactions to the financial intelligence unit or any competent body above a given amount, carried out by their clients with individuals or legal entities established or having their bank account at a financial institution established in countries or territories previously identified as non-cooperative.

53. These requirements should also make it possible to step up the vigilance of financial institutions and to enrich considerably the information of/to financial intelligence units on transactions carried out with the non-cooperative jurisdictions. They should also better protect the economies and financial systems of FATF members and, lastly, they will put more pressure on the jurisdictions concerned, capable of convincing them to adopt the necessary reforms and to co-operate better in the fight against money laundering.

(iii) Conditioning, restricting, targeting or even prohibiting financial transactions with non-cooperative jurisdictions

54. FATF members should also consider determining whether it is desirable and feasible to condition, restrict, target or even prohibit financial transactions with such jurisdictions. Such measures could serve as an ultimate recourse should a country or territory have decided to preserve laws or practices that are particularly damaging for the fight against money laundering. In the event that there was no legal basis for taking these measures, FATF members should consider adopting the relevant legislation. FATF members should also examine ways to prevent financial institutions located in identified non-cooperating countries or territories from using facilities (for example, information technology facilities) located in the FATF members' territory.

Conclusions

55. All countries and territories that are part of the global financial system should change the rules and practices that impede the anti-money laundering fight led by other countries. The legitimate use by private citizens and institutional investors of certain facilities offered by many financial centres, including offshore centres, is not put in question. An essential aspect of this issue is to make sure that such centres are not used by transnational criminal organisations to launder criminal proceeds in the international financial system. It is also important that they are not used by criminal organisations to escape investigation in other jurisdictions.

ANNEX[10]

CRITERIA DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES

A. Loopholes in financial regulations

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

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

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

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

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

(iii) Inadequate customer identification requirements for financial institutions

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

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

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

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

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

(iv) Excessive secrecy provisions regarding financial institutions

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

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

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[10] This Annex should read in conjunction with the comments and explanations of the report provided in Section I of the report.

(v) Lack of efficient suspicious transactions reporting system

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

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

B. Obstacles raised by other regulatory requirements

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

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

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

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

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

C. Obstacles to international co-operation

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

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

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

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

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

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

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

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

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

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

D. Inadequate resources for preventing and detecting money laundering activities

(i) Lack of resources in public and private sectors

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

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

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

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

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