



Financial Action Task Force
Groupe d'action financière

Annual and Overall Review of
Non-Cooperative
Countries or Territories

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TABLE OF CONTENTS

EXECUTIVE SUMMARY OF THE JUNE 2005 NCCTS REPORT	1
I. INTRODUCTION AND BACKGROUND	3
II. PROCESS	3
A. REVIEW PROCESS.....	4
B. ASSESSING PROGRESS	4
C. MONITORING PROCESS FOR JURISDICTIONS REMOVED FROM THE NCCT LIST	5
D. IMPLEMENTATION OF COUNTER-MEASURES	5
III. FOLLOW-UP TO JURISDICTIONS ON THE NCCT LIST	6
A. COUNTRIES REMOVED FROM THE NCCTS LIST IN FEBRUARY 2005	6
B. COUNTRIES THAT HAVE MADE PROGRESS SINCE JULY 2004.....	8
C. JURISDICTIONS THAT WERE SUBJECT TO COUNTER-MEASURES	11
IV. JURISDICTIONS SUBJECT TO THE MONITORING PROCESS SINCE JULY 2004	12
V. REVIEW OF THE NCCTS EXERCISE.....	15
A. OVERVIEW OF THE RESULTS.....	15
B. ANALYSIS OF THE USE OF THE 25 NCCT CRITERIA.....	16
C. ANALYSIS OF THE PROCESS.....	16
VI. CONCLUSIONS AND THE WAY FORWARD	17
ANNEX 1: LIST OF CRITERIA FOR DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES.....	19
ANNEX 2: FATF'S POLICY CONCERNING IMPLEMENTATION AND DE-LISTING IN RELATION TO NCCTS.....	28
ANNEX 3: TIMELINES OF FATF DECISIONS ON NCCTS	30

EXECUTIVE SUMMARY OF THE JUNE 2005 NCCTS REPORT

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

Removal of Cook Islands, Indonesia, and Philippines from the Non-Cooperative Countries and Territories (NCCTs) list in February 2005

2. In February 2005, the FATF Plenary removed the Cook Islands, Indonesia, and the Philippines from the list of NCCTs after enactment and substantial implementation of anti-money laundering reforms. Consequently, the procedures prescribed in FATF Recommendation 21 were withdrawn. To ensure continued effective implementation of these reforms, the FATF will monitor the developments in these countries, in consultation with the relevant FATF-style regional body, and particularly in the areas laid out in this NCCT report.

Progress made since July 2004

3. The FATF welcomes the substantial progress made by Myanmar, Nauru, and Nigeria in enacting legislation and regulations addressing the main identified deficiencies. As a result, all three countries have been asked to submit implementation plans to enable the FATF to evaluate actual implementation of the legislative changes: Nigeria was invited to submit an implementation plan in July 2004; Nauru, in October 2004; and Myanmar, in February 2005. However, the countries will remain on the NCCTs list until the reforms have been adequately implemented; therefore, the FATF believes that scrutiny of transactions with these jurisdictions continues to be necessary and reaffirms its advice to apply, in accordance with Recommendation 21, special attention to such transactions.

4. Regarding countries de-listed prior to July 2004 and subject to the monitoring process, the FATF will now end formal monitoring of Guatemala. In February 2005, the FATF ended formal monitoring of Egypt. Any future monitoring of these jurisdictions will be conducted within the context of the relevant FATF-style regional body and its evaluation mechanisms.

Removal of counter-measures

5. The FATF welcomed Myanmar's enactment of mutual legal assistance legislation, implementing rules and regulations for its AML law and improvements to its suspicious transaction reporting regime. Consequently, the FATF withdrew counter-measures in October 2004. Counter-measures for Myanmar had been in effect since 3 November 2003.

6. The FATF withdrew counter-measures in October 2004 after Nauru eliminated its shell banks and enacted further AML reforms. Counter-measures for Nauru had been in effect since December 2001.

Current NCCTs list

7. The list of NCCTs is comprised of: **Myanmar, Nauru, and Nigeria**. The FATF calls on its members to update their advisories directing their financial institutions to give special attention to businesses and transactions with persons, including companies and financial institutions, in those NCCTs.

Results of the NCCTs exercise and the road ahead

8. Overall, the NCCTs exercise has proved to be a very useful and very efficient tool to improve worldwide implementation of the FATF 40 Recommendations. Of the 23 jurisdictions designated as NCCTs in 2000 and 2001, only three remain. The de-listing of three countries in 2005 and progress by the remaining three NCCTs confirm that this initiative continues to trigger significant improvements in anti-money laundering systems throughout the world. It also demonstrates the continued willingness and commitment of countries to improve their AML systems. FATF members continue to express their willingness to provide technical assistance to jurisdictions identified through the NCCT initiative, and this has been an important element as these jurisdictions attempt to improve their anti-money laundering systems.

9. No new jurisdictions have been reviewed under the NCCTs process since 2001. However, the FATF remains committed to the current NCCTs process for those countries on the list and those subject to monitoring. The FATF will also ensure that it remains aware of new challenges where deficiencies in AML/CFT systems impede effective international co-operation against money laundering and terrorist financing, and the FATF will react appropriately. If need be the FATF will apply Recommendation 21 to jurisdictions identified as posing a particular money laundering or terrorist financing risk, and if necessary the FATF will recommend the application of additional counter-measures.

I. BACKGROUND

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

11. Combating money laundering is a dynamic process because the criminals who launder money are continuously seeking new ways to achieve their illegal ends. It became evident to the FATF through its regular typologies exercises that, as its members have strengthened their systems to combat money laundering, criminals have sought to exploit weaknesses in other jurisdictions to continue their laundering activities.

12. In order to reduce the vulnerability of the international financial system to money laundering, governments must intensify their efforts to co-operate at the international level. The goal of the FATF's work in this area is therefore to secure the adoption by all financial centres of international standards to prevent, detect and punish money laundering.

13. In February 2000, the FATF published the initial report on non-cooperative countries and territories (NCCTs)¹, which included 25 criteria identifying detrimental rules and practices that impede international co-operation in the fight against money laundering (see Annex 1). The report described a process to use these criteria to identify jurisdictions that do not co-operate adequately in the fight against money laundering. The report did contain as well a set of possible counter-measures that FATF members could use to protect their economies against the proceeds of crime.

14. In June 2000 and June and September 2001, the FATF identified a total of 23 NCCTs. No additional jurisdictions were reviewed since that time. This initiative has so far been both productive and successful because all of these jurisdictions have made significant progress, with 20 being removed from the NCCTs list as of 10 June 2005. The annual NCCT reviews of June 2002, June 2003, and July 2004 NCCT Reviews did update the situation as of those times.

15. The FATF approved this report at its 9-10 June 2005 Plenary. Section II of this document summarises the NCCT process. Section III highlights progress made by the jurisdictions deemed to be non-cooperative in June 2000, June 2001, and September 2001 that remained on the NCCTs list after the June/July 2004 Plenary meetings. Section IV updates the situations in de-listed jurisdictions that were subject to the monitoring process between July 2004 and June 2005. Section V analyses the results of the exercise so far, and Section VI concludes the document and indicates future steps.

II. THE NCCT PROCESS

16. In February 2000, the FATF set up four regional review groups (Americas; Asia/Pacific; Europe; and Africa and the Middle East) to analyse the anti-money laundering regimes of a number of jurisdictions against the above-mentioned twenty-five criteria. In 2000-2004, the review groups were maintained to continue this work and monitor the progress made by NCCTs as well as de-listed

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

jurisdictions subject to the monitoring process. In October 2004, the FATF consolidated the four review groups into two: the Review Group on Asia/Pacific and the Review Group on the Americas, Europe and Africa/Middle East.

A. REVIEW PROCESS

17. The jurisdictions to be reviewed were informed of the work to be carried out by the FATF. The reviews involved gathering the relevant information, including laws and regulations, as well as any mutual evaluation reports, related progress reports and self-assessment surveys, where these were available. This information was then analysed against the 25 criteria, and a draft report was prepared and sent to the jurisdictions for comment. In some cases, the reviewed jurisdictions were asked to answer specific questions designed to seek additional information and clarification. Each reviewed jurisdiction provided their comments on their respective draft reports. These comments and the draft reports themselves were discussed between the FATF and the jurisdictions concerned during a series of face-to-face meetings. Subsequently, the draft reports were discussed and adopted by the FATF Plenaries. The findings are reflected in Sections III and IV of the present report. For NCCTs, FATF has indicated that Recommendation 21² applies.

B. ASSESSING PROGRESS

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

19. Decisions to revise the NCCTs list are taken in the FATF Plenary. In deciding whether a jurisdiction should be removed from the list, the FATF Plenary assesses whether a jurisdiction has adequately its AML deficiencies. The FATF views the enactment of the necessary legislation and the promulgation of associated regulations as essential and fundamental first step for jurisdictions on the list. The FATF attaches particular importance to reforms in the area of criminal law, financial supervision, customer identification, suspicious transaction reporting, and international co-operation. Legislation and regulations need to have been enacted and to have come into effect before removal from the list can be considered.

20. In addition, the FATF seeks to ensure that the jurisdiction is effectively implementing the necessary reforms. Thus, the jurisdictions that have enacted legislation to remedy the main deficiencies are asked to submit implementation plans to enable the FATF to evaluate the actual implementation of the legislative changes according to the above principles. Information related to institutional arrangements, as well as the filing of suspicious activity reports, examinations of financial institutions, international co-operation and the conduct of money laundering investigations, are considered. The FATF, through the review group, should make an on-site visit to the NCCT at an appropriate time to confirm effective implementation of the reforms. (See Annex 2 for a thorough description of the de-listing process). When the review group is satisfied that the NCCT has taken sufficient steps to ensure continued effective implementation of AML measures, it will recommend to the Plenary that the country be de-listed.

² Recommendation 21. Financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply these Recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.

C. MONITORING PROCESS FOR JURISDICTIONS REMOVED FROM THE NCCT LIST

21. To ensure continued effective implementation of the reforms enacted, the FATF has adopted a monitoring mechanism to be carried out in consultation with the relevant FATF-style regional body. This mechanism includes the submission of regular implementation reports and a possible follow-up visit to assess progress in implementing reforms and to ensure that stated goals have, in fact, been fully achieved.

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

D. IMPLEMENTATION OF COUNTER-MEASURES

23. In addition to the application of Recommendation 21, in cases where jurisdictions have failed to make adequate progress in addressing the serious deficiencies previously identified by the FATF, and in cases where progress has stalled, the FATF will recommend the application of further counter-measures which should be gradual, proportionate and flexible regarding their means and taken in concerted action towards a common objective. The FATF believes that enhanced surveillance and reporting of financial transactions and other relevant actions involving these jurisdictions would now be required, including the possibility of:

- Stringent requirements for identifying clients and enhancement of advisories, including jurisdiction-specific financial advisories, to financial institutions for identification of the beneficial owners before business relationships are established with individuals or companies from these countries;
- Enhanced relevant reporting mechanisms or systematic reporting of financial transactions on the basis that financial transactions with such countries are more likely to be suspicious;
- In considering requests for approving the establishment in FATF member countries of subsidiaries or branches or representative offices of banks, taking into account the fact that the relevant bank is from an NCCT;
- Warning non-financial sector businesses that transactions with entities within the NCCTs might run the risk of money laundering.

III. FOLLOW-UP TO JURISDICTIONS ON THE NCCT LIST IN JULY 2004

24. This section summarises the progress made by these jurisdictions. Jurisdictions marked with an asterisk are still regarded as being non-cooperative by the FATF. (References to “meeting the criteria” means that the concerned jurisdictions were found to have detrimental rules and practices in place.) For each of the following jurisdictions, the situation which prevailed when the jurisdiction was placed on the NCCTs list is summarised (criteria met, main deficiencies) and is followed by an overview of the actions taken by jurisdictions since that time.

A. COUNTRIES REMOVED FROM THE NCCTS LIST IN FEBRUARY 2005

Cook Islands

Situation in June 2000

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

Progress made since June 2000

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

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

28. Since February 2005, the Cook Islands’ government has continued to implement its AML regime. The FSC is conducting additional on-site examinations of each international bank—by June

2005 it had completed examining one bank and was in the process of examining another. The FIU appointed two full-time compliance officers, who are in the process of developing an education and awareness plan, and a compliance program for non-licensed financial institutions.

Indonesia

Situation in June 2001

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

Progress made since June 2001

30. On 17 April 2002, Indonesia enacted Law of the Republic of Indonesia Number 15/2002 Concerning Money Laundering Criminal Acts. The law expands customer identification requirements and creates the Indonesian Financial Transaction Reports and Analysis Centre (PPATK), the framework for an FIU. The law criminalised the laundering of illicit proceeds in relation to criminal proceeds exceeding threshold of 500 million rupiah and mandated the reporting of suspicious transactions. BAPEPAM Decree 02/PM/2003 of January 2003 contains KYC and STR requirements for securities companies, mutual fund companies and custodian banks. Ministry of Finance Decree 45/KMK.06/2003, of January 2003 contains the KYC and STR requirements for insurance, pension funds and financing companies. In October 2003, Indonesia enacted legislation amending Law 15/2002 that addressed the main legal deficiencies by removing the threshold for defining the proceeds of crime, improving STR requirements by penalising unauthorised disclosure of such reports, and enhancing measures for international co-operation. Bank of Indonesia (BI) regulations 5/23/PBI/2003 and 6/1/PBI/2004 impose know your customer requirements on rural banks and money changers, respectively. The PPATK became operational in October 2003 and was admitted into the Egmont Group in its June 2004.

31. As of January 2005, PPATK had received a total of 1,374 STRs. 257 cases resulting from STRs had been disseminated to law enforcement agencies, and there had been 18 successful prosecutions on charges of terrorism, bank fraud and/or corruption—all based on STR referrals. And the Bank of Indonesia had also completed examinations on 32 commercial banks for AML compliance purposes. The Indonesian FIU had established MOUs with 6 foreign counterparts and anticipates signing with several others.

32. On the basis of this progress, the FATF de-listed Indonesia in February 2005. At that time, the FATF indicated that it would continue to monitor Indonesia for a period of time, as part of the FATF's standard monitoring process for de-listed NCCTs, to ensure continued adequate implementation. The FATF indicated that in the future it would pay special attention to: greater identification of STRs, additional capacity building for financial investigators and prosecutors, outcomes of money laundering prosecutions, supervisory examinations and follow-up, enactment of draft legislation on mutual legal assistance, and the commitment of the necessary human and budgetary resources.

33. Since February 2005, Indonesia has continued to implement its AML regime. Between January and April 2005 the PPATK received an additional 571 STRs. An additional 20 cases were forwarded to law enforcement agencies and one additional conviction based on information from an STR referral. There were 25 cases in the prosecution process as of April 2005. The PPATK now has 8 MOUs in place with counterpart FIUs.

The Philippines

Situation in June 2000

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

Progress made since June 2000

35. The Anti-Money Laundering Act (AMLA) of 2001 was enacted on 29 September 2001 and took effect 17 October 2001. The Act criminalises money laundering, introduces the mandatory reporting of certain transactions, requires customer identification, and creates the legal basis for the Anti-Money Laundering Council (AMLC), which functions as an FIU. The Act's implementing rules and regulations (IRRs) took effect 2 April 2002. On 7 March 2003, the Philippines enacted Republic Act No. 9194, which amends and improved the AMLA, addresses the main legal deficiencies. It requires the reporting of all suspicious transactions, grants the BSP (the banking supervisor) full access to account information to examine for anti-money laundering compliance, and allows the AMLC to inquire into deposits and investments made prior to the AMLA coming into effect.

36. As of December 2004, the AMLC had received a total of 5,451 STRs. The BSP has 800 bank examiners, of which 78 were AML specialists. It had conducted 438 on-site examinations including 31 universal and commercial banks from September 2003 until December 2004. On 24 January 2005, the BSP issued a circular to formally regulate and supervise money services providers which are not subsidiaries or affiliates of banks. There were a total of 11 money laundering investigations related to terrorist financing, drug trafficking and other crimes, which were initiated as a result of STRs. There were 30 money laundering cases are pending. The AMLC had signed MOUs with a number of foreign counterpart FIUs.

37. On the basis of this progress, the FATF de-listed the Philippines in February 2005. At that time, the FATF indicated that it would continue to monitor the Philippines for a period of time, as part of the FATF's standard monitoring process for de-listed NCCTs, to ensure continued adequate implementation. The FATF indicated that, moving forward, it would pay particular attention to enhancing the sustainability of the AML regime, improving internal co-operation between the AMLC and other supervisors, improving investigative tools and techniques, and progress and outcomes of money laundering prosecutions, encouraging greater bank surveillance, and identification of suspicious transactions.

38. Since February 2005, the Government of the Philippines has continued to implement its AML regime. The AMLC issued a resolution in order to reduce the number of threshold transactions reported and allow greater focus on the analysis of suspicious transactions. Between January and May 2005 the AMLC received 1,128 STRs.

B. COUNTRIES THAT HAVE MADE PROGRESS SINCE JULY 2004

Myanmar*

Situation in June 2001

39. In June 2001, Myanmar met criteria 1, 2, 3, 4, 5, 6, 10, 11, 19, 20, 21, 22, 23, 24 and 25. It lacked a basic set of anti-money laundering provisions. It had not yet criminalised money laundering

for crimes other than drug trafficking. There were no anti-money laundering provisions for financial institutions, and there was an absence of a legal requirement to maintain records and to report suspicious or unusual transactions. There were also significant obstacles to international co-operation by judicial authorities.

Progress made since June 2001

40. On 17 June 2002, Myanmar enacted The Control of Money Laundering Law (CMLL) (The State Peace and Development Council Law No. 6/2002). The law criminalises money laundering for certain predicate offences and allows for the establishment of a monetary threshold relating to predicate offences. The law created a framework for suspicious transaction reporting, customer identification, and record keeping. Due to Myanmar's failure to address remaining deficiencies in the law—the need for comprehensive mutual legal assistance legislation and the lack of implementing regulations for the CMLL—the FATF recommended that its members apply counter-measures to Myanmar on 3 November 2003.

41. The Government of Myanmar has enacted significant AML reforms since that time. It issued implementing rules for the CMLL in December 2003 (Notification 1/2003) and 3 orders in January 2004 that specify reporting requirements for financial institutions and property record offices (suspicious transactions and transactions exceeding approximately USD 100,000) and assign certain staff to an FIU. Myanmar adopted the Mutual Assistance in Criminal Matters Law (The State Peace and Development Council Law No. 4/2004) on 28 April 2004. On 14 October 2004, Myanmar adopted the Mutual Assistance in Criminal Matters Rules (Notification 5/2004) and Notification 30/2004, which adds fraud as a money laundering predicate offence. On the basis of this progress, the FATF withdrew counter-measures with respect to Myanmar in October 2004. The Law Amending the Control of Money Laundering Law No. 8/2004 was adopted on 2 November 2004 and prohibits persons from disclosing the fact that a suspicious or unusual report was filed.

42. In February 2005, the FATF invited Myanmar to submit an Implementation Plan. Myanmar authorities reported that through the first quarter of 2005, the FIU received approximately 5,000 large transaction and 14 STRs, which led to four investigations for potential money laundering. Myanmar also investigated two banks for money laundering concerns and shut them down in March 2005; a criminal investigation of these two banks is still underway. A number of AML on-site bank inspections have also taken place. The Government of Myanmar should continue its efforts to implement an effective AML regime.

Nauru *

Situation in June 2000

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

Progress made since June 2000

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

the offshore sector. On 27 March 2003, Nauru enacted the Corporation (Amendment) Act of 2003 and the Anti-Money Laundering Act of 2003. The legislation aimed to abolish offshore shell banks and prohibit the granting of new licences. Nauru authorities also formally revoked the licenses of all remaining offshore banks at that time.

45. In 2004, Nauru took important steps to further ensure that offshore banks could no longer operate, through enactment of the Banking (Amendment) Act in 2004 and the Corporation (Amendment) Act 2004 in February and September, respectively. The only bank currently licensed is the National Bank of Nauru, which conducts only domestic business. On the basis of these reforms, the FATF invited Nauru to submit an Implementation Plan in October 2004. Nauru also enacted the Anti-Money Laundering Act 2004, which expands the scope of AML requirements and establishes the legislative basis for an FIU. Nauru also enacted the Mutual Assistance in Criminal Matters Act 2004, the Proceeds of Crime Act 2004, and the Counter-Terrorism and Transnational Organised Crime Act 2004.

46. Nauru has taken significant steps to improve its offshore corporate registry. Nauru now has 126 offshore companies, mainly holding companies. The process now requires that adequate information on ownership and control of these companies be collected and maintained. And Nauru authorities have been collecting the relevant information for its existing companies. On the basis of the progress that Nauru has made, the FATF will plan an on-site visit to Nauru before October 2005 in order to confirm effective implementation of its AML reforms.

Nigeria*

Situation in June 2001

47. In 2001, Nigeria demonstrated an unwillingness or inability to co-operate with the FATF in the review of its system, and when placed on the NCCTs list in June 2001, met criteria 5, 17 and 24. It partially met criteria 10 and 19, and had a broad number of inconclusive criteria as a result of its general failure to co-operate in this exercise.

Progress made since June 2001

48. The Government of Nigeria substantially improved its co-operation with the FATF and its willingness to address its anti-money laundering deficiencies. On 14 December 2002, Nigeria enacted the Money Laundering Act (Amendment) Act 2002. This Act enhanced the scope of Nigeria's 1995 Money Laundering Law by extending predicate offences for money laundering from drugs to "any crime or illegal act," extending certain AML obligations to non-bank financial institutions, and extending customer identification requirements to include occasional transactions of \$5,000 or more. In December 2002, Nigeria also enacted the Economic and Financial Crime Commission (EFCC) (Establishment) Act. The EFCC was inaugurated in April 2003 to investigate money laundering cases from predicate offences other than drug trafficking. (The National Drug Law Enforcement Agency investigates drug and drug money laundering offences). The Banking and other Financial Institutions (BOFI) Amendment Act, also enacted in December 2002, improves licensing requirements for financial institutions. Nigeria also enacted the Money Laundering (Prohibition) Act 2003 on 22 May 2003.

49. Nigeria subsequently enacted the Money Laundering (Prohibition) Act 2004 on 29 March 2004 and the Economic and Financial Crimes Commission (Establishment) Act 2004 on 4 June 2004, which superseded and improved upon the previous versions of these laws and addressed the main remaining legal AML deficiencies. These laws establish: the framework for a broader STR and customer identification system, AML obligations for a broader range of financial and non-financial institutions, and a framework for the Nigerian FIU (NFIU) within the EFCC. On this basis, the FATF invited Nigeria to submit an implementation plan in June 2004. The NFIU became operational in January 2005. The NDLEA, which investigates drug-related money laundering, had 25 such cases in 2004. The FIU now has a staff of 27 and in the first quarter of 2005 received 328 STRs, followed up on 16

of those reports, and received 481,403 currency transaction reports. The EFCC undertook 10 money laundering investigations in 2004 and 10 in the first quarter of 2005.

50. Nigeria has made considerable progress in establishing a comprehensive AML legal framework. Nigeria should continue to build upon these efforts and fully implement its recent AML reforms. Nigeria should especially ensure that it fully staffs and funds the various AML bodies, institutes an effective system for bank inspections, and pursues money laundering investigations and prosecutions.

C. JURISDICTIONS THAT WERE SUBJECT TO COUNTER-MEASURES

51. As of June 2005, there were no NCCTs subject to counter-measures. Counter-measures for Nauru went into effect in December 2001. However, the FATF withdrew counter-measures in October 2004 after Nauru eliminated its shell banks and enacted further reforms to its anti-money laundering law and its corporations law.

52. Counter-measures for Myanmar went into effect on 3 November 2003. However, the FATF welcomed Myanmar's enactment of mutual legal assistance legislation, implementing rules and regulations for its AML law and improvements to its suspicious transaction reporting regime. Consequently, the FATF withdrew counter-measures in October 2004.

IV. JURISDICTIONS SUBJECT TO THE MONITORING PROCESS SINCE JULY 2004

The Bahamas

53. The Commonwealth of the Bahamas was identified as an NCCT in June 2000. The Bahamas subsequently enacted comprehensive anti-money laundering measures, made important progress implementing these measures, and was therefore removed from the NCCTs list in June 2001. The Bahamas established a financial intelligence unit (FIU) that has been successfully operational and was admitted into the Egmont Group in 2001. The Bahamas required banks to establish a physical presence in the jurisdiction, and required all pre-existing accounts to be identified by 31 December 2002. The Central Bank established and began to implement an ambitious inspection programme, and the Attorney General's Office established an international co-operation unit. Since de-listing, the Bahamian FIU has continued to function effectively—receiving, analysing and forwarding STRs to law enforcement, and effectively exchanging information with foreign counterparts.

54. However, the FATF has continued to monitor the situation in the Bahamas in light of continuing and serious concerns expressed by FATF members regarding other areas of international co-operation. By December 2004, The Bahamas had made progress in this area and responded to all outstanding regulatory requests from FATF members at that time and signed an agreement for future information exchange with the US Securities and Exchange Commission. Between January and May 2005, the FIU received 67 STRs, was in the process of analysing 55, and passed 8 on to the police force for investigation. The government also continued to respond productively to international requests for information. Between February and May 2005, The Bahamas received 20 new regulatory requests (for a total of 27 requests on hand), and had responded to 19. Finally, The Bahamas has drafted a handbook to assist foreign regulators when making requests to The Bahamas; this handbook is expected to be finalised in late June 2005.

55. The Bahamas has shown progress in implementing its anti-money laundering regime, and more recently has been addressing the ongoing concerns regarding international co-operation. The FATF will continue to monitor the situation in The Bahamas for the time being; however, if The Bahamas continues to respond adequately to requests for international co-operation, the FATF will end monitoring in the near future.

Guatemala

Situation in June 2001

56. In June 2001, Guatemala met criteria 6, 8, 15, 16, 19 and 25 and partially met criteria 1, 7 and 10. Guatemalan laws contained secrecy provisions that constituted a considerable obstacle to administrative counter-money laundering authorities, and Guatemalan law provided no adequate gateways for administrative authorities to co-operate with foreign counterparts. Additionally, Guatemala had not criminalised money laundering beyond the proceeds of narcotics violations. Further, the suspicious transaction reporting system contained no provision preventing “tipping off.”

Progress made since June 2001

57. Guatemala enacted Decree No. 67-2001, “Law Against Money and Asset Laundering,” on 27 November 2001. The law criminalises the laundering of proceeds relating to any crime, contains specific record-keeping requirements, and creates a special investigative unit (IVE) as a financial intelligence unit. The law's April 2002 implementing regulations improve suspicious transaction reporting and customer identification requirements. Decree No. 19-2002, the Banks and Financial Groups Law, of 1 June 2002, placed offshore banks under the oversight of the Superintendent of

Banks (SIB) after a six-month transition period following application for authorisation to operate. The Monetary Board issued Resolution JM-68-2003, of 21 May 2003, requiring banks to cancel or register all existing coded accounts within 3 months. The IVE became a member of the Egmont Group in August 2003.

58. Guatemala completed the licensing process of its offshore banks in December 2003. As of June 2004, all eleven offshore banks were subject to on-site inspections for compliance with the new requirements during 2003, and eight of the 11 were subject to a second on-site inspection during January-April 2004. The IVE has received a total of 1,068 STRs, including 36 from offshore banks. Seven cases originating from STRs have been referred to the prosecutor's office. Two money laundering prosecutions and one conviction had taken place. Guatemala had concluded 17 MOUs between the IVE and foreign FIUs, and 11 MOUs between the Banking Superintendency and foreign supervisors. Guatemala has responded to all the requests received pursuant to these agreements. Based on this progress these efforts in implementing an effective AML regime, the FATF Plenary decided at its June/July 2004 meeting to remove Guatemala from the NCCTs list.

59. Since de-listing, Guatemala has continued to implement its AML regime. Guatemala reported that it received 311 STRs in 2004 and that it met its goal of conducting 30 on-site AML examinations of financial institutions in 2004. Between January and May 2005, the IVE received another 48 STRs. In February 2005, the Special Money Laundering Prosecutor's Office achieved another money laundering conviction, and as of 31 March had 13 additional cases in process. As of May 2005, the IVE had a total of 24 MOUs for information exchange with counterpart FIUs in force and was negotiating another 9. Based on this continued progress, the June 2005 FATF Plenary decided to end monitoring of Guatemala. Future monitoring would be done within the context of the CFATF and its relevant mechanisms.

Egypt

Situation in June 2001

60. In June 2001, Egypt met criteria 5, 10, 11, 14, 19 and 25, and it partially met criteria 1, 6 and 8. Particular concerns identified included: a failure to adequately criminalise money laundering to internationally accepted standards; a failure to establish an effective and efficient STR system covering all financial institutions; a failure to establish an FIU or equivalent mechanism; and a failure to establish rigorous identification requirements that apply to all financial institutions. Further clarification was also sought on the evidential requirements necessary for access to information covered by Egypt's banking secrecy laws.

Progress made since June 2001

61. On 22 May 2002, Egypt enacted Law No. 80-2002 for Combating Money Laundering. The law criminalises the laundering of proceeds from various crimes, including narcotics, terrorism, fraud, and organised crime. The law contains basic anti-money laundering requirements and the framework for the Money Laundering Combating Unit (MLCU) to function as an FIU. Presidential Decree No. 164 of 2002 formally established and structured the MLCU. Law No. 78-2003 came into effect 9 June 2003 and expanded the scope of Law 80-2002 (by expanding predicate offences and removing a previous loophole which appeared to grant broad exemptions from imprisonment). Prime Minister Decree No. 951-2003, which came into effect in 10 June 2003, details the Executive Regulations specifying the requirements for STR reporting, customer identification procedures, the functions of the MLCU, supervision of entities for compliance with the obligations, and international co-operation.

62. Because of significant implementation of these reforms, the FATF removed Egypt from the NCCTs list in February 2004. Since that time, Egypt has continued to implement its anti-money laundering reforms. The MLCU became a member of the Egmont Group at its June 2004 Plenary. As of February 2005, the MLCU had received 850 STRs (up from 325 as of February 2004) and sent 513

to law enforcement for investigations. There had been two convictions for money laundering resulting from STR referrals and 10 prosecutions underway. On-site examinations had looked at 193 branches of 59 Egyptian banks.

63. Based on Egypt's continued progress in implementing its AML regime, the FATF decided to end monitoring of Egypt in February 2005. As Egypt is a member of the Middle East and North Africa FATF (MENAFATF), any future monitoring would take place within the context of MENAFATF and its evaluation mechanisms.

Ukraine

Situation in September 2001

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

Progress made since September 2001

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

66. Since de-listing, Ukraine has continued to develop and implement its anti-money laundering reforms. The SDFM officially became a member of the Egmont Group at its June 2004 Plenary. In 2004, the SDFM received more than 700,000 financial transaction reports (including threshold and suspicious transaction reports), and referred more than 200 cases to law enforcement. There were a total of 278 money laundering prosecutions and 69 convictions in 2004. The SDFM also began a significant increase in the size of its staff through the development of 27 regional SDFM offices.

67. Under new legislation, the SDFM became the SCFM (State Committee for Financial Monitoring), reflecting its improved status as a fully independent body. As of 1 May 2005, the SCFM had a staff of 173 (with plans to expand to 338), and 5 regional offices were fully operational. The FIU received over 233,000 financial transaction reports and selected 4,388 for further analysis. Ninety-three case referrals (out of 259 total) became the grounds for 62 criminal investigations. Ukraine has continued to make impressive progress in implementing its AML regime. However, there is still a need for the enactment of legislation to broaden Ukraine's ability to engage in regulatory co-operation. Once adequate legislation in this area is adopted, the FATF will end formal monitoring of Ukraine.

V. REVIEW OF THE NCCTS EXERCISE

A. OVERVIEW OF THE RESULTS

68. The NCCTS exercise began in 1998 at a time when many countries around the world did not have adequate AML measures in place. The aim of the initiative is to increase the protection of the world's financial system by securing adoption by all financial centers of effective measures to prevent, detect, and repress money laundering.

69. The exercise reviewed 47 jurisdictions in depth over two rounds of reviews (31 in 2000³ and 16 in 2001⁴). A total of 23 jurisdictions were identified as NCCTS (15 in 2000 and 8 in 2001). The timeline with respect to FATF decisions on listing, counter-measures, implementation plans, and de-listing can be summarised in narrative and graphic form in Annex 3. The FATF recommended that financial institutions give special attention to transactions involving the NCCTS, in accordance with Recommendation 21.

70. Most NCCTS began immediately improving their AML systems after being listed. This took place for several reasons. Generally, countries recognised that adopting current AML standards was important for the protection and soundness of their own financial systems. In addition, being placed on the list and the application of Recommendation 21 by the FATF were viewed by countries as harmful to their reputations and need to be addressed. In some jurisdictions, there were already stimuli for moving forward with AML reforms such as through feedback from FSRB mutual evaluations.

71. In addition to listing and the application of Recommendation 21, the possibility of applying counter-measures and the actual application of counter-measures in some cases also stimulated reforms. The FATF indicated to six NCCTS⁵ that counter-measures would go into effect if it did not adopt adequate reforms before a specific date (within either one or two months). In each case except one⁶ (where counter-measures went into effect), the country enacted AML reforms within the designated time frame.

72. There were two other cases where the FATF recommended counter-measures. In one case⁷ the country adopted reforms that were deemed inadequate, and the country was given a second deadline to enact appropriate reforms, which it did not. In another case⁸, a country enacted legislation that was deemed deficient and counter-measures went into effect as well. However, in all three NCCTS where counter-measures went into effect, the country subsequently approved the needed legislation and had counter-measures removed.

³ Antigua & Barbuda, *Bahamas*, Belize, Bermuda, British Virgin Islands, *Cayman Islands*, *Cook Islands*, Cyprus, *Dominica*, Gibraltar, Guernsey, Isle of Man, *Israel*, Jersey, *Lebanon*, *Liechtenstein*, Malta, *Marshall Islands*, Mauritius, Monaco, *Nauru*, *Niue*, *Panama*, *Philippines*, *Russia*, Samoa, Seychelles, *St. Kitts & Nevis*, St. Lucia, *St. Vincent & the Grenadines*, and Vanuatu. (Those jurisdictions identified as NCCTS at that time are in italics.)

⁴ Costa Rica, Czech Republic, *Egypt*, *Grenada*, *Guatemala*, *Hungary*, *Indonesia*, *Myanmar*, *Nigeria*, Palau, Poland, Slovakia, Turks & Caicos Islands, United Arab Emirates, *Ukraine*, and Uruguay. (Those jurisdictions identified as NCCTS at that time are in italics.)

⁵ Nauru, Philippines, Russia, Nigeria, Myanmar, and Ukraine.

⁶ Myanmar.

⁷ Nauru.

⁸ Ukraine.

73. Due to their rapid progress, five NCCTs were de-listed after only one year on the list, and four more were de-listed within two years. Sixteen jurisdictions—70% of all NCCTs—were de-listed within three years. Although the length of time varied, for de-listed jurisdictions the average amount of time spent on the list was approximately 2 1/3 years.

74. Technical assistance to NCCTs also played an important role in aiding local efforts to build and implement effective AML programs. This included assistance on draft legislation, training, and financial and technological support for FIU development. Technical assistance was provided directly by FATF members and/or by international financial institutions, and often co-ordinated by the FATF-style regional bodies.

75. Another sign of progress is that all de-listed jurisdictions established the legislative basis for an FIU prior to de-listing, and all except one (Niue) have joined the Egmont Group, representing an on-going commitment to implement AML measures and co-operate internationally. Two were already Egmont members when identified as NCCTs (Panama, Hungary). Several NCCTs developed FIUs that joined the Egmont Group prior to or around the time of de-listing (Bahamas, Cayman Islands, Cook Islands, Indonesia, Israel, Liechtenstein, Marshall Islands, Russia, and St. Vincent & the Grenadines). Others joined Egmont within a year of de-listing (Dominica, Egypt, Guatemala, Lebanon, and Ukraine).

76. Overall, the NCCTs exercise has proved to be a very efficient tool to improve worldwide implementation of the FATF 40 Recommendations. Of the 23 jurisdictions designated as NCCTs in 2000 and 2001, only three remain. The de-listing of three countries in 2005 and progress by the remaining three NCCTs confirm that this initiative continues to trigger significant improvements in anti-money laundering systems throughout the world. It also demonstrates the continued willingness and commitment of countries to improve their AML systems. The FATF commends these jurisdictions for their significant and important efforts and the results they have achieved. FATF members continue to express their willingness to provide technical assistance to jurisdictions identified through the NCCT initiative, and this has been an important element as these jurisdictions attempt to improve their anti-money laundering systems.

B. ANALYSIS OF THE USE OF THE 25 NCCT CRITERIA

77. During the consideration of the jurisdiction reports, the FATF paid particular attention to several critical areas, such as overall regulatory and supervisory framework, customer identification, suspicious transaction reporting, criminalisation of money laundering, and administrative and judicial co-operation. Jurisdictions that had deficiencies in these areas and met more of these criteria were more likely to be identified as NCCTs. In fact, every reviewed jurisdiction that met or partially met Criterion 17 (“Obvious unwillingness to respond constructively to requests”), Criterion 20 (“Laws or regulations prohibiting international exchange of information between judicial authorities”) or Criterion 21 (Obvious unwillingness to respond to mutual legal assistance requests) was placed on the NCCTs list.

C. ANALYSIS OF THE PROCESS

78. In developing the NCCTs exercise, the FATF attempted to make an exercise that was transparent, fair, and objective⁹. The FATF took over a year to develop the specific criteria and process, which helped to gain co-operation from the reviewed jurisdictions during the exercise and proved to be successful. In terms of process, the setting up of the Ad Hoc Group on NCCTs in 1998 provided a forum to discuss and review the technical procedures. The setting up of regional review

⁹ Specific progress made in each NCCT and monitored jurisdiction is included in FATF news releases after June 2000 and summarised in the annual NCCT reports of June 2000, of June 2001, June 2002, June 2003, July 2004 and June 2005.

groups provided a very efficient mechanism to conduct the bulk of the analytical work of the exercise itself. Specifically, the issues of transparency, consideration of the country's views, and confidentiality, also contributed to and continues to contribute to a successful NCCTs exercise.

79. The FATF published criteria and procedures in February 2000 prior to reviewing specific jurisdictions. This demonstrated the objectiveness of the process, as reviewed jurisdictions would be rated against the same criteria and subject to the same process. The breadth of the review (47 jurisdictions) also indicated that it was not only a few specific jurisdictions being targeted.

80. The NCCTs process provided each country reviewed with multiple opportunities to reply to FATF concerns and comment on draft reports throughout the review process. Such a "right to reply" was important for maintaining the co-operation of the country and helped to ensure a more fair process. In addition to electronic exchanges and letters, the reviewed jurisdictions were invited to comment on the draft NCCT reports, and their views were considered by the review group. The countries were also invited to present their cases in person during face-to-face meetings. All these steps took place before the presentation of the draft reports to the Plenary.

81. The FATF maintained a policy of confidentiality with the jurisdiction throughout the process before any jurisdiction was publicly named. The process of the review and drafting the report took several months, in consultation with the jurisdiction. The reports were confidential between the FATF and the jurisdiction; no NCCT report became public and the name of no jurisdiction was identified publicly before the NCCT list was made public.

82. The NCCTs exercise has been and continues to be a useful tool for the private sector, since it has assisted financial institutions to identify and prioritise potential money laundering risks. The exercise was also a useful tool for FATF members to identify several areas where there were differences of interpretation within the FATF regarding certain FATF NCCT criteria ("horizontal issues"), for instance: the application of customer identification requirements to accounts opened before AML measures were in place; the adequacy of measures where intermediaries introduce customers to financial institutions; the effectiveness of an "indirect obligation" to report suspicious transactions; difficulties in establishing beneficial ownership with regards to legal entities, including bearer shares, and trusts. The FATF decided that no reviewed jurisdictions would be listed based on these issues. In addition, the FATF decided that these issues would be further discussed and developed within the review of the FATF 40 Recommendations. Indeed, in each case the revision process led to clearer obligations in the new FATF Recommendations of 2003 (especially Recommendations 5, 9, 13, 33, and 34).

VI. CONCLUSIONS AND THE WAY FORWARD

83. The NCCTs exercise has proved to be a very useful and very efficient tool to improve worldwide implementation of the FATF 40 Recommendations. Of the 23 jurisdictions designated as NCCTs in 2000 and 2001, there are only 3 NCCTs as of June 2005. All reviewed jurisdictions have participated actively and constructively in the process. The reviews of jurisdictions against the 25 criteria have revealed—and stimulated—many ongoing efforts by governments to improve their systems. All three remaining NCCTs have enacted the main necessary legal and regulatory reforms and have therefore been invited to submit implementation plans so as to evaluate the actual implementation of their reforms.

84. Following the progress made by the jurisdictions deemed to be non-cooperative in June 2000, June 2001, and September 2001, the list of NCCTs now comprises:

Myanmar
Nauru
Nigeria

85. In accordance with Recommendation 21, the FATF recommends that financial institutions give special attention to business relations and transactions with persons, including companies and financial institutions, from the “non-cooperative countries and territories” mentioned above and in so doing take into account issues raised in the relevant summaries in Section III of this report and any progress made by these jurisdictions since being listed as NCCTs. These countries are strongly urged to adopt the remaining necessary measures to improve their rules and practices as expeditiously as possible in order to remedy the remaining AML deficiencies. Most importantly, these countries are urged to fully implement their reforms and take sufficient steps to ensure continued effective implementation of comprehensive AML systems.

86. The FATF remains committed to the current NCCT process for those countries on the list and those subject to monitoring, and the FATF and its members will remain fully engaged with these countries. The FATF will continue to place on the agenda of each plenary meeting the issue of non-cooperative countries and territories, to monitor any progress which may materialise, and to revise its findings, including the removal of jurisdictions’ names from the list of NCCTs, as warranted. FATF members are also prepared to provide technical assistance, where appropriate, to help jurisdictions in the design and implementation of their anti-money laundering systems.

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

88. All countries and territories that are part of the global financial system are urged to change any rules or practices which impede the fight against money laundering and the financing of terrorism. To this end, the FATF will continue its work to improve its members’ and non-members’ implementation of the FATF Forty Recommendations. It will also encourage and support the regional anti-money laundering bodies in their ongoing efforts.

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

LIST OF CRITERIA FOR DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES¹⁰

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

¹⁰ This list should be read in conjunction with the attached comments and explanations.

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

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

(v) Lack of efficient suspicious transactions reporting system

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

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

B. Obstacles raised by other regulatory requirements

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

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

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

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

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

C. Obstacles to international co-operation

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

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

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

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

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

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

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

20. Laws or regulations prohibiting international exchange of information between judicial authorities (notably specific reservations to the anti-money laundering provisions of international agreements) or placing highly restrictive conditions on the exchange of information.
21. Obvious unwillingness to respond constructively to mutual legal assistance requests (e.g. failure to take the appropriate measures in due course, long delays in responding).
22. Refusal to provide judicial co-operation in cases involving offences recognised as such by the requested jurisdiction especially on the grounds that tax matters are involved.

D. Inadequate resources for preventing and detecting money laundering activities

(i) Lack of resources in public and private sectors

23. Failure to provide the administrative and judicial authorities with the necessary financial, human or technical resources to exercise their functions or to conduct their investigations.
24. Inadequate or corrupt professional staff in either governmental, judicial or supervisory authorities or among those responsible for anti-money laundering compliance in the financial services industry.

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

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

CRITERIA DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES

1. International co-operation in the fight against money laundering not only runs into direct legal or practical impediments to co-operation but also indirect ones. The latter, which are probably more numerous, include obstacles designed to restrict the supervisory and investigative powers of the relevant administrative¹¹ or judicial authorities¹² or the means to exercise these powers. They deprive the State of which legal assistance is requested of the relevant information and so prevent it from responding positively to international co-operation requests.

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

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

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

A. Loopholes in financial regulations

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

4. All financial systems should be adequately regulated and supervised. Supervision of financial institutions is essential, not only with regard to purely prudential aspects of financial regulations, but also with regard to implementing anti-money laundering controls. Absence or ineffective regulations and supervision for all financial institutions in a given country or territory, offshore or onshore, on an equivalent basis with respect to international standards applicable to money laundering is a detrimental practice.¹³

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

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

¹¹ The term "administrative authorities" is used in this document to cover both financial regulatory authorities and certain financial intelligence units (FIUs).

¹² The term "judicial authorities" is used in this document to cover law enforcement, judicial/prosecutorial authorities, authorities that deal with mutual legal assistance requests, as well as certain types of FIUs.

¹³ 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.

6. The following should therefore be considered as detrimental:

- possibility for individuals or legal entities to operate a financial institution¹⁴ without authorisation or registration or with very rudimentary requirements for authorisation or registration; and,

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

(iii) Inadequate customer identification requirements for financial institutions

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

8. Accordingly, the following are detrimental practices:

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

- lack of effective laws, regulations or agreements between supervisory authorities and financial institutions or self-regulatory agreements among financial institutions¹⁵ on identification¹⁶ 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

9. Countries and territories offering broad banking secrecy have proliferated in recent years. The rules for professional secrecy, like banking secrecy, can be based on valid grounds, i.e., the need to

¹⁴ 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”.

¹⁵ The agreements and self-regulatory agreements should be subject to strict control.

¹⁶ 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.

protect privacy and business secrets from commercial rivals and other potentially interested economic players. However, as stated in Recommendations 2 and 37, these rules should nevertheless not be permitted to pre-empt the supervisory responsibilities and investigative powers of the administrative and judicial authorities in their fight against money laundering. Countries and jurisdictions with secrecy provisions must allow for them to be lifted in order to co-operate in efforts (foreign and domestic) to combat money laundering.

10. Accordingly, the following are detrimental:

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

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

(v) Lack of efficient suspicious transaction reporting system

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

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

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

B. Impediments set by other regulatory requirements

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

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

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

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

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

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

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

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

C. Obstacles to international co-operation

(i) At the administrative level

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

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

- the requesting authority should perform similar functions to the authority to which the request is addressed;
- the purpose and scope of information to be used should be expounded by the requesting authority, the information transmitted should be treated according to the scope of the request;
- the requesting authority should be subject to a similar obligation of professional or official secrecy as the authority to which the request is addressed;
- exchange of information should be reciprocal.

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

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

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

22. Restrictive practices in international co-operation against money laundering between supervisory authorities or between FIUs for the analysis and investigation of suspicious transactions, especially on the grounds that such transactions may relate to tax matters (fiscal excuse¹⁷). Refusal only on this basis is a detrimental practice for international co-operation against money laundering.

(ii) At the judicial level

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

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

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

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

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

(i) Lack of resources in public and private sectors

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

¹⁷ "Fiscal excuse" as referred to in the Interpretative Note to Recommendation 15.

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

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

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

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

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

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

In order to be removed from the NCCT list:

1. An NCCT must enact laws and promulgate regulations that comply with international standards to address the deficiencies identified by the NCCT report that formed the basis of the FATF's decision to place the jurisdiction on the NCCT list in the first instance.
2. The NCCTs that have made substantial reform in their legislation should be requested to submit to the FATF through the applicable regional review group, an implementation plan with targets, milestones, and time frames that will ensure effective implementation of the legislative and regulatory reforms. The NCCT should be asked particularly to address the following important determinants in the FATF's judgement as to whether it can be de-listed: filing of suspicious activity reports; analysis and follow-up of reports; the conduct of money laundering investigations; examinations of financial institutions (particularly with respect to customer identification); international exchange of information; and the provision of budgetary and human resources.
3. The appropriate regional review groups should examine the implementation plans submitted and prepare a response for submission to the NCCT at an appropriate time. The Chairs of the four review groups (Americas; Asia/Pacific; Europe; Africa and the Middle East) should report regularly on the progress of their work. A meeting of those Chairs, if necessary, to keep consistency among their responses to the NCCTs.
4. The FATF, on the initiative of the applicable review group chair or any member of the review group, should make an on-site visit to the NCCT at an appropriate time to confirm effective implementation of the reforms.
5. The review group chair shall report progress at subsequent meetings of the FATF. When the review groups are satisfied that the NCCT has taken sufficient steps to ensure continued effective implementation of the reforms, they shall recommend to the Plenary the removal of the jurisdiction from the NCCT list. Based on an overall assessment encompassing the determinants in paragraph 2, the FATF will rely on its collective judgement in taking the decision.
6. Any decision to remove countries from the list should be accompanied by a letter from the FATF President:
 - (a) clarifying that de-listing does not indicate a perfect anti-money laundering system;
 - (b) setting out any outstanding concerns regarding the jurisdiction in question;

(c) proposing a monitoring mechanism to be carried out by FATF in consultation with the relevant FATF-style regional body, which would include the submission of regular implementation reports to the relevant review group and a follow-up visit to assess progress in implementing reforms and to ensure that stated goals have, in fact, been fully achieved.

7. Any outstanding concerns and the need for monitoring the full implementation of legal reforms should also be mentioned in the NCCT public report.

OUTLINE FOR MONITORING PROGRESS OF IMPLEMENTATION SUBSTANCE

The FATF will monitor progress of de-listed jurisdictions against the implementation plans, specific issues raised in the updated progress reports (e.g., phasing out of unidentified accounts) and the experience of FATF members. Subjects addressed may include, as appropriate:

- the issuance of secondary legislation and regulatory guidance;
- inspections of financial institutions planned and conducted;
- STR systems;
- process for money laundering investigations and prosecutions conducted;
- regulatory, FIU and judicial co-operation;
- adequacy of resources;
- assessment of compliance culture in the relevant sectors.

TIMELINES OF FATF DECISIONS ON NCCTS

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

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

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

	Jun-00	Feb-01	Jun-01	Sep-01	Dec-01	Feb-02	Jun-02	Oct-02	Dec-02	Feb-03	Jun-03	Aug-03	Oct-03	Nov-03	Feb-04	Jul-04	Oct-04	Feb-05	Jun-05	
Bahamas	listed	IP	de-listed	de-listed																
Cayman Islands	listed	IP	de-listed	de-listed				de-mon.								new IP				
Cook Islands	listed	IP																		
Dominica	listed						IP							de-mon.						
Israel	listed	IP	de-listed	de-listed				de-listed						de-mon.						
Lebanon	listed	IP	de-listed	de-listed				de-listed						de-mon.						
Liechtenstein	listed	IP	de-listed	de-listed				de-mon.						de-mon.						
Marshall Islands	listed	IP	de-listed	de-listed				de-listed						de-mon.						
Nauru	listed	IP	de-listed	de-listed				de-listed						de-mon.						
Palau	listed	IP	de-listed	de-listed				de-listed						de-mon.						
Panama	listed	IP	de-listed	de-listed				de-listed						de-mon.						
Philippines	listed	IP	de-listed	de-listed				de-listed						de-mon.						
Russia	listed							de-listed						de-mon.						
St. Kitts & Nevis	listed						IP	de-listed						de-mon.						
St. Vincent & Gren.	listed						IP	de-listed						de-mon.						
Egypt								IP						de-listed		de-listed				
Guatemala								IP						de-listed		de-listed				
Hungary								IP						de-mon.						
Indonesia								IP						IP						
Myanmar								IP						CM						
Nigeria								IP						IP						
Grenada								IP						de-mon.						
Ukraine								IP						IP						

- listed
- listed and counter-measures apply
- listed but Implementation Plan requested
- de-listed and subject to monitoring
- not-listed and not monitored