FATF • GAFI

Financial Action Task Force on Money Laundering

Groupe d'action financière sur le blanchiment de capitaux

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

22 June 2000

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

Introduction and background

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

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

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

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

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

6. The goal of the FATF's work in this area is to secure the adoption by all financial centres of international standards to prevent, detect and punish money laundering.

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1 The report is available at the following website address : http://www.oecd.org/fatf

7. At its Plenary meeting on 20-22 June 2000, the FATF approved this report. Section one of this report summarises the review process. In section two, the report briefly describes the findings with respect to the jurisdictions studied. Section three highlights issues that were raised during the process that warrant further consideration by the FATF. Section four outlines future steps to be taken and identifies 15 countries or territories which are viewed by the FATF as non-cooperative in the fight against money laundering.

I. Review process

8. At its February 2000 Plenary meeting, the FATF set up four regional review groups (Americas; Asia/Pacific; Europe; and Africa and the Middle East) to analyse the anti-money laundering regimes of a number of jurisdictions against the above-mentioned twenty-five criteria. Soon after this meeting, the jurisdictions to be reviewed were informed of the work to be carried out by the FATF.

9. The reviews involved the gathering of all the relevant information, including laws and regulations, as well as any mutual evaluation reports, related progress reports and self-assessment surveys, where available. This information was then analysed with respect to the twenty-five criteria and a draft report was prepared and sent to the jurisdictions concerned for comment. In some cases, the reviewed jurisdictions were asked to answer specific questions designed to seek additional information and clarification. Each reviewed jurisdiction sent their comments on their respective draft reports. These comments and the draft reports themselves were discussed between the FATF and the jurisdictions concerned during a series of face-to-face meetings which took place at the end of May and at the beginning of June 2000. Subsequently, the draft reports were discussed by the FATF Plenary. The findings are reflected below.

II. Summaries of the reviews of jurisdictions

10. This section contains summaries of the reviews of a first set of jurisdictions carried out by the FATF. Jurisdictions marked with an asterisk are 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.)

Antigua and Barbuda

11. The authorities of Antigua and Barbuda have achieved impressive results, especially since 1999, in revising the anti-money laundering framework, in accordance with the FATF 40 Recommendations. However, there are still some deficiencies in the identification of beneficial owners. Amended regulations on customer identification requirements and improved registration procedures would basically address those deficiencies.

Bahamas *

12. The Commonwealth of the Bahamas meets criteria 12-16, 18, 21, 22, 23 and 25. It partially meets criteria 5, 10, 11 and 20. Although the Bahamas has comprehensive anti-

money laundering legislation, there are serious deficiencies in its system. In particular, there is a lack of information about beneficial ownership as to trusts and International Business Companies (IBCs), which are allowed to issue bearer shares. There is also a serious breach in identification rules since certain intermediaries can invoke their professional code of conduct to avoid revealing the identity of their clients. International co-operation has been marked by long delays and restricted responses to requests for assistance and there is no room to co-operate outside of judicial channels.

13. This jurisdiction is a member of the Caribbean Financial Action Task Force (CFATF), and has indicated, during the process of this review, its commitment to follow the recommendations contained in the CFATF mutual evaluation of 1997. At present there are several Bills pending in the legislative process that would address the weak points identified.

Belize

14. Since criminalising money laundering in 1996, Belize has generally pursued policies in law and regulation aimed at fostering a sound anti-money laundering regime. Belize has, nevertheless, certain deficiencies with regard to IBCs, particularly in the identification of beneficial owners and in ascertaining other information that could prove useful in protecting against criminal abuse of its offshore financial sector.

Bermuda

15. Bermuda appears to have effective regulations and supervision for financial institutions operating in its territory as well as an efficient mandatory system for reporting, monitoring and sanctioning for the failure to comply with the obligation to report suspicious or unusual transactions. Financial institutions are not, however, required to identify the beneficial owners of all companies for which transactions are undertaken.

British Virgin Islands

16. The British Virgin Islands (BVI) is committed to implementing solid legislation and regulatory measures against money laundering.

17. The BVI allows certain intermediaries, and individuals, which are subject to the same anti-money laundering standards and supervision as financial institutions, to introduce business to banks and financial institutions on the basis that the introducers themselves verify the identify of the customer. In addition, the BVI allows certain institutions based in certain overseas countries, subject to equivalent anti-money laundering systems, to introduce business, without separately verifying the identity of the client. The banks and the financial institutions are only required to know the name of the client but not to verify the identity separately. There is concern as to whether such a system is consistent with FATF Recommendations and provides sufficiently rigorous checks on the identity of clients of banks and financial institutions, especially in cases where the introducer is not a financial institution.

18. The BVI also has a large number of IBCs, the formation of which by intermediaries is subject to fewer identification requirements than applied to the company sector as a whole.

19. The FATF has decided to consider both issues and will need, following this exercise, to discuss them with the BVI authorities.

Cayman Islands *

20. The Cayman Islands meets criteria 1, 5, 6, 8, 10, 11, 13, 14, 15, 16, 17, 18 and 23. It partially meets criteria 2, 3, 7 and 12. The Cayman Islands does not have any legal requirements for customer identification and record keeping. Even if in the absence of a mandatory requirement, financial institutions were to identify their customers, supervisory authorities cannot, as a matter of law, readily access information regarding the identity of customers. Moreover, the supervisory authority places too much reliance on home country supervisors' assessment of management of bank branches.

21. Although the Cayman Islands has criminalised the laundering of the proceeds of all serious crimes and its system *encourages* reporting of suspicious transactions (by providing a safe harbour from criminal liability for those who report), it lacks a *mandatory* regime for the reporting of suspicious transactions. Moreover, a large class of management companies – including those providing nominee shareholders for the purpose of formation of a company or holding the issued capital of a company -- is unregulated.

22. At the same time, the FATF notes that the Cayman Islands has been a leader in developing anti-money laundering programmes throughout the Caribbean region. It has served as president of the CFATF, and it has provided substantial assistance to neighbouring states in the region. It has demonstrated co-operation on criminal law enforcement matters, and uncovered several serious cases of fraud and money laundering otherwise unknown to authorities in FATF member states. In addition, it has closed several financial institutions on the basis of concerns about money laundering.

Cook Islands *

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

24. During the FATF review process, the Government expressed its intention to propose to the Parliament, before October 2000, two Bills which would criminalise money laundering and establish a suspicious transaction reporting system with a Financial Intelligence Unit (FIU). However, the authorities indicated that those Bills would not likely introduce a customer identification requirement, nor would they relax the excessive secrecy provisions.

Cyprus

25. Cyprus has a comprehensive anti-money laundering system. The review did, however, raise a specific issue of concern on customer identification in respect of trusts. The

FATF welcomes Cyprus' intention to supervise lawyers and accountants when engaged in financial activities.

Dominica *

26. Dominica meets criteria 4, 5, 7, 10-17, 19, 23 and 25. Dominica has outdated proceeds of crime legislation, which lacks many features now expected, and very mixed financial services legislation currently on the books. In addition, company law provisions create additional obstacles to identification of ownership. The offshore sector in Dominica appears to be largely unregulated although it is understood that responsibility for its regulation is to be transferred to the Eastern Caribbean Central Bank. Since Dominican authorities did not participate in the FATF review, the FATF looks forward to the discussion of the CFATF evaluation of Dominica, currently scheduled for October.

Gibraltar, Guernsey, the Isle of Man and Jersey

27. These jurisdictions have comprehensive anti-money laundering systems. Gibraltar, Guernsey, the Isle of Man and Jersey have in place a system for reporting suspicious transactions. Where the underlying criminal conduct is drug trafficking or terrorism, the obligation to report is a direct one. Where the underlying criminal conduct is another predicate offence, the reporting is an "indirect obligation": failure to make a report potentially leaves one open to a charge of money laundering; making a report is a defence against such a charge. During the review process the issue was raised as to whether an "indirect reporting requirement" is adequate and consistent with FATF Recommendations or whether the obligation should be a direct one for all predicate offences. FATF has agreed to consider the issue and will need, following this exercise, to discuss further the adequacy of the suspicious transaction reporting system in the jurisdictions with the authorities.

28. Gibraltar, Guernsey, the Isle of Man and Jersey allow certain intermediaries, and individuals, which are subject to the same anti-money laundering standards and supervision as financial institutions, to introduce business to banks and financial institutions on the basis that the introducers themselves verify the identify of the customer. In addition, the jurisdictions allow certain institutions based in certain overseas countries, subject to equivalent anti-money laundering systems, to introduce business, without separately verifying the identity of the client. The banks and the financial institutions in Guernsey, Isle of Man and Jersey are only required to know the name of the client but not to verify the identity separately. There is concern as to whether such a system is consistent with FATF Recommendations and provides sufficiently rigorous checks on the identity of clients of banks and financial institutions, especially in cases where the introducer is not a financial institution. Guernsey, Gibraltar, Jersey have decided to restrict to those meeting FATF anti-money laundering standards, the list of countries permitted to introduce business to Guernsey, Gibraltar, Jersey banks without them having to verify separately the client's identity. The FATF has decided to consider the issue and will need, following this exercise, to discuss the adequacy of introducer system in the jurisdictions with the authorities.

29. The lack of a stringent scheme to apply the new rules of customer identification for accounts opened prior to their entry into force is also a source of concern. The new rules for

customer identification verification were introduced in Gibraltar in 1995, Guernsey in 1999, Isle of Man in 1998 and Jersey in 1999.

Israel *

30. Israel meets criteria 10, 11, 19, 22 and 25. It also partially meets criterion 6. The absence of anti-money laundering legislation causes Israel to fall short of FATF standards in the areas of mandatory suspicious transaction reporting, criminalisation of money laundering arising from serious crimes and establishment of a financial intelligence unit. Israel is partially deficient in the area of record keeping, since this requirement does not apply to all transactions. However, Israel already meets FATF standards in the areas of regulation of financial institutions, licensing and screening procedures for banking corporations, and international co-operation in regulatory investigations. Israeli banking regulations address the issue of customer identification.

31. The Government of Israel has been considering the enactment of an anti-money laundering law for almost a decade. It is expected that a final draft will be submitted to a Knesset Committee for approval by the end of June 2000 and then sent to the full Knesset for its final two readings and a vote. Israeli officials expect enactment by the end of July 2000. This anti-money laundering legislation is intended to rectify most of Israel's shortcomings and to correct most of the deficiencies in the Israeli legal system that allow freedom of movement to money launderers. However, unless the legislation is amended to provide for exchanges with foreign administrative financial intelligence units, its enactment would cause Israel to partially meet criterion 15. The Israeli Ministry of Justice has already drafted a plan to set up an FIU so that the unit can become operational as soon as the law is passed.

Lebanon *

32. Lebanon meets criteria 1, 2, 7, 8, 9, 10, 11, 14, 15, 16, 18, 19, 20, 24 and 25. In particular, it maintains a strict banking secrecy regime which affects access to the relevant information both by administrative and investigative authorities. International co-operation is compromised as well.

33. Anomalies in the identification procedures for clients and doubts related to the actual identity of the clients can constitute grounds for the bank to terminate any existing relationship, without violating the terms of the contract. No specific reporting requirement exists in such cases.

34. Furthermore, there does not seem to be any well-structured unit tasked with FIU functions, even though during the process of the FATF review, the country has indicated that it has formed a joint committee, composed of members of the Central Bank, the Ministry of Finance and the Bankers Association.

Liechtenstein *

35. Although the situation has recently improved significantly, Liechtenstein currently meets criteria 1, 5 (partially), 10, 13 (partially), 15, 16, 17, 18, 20, 21 and 23. The system for reporting suspicious transactions is still inadequate, there are not proper laws in place for exchanging information about money laundering investigations and co-operating with foreign

authorities in prosecuting cases, and the resources devoted to tackling money laundering are inadequate.

36. During the FATF review, the Liechtenstein authorities advised of measures already adopted to improve the effectiveness of their anti-money laundering operations. They have introduced laws in Parliament governing due diligence and mutual assistance and to increase further the resources devoted to the fight against money laundering, including the establishment of a new FIU, separate from the Financial Services Authority. It is expected that this legislation will be adopted by September 2000. They also plan to have more judges to deal with money laundering cases.

37. FATF strongly supports these measures and urges their quick adoption. They are intended to rectify most of the shortcomings which have been identified. The FATF also advises the Liechtenstein authorities to consider whether any additional measures are needed to require banks to obtain more information on customers introduced by lawyers and fiduciaries and to encourage banks to report suspicious transactions.

Malta

38. In an otherwise comprehensive anti-money laundering system, the review raised only one major source of concern. This relates to the Maltese system of nominee companies which is an obstacle for the identification of the beneficial owners in offshore and onshore companies although the nominee companies are licensed and regulated by the Malta Financial Services Centre. The FATF urges Malta to accelerate the phasing-out of the nominee company system.

Marshall Islands *

39. Marshall Islands meets criteria 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 19, 23 and 25. It also indirectly meets criteria 15, 16 and 17. It lacks a basic set of anti-money laundering regulations, including the criminalisation of money laundering, customer identification and a suspicious transaction reporting system. While the size of the financial sector in the Marshall Islands is limited with only three onshore banks and no offshore bank, the jurisdiction has registered about 3,000 IBCs. The relevant information on those international companies is guarded by the excessive secrecy provision and not accessible by financial institutions.

40. During the FATF review process, the Government has indicated that, by the end of October 2000, it would propose an anti-money laundering law which would introduce criminalisation of money laundering, customer identification, record keeping and suspicious transaction reporting system.

Mauritius

41. Mauritius has a range of legislation governing the domestic and offshore financial services industries. Some concerns have been identified regarding the identity of directors and beneficial owners of offshore trusts but the Economic Crime and Anti-Money Laundering Act, passed on 13 June 2000, reinforces the existing legislation in the prevention of and fight against money laundering.

Monaco

42. The anti-money laundering system in Monaco is comprehensive. However, difficulties have been encountered with Monaco by countries in international investigations on serious crimes that appear to be linked also with tax matters. In addition, the FIU of Monaco (SICCFIN) suffers a great lack of adequate resources. The authorities of Monaco have stated that they will provide additional resources to SICCFIN.

Nauru *

43. Nauru meets criteria 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 19, 23, 24 and 25. It lacks a basic set of anti-money laundering regulations, including the criminalisation of money laundering, customer identification and a suspicious transaction reporting system. It has licensed approximately 400 offshore “banks”, which are prohibited from taking deposits from the public but are poorly supervised. The excessive secrecy provisions guard against the disclosure of the relevant information on those offshore banks and international companies.

44. In response to the allegation that a significant number of “offshore banks” derives its funds from illicit sources in Russia, the government has been tightening its supervision over those “banks”. During the FATF review process, Nauru indicated its intention to consider reforms, which would introduce the obligation of customer identification and record-keeping.

Niue *

45. Niue meets criteria 1, 2, 3, 4, 5, 10, 11, 12, 14, 15 and 25. Although Niue has introduced laws relating to money laundering and international co-operation, the legislation contains a number of deficiencies, in particular in relation to customer identification requirements. While it has licensed five offshore banks and registered approximately 5,500 IBCs, there are serious concerns about the structure and effectiveness of the regulatory regime for those institutions. In addition, Niue willingness to co-operate in money laundering investigations has not been tested in practice.

46. During the FATF review process, the authorities acknowledged some of the deficiencies, but they have not indicated any concrete initiatives to reform the system.

Panama *

47. Panama meets criteria 7, 8, 13, 15, 16, 17, 18 and 19, and partially meets criterion 10. Panama has not yet criminalised money laundering for crimes other than drug trafficking. It has an unusual and arguably inefficient mechanism for transmitting suspicious transaction reports to competent authorities. Panama's FIU is not able to exchange information with other FIUs. In addition, certain outdated civil law provisions impede the identification of the true beneficial owners of trusts.

48. Panama is, however, an active member of the CFATF and through its work in that body has made a number of significant improvements to its regime over recent years. Significantly, in connection with its hosting this year of the plenary meeting of the Egmont Group of financial intelligence units, the President of Panama committed her administration to implement a series of improvements to her country’s anti-money laundering regime.

Philippines *

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

50. During the past few years, the government has been seeking unsuccessfully for the Congress to pass several anti-money laundering Bills. The Government of the Philippines urgently needs to enact an anti-money laundering Bill during the current session of the Congress (June 2000 to May 2001), to criminalise money laundering, require customer identification as well as record keeping, introduce suspicious transaction reporting system and relax the bank secrecy provisions.

Russia *

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

52. Russia faces a unique challenge in combating money laundering as it continues its transition to a market economy. The existence of a continued large scale capital flight, underdeveloped market institutions and lack of fiscal resources all complicate the fight against money laundering.

53. Russian authorities state that they are committed to implementing the FATF Forty Recommendations and being "cooperative" within the context of the 25 criteria. In this regard, they are working with the Duma in a Trilateral Commission to try and reach agreement and passage of a comprehensive money laundering statute in July 2000. FATF has been advised that the new law will contain provisions for a mandatory suspicious transactions reporting regime, which will require that the reports be filed with the "Interagency Centre for Countering the Legalisation (Laundering) of Illegally Derived Proceeds" ("Centre").

54. The Interagency Centre, which was created in mid-1999, has the potential to become a fully functioning FIU, but cannot be truly effective until there is a suspicious transaction reporting system that produces reports for the Centre to work on. Russia must also enact the necessary implementing regulations to carry out the provisions of the new law.

55. The success of Russian efforts will depend on high-level support to combat money laundering, clearly defined authority for agencies charged with carrying out anti-money laundering responsibilities, and adequate resources to carry out agency duties.

Samoa

56. Samoa passed a Money Laundering Prevention Bill on 5 June 2000. The enactment of this Law has criminalised money laundering, required financial institutions as well as trustee companies to identify customers and keep their records, and established suspicious transaction reporting system and an FIU. As a consequence, a number of Samoa's deficiencies have been addressed, while others will need further steps. The FATF urges the Government of Samoa to fully implement the enacted law and to strengthen the bank licensing procedure.

St. Kitts and Nevis *

57. St. Kitts and Nevis meets criteria 1-13, 15-19, 23 and 25. Money laundering is a crime only as it relates to narcotics trafficking. There is no requirement to report suspicious transactions. Most of the other failings relate to Nevis, which constitutes the only significant financial centre of the federation. The Nevis offshore sector is effectively unsupervised, and there are no requirements in place to ensure financial institutions to follow procedures or practices to prevent or detect money laundering. Non-residents of Nevis are allowed under law to own and operate an offshore bank without any requirement of identification. Strong bank secrecy laws prevent access to information about offshore bank account holder, apparently even in some criminal proceedings. Company law provisions outline additional obstacles to customer identification and international co-operation: limited liability companies may be formed without registration of their owners and there can be no mutual legal assistance or international judicial co-operation (notwithstanding a treaty or convention) with respect to legal action against an international trust, or a settlor, trustee, protector, or beneficiary of such trust.

St. Lucia

58. Although St. Lucia enacted relatively comprehensive new money laundering legislation early this year, it appears not to have structured its offshore financial services regulatory regime in such a way as to prevent conflicts of interest with the private sector in decision-making and operations. This conflict of interest has the potential of undermining the anti-money laundering system. It also appears as though the regulatory body may not be staffed sufficiently to oversee the rapidly developing offshore services sector. The FATF urges St. Lucia to remedy these deficiencies and will follow up progress in the matter.

St. Vincent and the Grenadines *

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

III. Issues of particular concern for anti-money laundering purposes

60. During the review process, a number of issues arose in several jurisdictions (noted above), which raised questions of interpretation. These were:

(i) The practice in some jurisdictions of an "indirect obligation" to report suspicious transactions related to some criminal offences, whereby making a report provides a defence against a charge of money laundering, rather than a direct obligation to make a report.

(ii) The practice in some jurisdictions of allowing intermediaries to introduce businesses to banks and financial institutions where the obligation to verify customer identity was an obligation for the introducer instead of the bank.

(iii) Difficulties in establishing the beneficial ownership of some legal entities, including companies issuing bearer shares and trusts.

(iv) The existence and development of the IBCs which can be formed by intermediaries and be subject to fewer verification and disclosure requirements than applied to the company sector as a whole.

(v) The lack of a stringent scheme to apply the new rules of customer identification for accounts open prior to their entry into force.

61. The FATF believes that these general issues require further clarification. In light of this, the FATF will initiate a dialogue with concerned jurisdictions to discuss the implications for them, including the possibility of changing their laws and practices.

IV. Conclusion and the way forward

62. The FATF has considered the reports summarised above and confirmed that there is a wide variance in both the character of the money laundering threat posed by different jurisdictions and in the status of efforts to implement anti-money laundering controls.

63. This work of the FATF has been particularly encouraging. Most jurisdictions have participated actively and constructively in the reviews. The reviews of jurisdictions under the 25 criteria have revealed – and stimulated – many ongoing efforts by governments to improve their system. Many jurisdictions indicated that they would shortly submit anti-money laundering Bills to their legislative bodies and would conclude international arrangements to exchange information on money laundering cases among competent authorities. Some of them have already enacted anti-money laundering legislation.

64. Nevertheless, serious systemic problems have been identified in the following jurisdictions:

Bahamas
Cayman Islands
Cook Islands
Dominica
Israel
Lebanon
Liechtenstein
Marshall Islands
Nauru
Niue
Panama
Philippines
Russia
St. Kitts and Nevis
St. Vincent and the Grenadines

65. These jurisdictions are strongly urged to adopt measures to improve their rules and practices as expeditiously as possible in order to remedy the deficiencies identified in the reviews. Pending adoption and implementation of appropriate legislative and other measures, and in accordance with Recommendation 21, the FATF recommends that financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from the "non-cooperative countries and territories" mentioned in paragraph 64 and so doing take into account issues raised in the relevant summaries in Section II of this report.

66. The FATF and its members will continue a dialogue with these jurisdictions. The 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.

67. On the other hand, should those countries or territories identified as non-cooperative maintain their detrimental rules and practices despite having been encouraged to make certain reforms, FATF members would then need to consider the adoption of counter-measures.

68. All countries and territories which are part of the global financial system are urged to change any rules or practices which impede the fight against money laundering. To this end, the FATF will continue its work to improve its members' and non-members' implementation of the FATF 40 Recommendations. It will also encourage and support the regional anti-money laundering bodies in their ongoing efforts.

69. In such a broad context, the FATF also calls on all the jurisdictions mentioned in this report to adopt legislation and improve their rules or practices as expeditiously as possible, in order to remedy the deficiencies identified in the reviews.

70. The FATF intends to remain fully engaged with the jurisdictions identified in paragraph 64, as well as the other jurisdictions whose reviews are described above. The FATF intends 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 removal of jurisdictions' names from the list contained in paragraph 64, as warranted.

71. The FATF will continue to monitor weaknesses in the global financial system that could be exploited for money laundering purposes. This will lead to further jurisdictions being examined. Future reports will update the FATF findings in relation to these matters.

72. The FATF expects that this exercise along with its other efforts, including the third round of FATF mutual evaluations of its members and the activities of regional anti-money laundering bodies, will provide an ongoing stimulus for all jurisdictions to bring their regimes into compliance with the FATF 40 Recommendations, in the global fight against money laundering.

22 June 2000

APPENDIX

LIST OF CRITERIA FOR DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES[2]

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.

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

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

(iv) Excessive secrecy provisions regarding financial institutions

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

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

(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. <u>Obstacles raised by other regulatory requirements</u>

(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. <u>Obstacles to international co-operation</u>

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

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

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

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

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

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

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

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

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

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

D. Inadequate resources for preventing and detecting money laundering activities

(i) Lack of resources in public and private sectors

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

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

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

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

CRITERIA DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES

1. International co-operation in the fight against money laundering not only runs into direct legal or practical impediments to co-operation but also indirect ones. The latter, which are probably more numerous, include obstacles designed to restrict the supervisory and investigative powers of the relevant administrative[3] or judicial authorities[4] 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.[5]

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

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

[5] 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.

(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.

6. The following should therefore be considered as detrimental:

- <u>possibility for individuals or legal entities to operate a financial institution</u>[6] <u>without authorisation or registration or with very rudimentary requirements for authorisation or registration</u>; and,

- <u>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)</u>.

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

- <u>lack of effective laws, regulations or agreements between supervisory authorities and financial institutions or self-regulatory agreements among financial institutions</u>[7] <u>on identification</u>[8] <u>by the financial institution of the client, either occasional or usual, and the beneficial owner of an account</u> when a client does not seem to act in his own name

[6] 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".

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

[8] 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.

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

10. Accordingly, the following are detrimental:

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

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

(v) Lack of efficient suspicious transaction reporting system

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

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

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

B. Impediments set by other regulatory requirements

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

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

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

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

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

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

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

17. Regulatory or other systems which allow financial institutions to carry out financial business where the beneficial owner(s) of transactions is unknown, or is represented by an

intermediary who refuses to divulge that information, without informing the competent authorities, should be considered as detrimental practices.

C. Obstacles to international co-operation

(i) At the administrative level

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

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

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

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

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

- exchange of information should be reciprocal.

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

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

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

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

excuse[9]). Refusal only on this basis is a detrimental practice for international co-operation against money laundering.

(ii) At the judicial level

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

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

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

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

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

(i) Lack of resources in public and private sectors

27. Another detrimental practice is failure to provide the administrative and judicial authorities with the necessary financial, human or technical resources to ensure adequate oversight and to conduct investigations. This lack of resources will have direct and certainly damaging consequences for the ability of such authorities to provide assistance or take part in international co-operation effectively.

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.

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

(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.