



**Financial Action Task Force
on Money Laundering**

Groupe d'action financière
sur le blanchiment de capitaux

**Annual Review of Non-Cooperative
Countries or Territories**

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EXECUTIVE SUMMARY OF THE JULY 2004 NCCTS REPORT

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

Removal of countries from the Non-Cooperative Countries and Territories (NCCTS) list in February and July 2004

- The FATF recognises that Guatemala, listed as non-cooperative in the fight against money laundering in June 2001, has now sufficiently addressed the deficiencies identified by the FATF through enactment and implementation of appropriate legal reforms. Therefore, Guatemala is now removed from the NCCTS list. In February 2004, the Plenary removed Egypt and Ukraine from the list of NCCTS after enactment and substantial implementation of legal reforms addressing identified deficiencies. Consequently, the procedures prescribed in FATF Recommendation 21 are withdrawn. To ensure continued effective implementation of these reforms, the FATF will monitor the developments in Guatemala, as well as Egypt and Ukraine, in consultation with the relevant FATF-style regional bodies and particularly in the areas laid out in this NCCT report.

Progress made since June 2003

- The FATF welcomes the progress made by the Cook Islands, Indonesia, Nigeria, and the Philippines in addressing deficiencies and calls upon them to continue this work. Until the deficiencies have been fully addressed and the necessary reforms have been sufficiently implemented, 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. The FATF notes with particular satisfaction that Nigeria has enacted legislation needed to remedy the main deficiencies previously identified. On the basis of this progress, the FATF invites Nigeria to submit an implementation plan to enable the FATF to evaluate actual implementation of the legislative changes.
- With respect to jurisdictions de-listed prior to June 2003 and subject to the monitoring process, the FATF will now end formal monitoring of Grenada and St. Vincent & the Grenadines. In October 2003, the FATF ended formal monitoring of Dominica, Israel, Lebanon, the Marshall Islands and Niue. Any future monitoring of these jurisdictions would be conducted within the context of the relevant FATF-style regional body and its evaluation mechanisms. The FATF will continue to monitor the situation in Bahamas, as concerns persist regarding the ability to provide adequate international co-operation.

Counter-measures

- Due to Myanmar's failure to introduce comprehensive mutual legal assistance legislation prior to 3 November 2003, counter-measures have been in effect since that date. Although legislation was adopted in April 2004, it contains serious deficiencies that will need to be addressed; the FATF will consider removing counter-measures when Myanmar has established a framework for effective international judicial co-operation. The FATF welcomes Myanmar's recent enactment of implementing rules and regulations for its AML law.
- Because of Nauru's failure to enact appropriate legislative measures and the existence of numerous shell banks, counter-measures have been in effect with respect to Nauru since December 2001. Although the FATF welcomes Nauru's recent efforts to eliminate shell banks, additional steps are needed to ensure that previously licensed offshore banks are no longer conducting banking activity before the FATF will consider removing counter-measures. In

particular, Nauru must still amend the Corporation Amendment Act to ensure that all offshore banking licences are no longer valid.

2. With respect to those countries on the NCCTs list whose progress in addressing deficiencies has stalled, the FATF will consider the adoption of additional counter-measures as well.

3. In sum, the list of NCCTs is comprised of the following jurisdictions: **Cook Islands, Indonesia, Myanmar, Nauru, Nigeria, and Philippines.** The FATF calls on its members to update their advisories requesting that their financial institutions give special attention to businesses and transactions with persons, including companies and financial institutions, in those countries or territories identified in the report as being non-cooperative.

I. INTRODUCTION AND BACKGROUND

4. The Forty Recommendations of the Financial Action Task Force (FATF) have been established as 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. It does this through annual self-assessment exercises and periodic mutual evaluations of its members. The FATF also identifies emerging trends and methods used to launder money and suggests measures to combat them.

5. Combating money laundering is a dynamic process because the criminals who launder money are continuously seeking new ways to achieve their illegal ends. 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.

6. In order to reduce the vulnerability of the international financial system to money laundering, governments must intensify their efforts to remove any detrimental rules and practices that obstruct international co-operation against money laundering. 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.

7. In this context, on 14 February 2000, the FATF published an initial report on the issue of non-cooperative countries and territories (NCCTs)¹, which set out twenty-five criteria identifying detrimental rules and practices that impede international co-operation in the fight against money laundering (see Annex 1). The criteria are consistent with the FATF Forty Recommendations. It describes a process whereby jurisdictions having such rules and practices can be identified and encourages these jurisdictions to implement international standards in this area. Finally, the report contains a set of possible counter-measures that FATF members could use to protect their economies against the proceeds of crime.

8. A major step in this process was the publication of the June 2000 Review² and June 2001 Review³ to identify non-cooperative countries or territories, and the September 2001 news release⁴, which 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 most of these jurisdictions have made significant and rapid progress, with 17 being removed from the NCCTs list as of 2 July 2004. The June 2002 and June 2003 NCCT Reviews⁵ update the situation as of those times.

9. The FATF approved this report at its 30 June—2 July 2004 Plenary meeting. Section II of this document summarises the review 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 prior to the June/July 2004 Plenary meeting. Section IV updates the situations in de-listed jurisdictions that were subject to the monitoring process between June 2003 and June/July 2004. Section V concludes the document and indicates future steps.

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

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

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

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

⁵ Available at the following website addresses: http://www.fatf-gafi.org/pdf/NCCT2002_en.pdf and http://www.fatf-gafi.org/pdf/NCCT2003_en.pdf.

II. PROCESS

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

A. REVIEW PROCESS

11. 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 21⁶ applies.

B. ASSESSING PROGRESS

12. The assessments of the jurisdictions identified as non-cooperative by the FATF were discussed as a priority item at each FATF Plenary meeting during 2003-2004. These assessments were discussed initially by the FATF review groups, including through face-to-face meetings, and then discussed by the FATF Plenary.

13. 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 addressed the deficiencies previously identified. 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 activity reporting, and international co-operation. Legislation and regulations need to have been enacted and to have come into effect before removal from the list can be considered.

14. In addition, the FATF seeks to ensure that the jurisdiction is effectively implementing the necessary reforms. Thus, the jurisdictions which have enacted most, if not all legislation needed to remedy the deficiencies were 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. Finally, the FATF has further elaborated a process, which includes on-site visits to the jurisdiction concerned, by which jurisdictions can be de-listed at the earliest possible time (See Annex 2).

⁶ 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

15. 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.

16. 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

17. In jurisdictions that have failed to make adequate progress in addressing the serious deficiencies previously identified by the FATF, in addition to the application of Recommendation 21, the FATF recommends 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

18. This section constitutes an overview of progress made by these jurisdictions. Jurisdictions marked with an asterisk are still regarded as being non-cooperative by the FATF. (References to “meeting the criteria” means that the concerned jurisdictions were found to have detrimental rules and practices in place.) For each of the following jurisdictions, the situation which prevailed when the jurisdiction was 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. JURISDICTIONS REMOVED FROM THE NCCTS LIST IN FEBRUARY AND JULY 2004

Guatemala

Situation in June 2001

19. 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

20. 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.

21. Guatemala completed the licensing process of its offshore banks in December 2003. 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 have been concluded, one of which resulted in a conviction. Guatemala has also been actively negotiating and utilising Memoranda of Understanding (MOU) with foreign authorities to facilitate information exchange; authorities have 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.

22. Based on the significant progress that Guatemala has made in addressing its anti-money laundering deficiencies, the FATF Plenary decided at its June/July 2004 meeting to remove Guatemala from the NCCTs list. The FATF will continue to monitor Guatemala for continued implementation, paying particular attention to proper supervision of money remitters and measures to ensure identification of the ultimate owners of Guatemalan corporations.

Egypt

Situation in June 2001

23. 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

24. 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.

25. Because of significant implementation of these reforms, the FATF removed Egypt from the NCCTs list in February 2004. At that time, the FATF indicated that it would continue to monitor Egypt 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 it would pay particular attention to intensified AML training, standardised and detailed bank inspection procedures to ensure adequate AML compliance, and institutionalised co-ordination between the MLCU and the law enforcement sector.

26. Since February 2004, Egypt has continued to implement its anti-money laundering reforms. As of June 2004, the MLCU had received and analysed 519 STRs. Egypt recorded its first money laundering conviction as well as several additional money laundering investigations. The MLCU also reported increased co-operation with domestic law enforcement agencies, including improved feedback on STRs. The MLCU signed its first Memorandum of Understanding (MOU) with a foreign counterpart, is negotiating two others, and officially became a member of the Egmont Group at its June 2004 Plenary.

Ukraine

Situation in September 2001

27. 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

28. 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 the 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.

29. 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. The FATF indicated that it would pay particular attention to adequate resources for AML bodies and regulatory bodies, money laundering prosecutions and convictions.

30. Since February 2004, Ukraine has continued to implement its anti-money laundering reforms. From 1 January to 1 June 2004 the SDFM received over 244,000 reports (including covered and suspicious transaction reports), referred 32 cases to law enforcement agencies, and concluded 11 MOUs with foreign FIUs. The SDFM officially became a member of the Egmont Group at its June 2004 Plenary. Bank inspections from late 2003 through the first quarter of 2004 covered 40 banks and 147 bank branches. The State Commission on Regulation of Financial Services Markets, which now comprises 225 employees, conducted 138 inspections of insurance institutions, resulting in 17 decisions to impose fines, 20 letters of caution, and suspension of 5 licenses. The General Prosecutor’s office also passed 47 money laundering cases to the criminal courts.

B. JURISDICTIONS THAT HAVE MADE PROGRESS SINCE JUNE 2003

Cook Islands *

Situation in June 2000

31. 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

32. In August 2000, the Cook Islands’ Parliament enacted the “Money Laundering Prevention Act 2000” (MLPA). A financial intelligence unit (FIU) was established under a Letter of Delegation in respect of certain of the powers of the MLA under section 9 (1) (a), (e), (f), (g), and (h) of the MLPA. On 7 May 2003, the Cook Islands passed nine Acts that superseded the MLPA and broadened the anti-money laundering framework. They include 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). Most significantly, the legislation aims to eliminate shell banks within one year through re-licensing under stricter requirements. In February 2004, a series of regulations was issued to give effect to this primary legislation.

33. In 2004 the Cook Islands passed a series of new acts that amended the above legislation and addressed certain deficiencies; however, these laws are not yet in force. The laws include the Crimes Amendment Act 2004, the Financial Transactions Reporting Act 2004, the International Companies Amendment Act 2004, and the Proceeds of Crime Amendment Act. The FSC also indicated that of the 16 off-shore banks, 9 have applied for licenses under the new Banking Act. The process for consideration of applications is nearing completion. The FIU has been established and became an official member of the Egmont Group at its June 2004 Plenary.

34. The Government of the Cook Islands needs to move quickly to fully implement its anti-money laundering measures, especially licensing and adequate supervision of its offshore banks, as the continued existence of shell banks poses a continued money laundering risk. The Government of the Cook Islands needs to ensure effective regulatory and supervisory capability by the FSC across all categories of financial institutions, and effective implementation of on-site AML compliance programs by the FSC and FIU across all categories of subject entities.

Indonesia*

Situation in June 2001

35. 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

36. 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, however, only in relation to criminal proceeds exceeding threshold of 500 million rupiah. The law also mandated reporting of suspicious transactions, although the law did not criminalise unauthorised disclosure of such reports. 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.

37. 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, 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.

38. Indonesia has begun implementing its AML reforms. The PPATK became operational in October 2003, currently has a staff of 37, and was admitted into the Egmont Group at its June 2004 Plenary. As of June 2004, the PPATK had received 675 STRs. The PPATK has also issued guidelines on identifying and reporting suspicious transactions and has entered into five agreements with foreign FIUs. Indonesia should continue to build its anti-money laundering systems and fully implement all its AML reforms. Indonesia especially needs to demonstrate effective mutual legal assistance, implement an AML compliance program that includes full on-site examinations, and successfully prosecute money laundering cases to demonstrate the adequacy of the criminal offence.

Nigeria*

Situation in June 2001

39. 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

40. 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 (Establishment) Act. The Banking and other Financial Institutions (BOFI) Amendment Act, also enacted in December 2002, improves licensing requirements for financial institutions. Nigeria enacted the Money Laundering Act 2003 on 22 May 2003. It consolidates and supersedes the previous anti-money laundering legislation. It provides for a broader interpretation of financial institutions and scope of supervision of regulatory authorities on money laundering activities, and improves customer identification requirements. It also improves STR provisions by removing a previous threshold.

41. Nigeria 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. These laws repeal the previous versions and address the main remaining legal deficiencies. Nigeria must now focus on comprehensively implementing these AML reforms, including fully establishing the EFCC to enable it to function as an effective FIU.

The Philippines*

Situation in June 2000

42. 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

43. 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.

44. Since March 2003, the Philippines has begun to implement its anti-money laundering measures. As of 30 April 2004, 437 STRs were received and investigated, resulting in 57 criminal complaints

and civil forfeiture cases. There were 4 cases involving 25 separate money laundering charges pending before the criminal courts and 4 cases before the Department of Justice for preliminary investigation. Forty-one foreign requests for information were received by the AMLC, none of which were denied. The AMLC has completed one MOU with a foreign counterpart and is pursuing several others; AMLC currently has a staff of 45 and is also increasing its technical capabilities. The BSP began conducting AML inspections in November 2003 and had completed inspections of 76 banks (out of 926) and 2 NBFIs.

45. The Philippines should continue to build its anti-money laundering systems and fully implement all its AML reforms. The Philippines needs to ensure that the obligation to file STRs is observed by all commercial banks and should amend the AMLA to stipulate the reporting of large “cash” transactions so that appropriate focus is given to receipt and analysis of STRs. The Philippines also needs to implement an AML compliance audit programme to include full on-site supervision and examination for both banks and non-bank financial institutions.

D. JURISDICTIONS CURRENTLY SUBJECT TO COUNTER-MEASURES

Myanmar*

Situation in June 2001

46. 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

47. 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; however, comprehensive implementing rules and regulations were needed to specify and improve this framework. Remaining significant deficiencies in the law included the lack of measures to engage in effective international co-operation, particularly mutual legal assistance.

48. Due to Myanmar’s failure to introduce comprehensive mutual legal assistance legislation prior to 3 November 2003, counter-measures have been in effect since that time. Although legislation was adopted on 28 April 2004, it contains serious deficiencies that will need to be addressed. The FATF will consider removing counter-measures when Myanmar has established a framework for effective international judicial co-operation. Myanmar made progress by issuing implementing rules for the CMLL in December 2003 and 3 orders in January 2004 that specify reporting requirements for financial institutions and property record offices and assign certain staff to an FIU. Myanmar authorities reported having already received 862 reports on large transactions but no STRs; therefore, Myanmar still needs to build an effective STR regime. Myanmar should also include the fraud offence to the predicate offences for money laundering.

Nauru *

Situation in June 2000

49. 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

50. 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.

51. Nauru took steps in 2003 by enacting the Corporation (Amendment) Act of 2003 and the Anti-Money Laundering Act of 2003 on 27 March 2003. The legislation is intended to abolish offshore shell banks and prohibit the granting of new licences. Nauru has indicated that it has since revoked the licenses of all remaining offshore banks operating out of Nauru and that the only bank currently licensed is the National Bank of Nauru, which conducts only domestic business. While the FATF welcomes these efforts, the FATF would like Nauru to take additional steps to ensure that previously licensed offshore banks are no longer conducting banking activity and are no longer in existence. In particular, Nauru must still amend the Corporation Amendment Act to ensure that all offshore banking licences are no longer valid. In addition, further information is needed about the 236 corporations that are currently licensed in Nauru.

IV. JURISDICTIONS SUBJECT TO THE MONITORING PROCESS SINCE JUNE 2003

The Bahamas

52. 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. However, the FATF has continued to monitor the situation in the Bahamas, particularly in light of continuing concerns expressed by FATF members regarding inadequate international co-operation.

53. In 2002-2003, the FIU received a total of 337 STRs and referred 108 to the Royal Bahamas Police Force. For the period of January—June 2004, the FIU received 54 additional STRs and referred 7 to the Royal Bahamas Police Force. Seven requests for information were received from foreign supervisors; Bahamian authorities had responded to 3 and the others were pending. The FIU had responded to 21 of 22 requests from foreign FIUs. The Securities Commission had responded to six of nine foreign regulatory requests, while 3 were cases were still open. The International Legal Co-operation Unit had received 71 new requests for legal assistance.

54. While the Bahamas has shown significant progress in many areas, the FATF will continue to monitor the Bahamas as concerns persist concerning the Bahamas' ability to fully co-operate internationally. In particular, the FATF remains concerned about the ability of the Bahamian authorities to adequately respond to foreign judicial and regulatory requests.

Dominica

55. Dominica was identified as an NCCT in June 2000. After that time, Dominica enacted significant legislative reforms relating to the criminalisation of money laundering, the establishment of a Money Laundering Supervisory Authority (MLSA) and of a financial intelligence unit, and requirements for record-keeping, reporting of suspicious transactions, and customer identification. The Exchange of Information Act, effective January 31, 2002, expanded Dominica's authority to assist foreign regulatory authorities. Dominica was among the first to place its offshore banks under the direct supervision of the Eastern Caribbean Central Bank (ECCB), in conjunction with the local supervisory authorities. As a result of adequate implementation of these reforms, including significant improvement on international co-operation matters, Dominica was de-listed in October 2002.

56. Since that time, Dominica continued to effectively implement its anti-money laundering regime. The FIU operates effectively and was admitted into the Egmont Group in July 2003. Dominica has significantly reduced the size of its offshore sector, and the new Anti-Money Laundering Supervisory Authority inspected 12 scheduled entities between September 2002 and 15 May 2003. International co-operation also improved significantly; as of June 2003, Dominica had responded to all requests for mutual legal assistance and all requests under the Exchange of Information Act. One additional MLAT request was received as of September 2003 and was being processed.

57. Recognising the sustained efforts by Dominica to implement an effective anti-money laundering regime, the FATF decided in October 2003 to end formal monitoring of Dominica. As Dominica is a member of the Caribbean Financial Action Task Force (CFATF), any future monitoring would be conducted within the context of CFATF's relevant evaluation mechanisms.

Grenada

58. Grenada was placed on the NCCTs list in September 2001. Since that time, Grenada achieved significant progress, including legislative reforms that permit regulatory access to account records, allow the regulator to communicate relevant information to other Grenadian authorities, and the creation of a registration mechanism for bearer shares of IBCs. Grenada also enacted the Financial Intelligence Unit (FIU) Act (No. 1 of 2003), the Exchange of Information Act (No. 2 of 2003) and the Proceeds of Crime Act on 31 January 2003. The ECCB now has a supervisory role for offshore banking and trust businesses. The Grenada International Financial Services Authority (GIFSA) supervises other offshore entities, and banking and trust businesses jointly with the ECCB. As a result of implementation of the above measures, and adequate responses to requests for mutual legal assistance, Grenada was de-listed in February 2003.

59. Since February 2003, Grenada has continued to implement its anti-money laundering program. A new Offshore Banking Act 13 of 17 October 2003 provides a more formal role for the ECCB. A total of 37 STRs were filed in 2003 and 26 in 2004, bringing the total to 72 as of 9 June 2004. Since being de-listed Grenada also continued to respond constructively to international requests, responding to all 10 MLAT requests and 29 FIU and law enforcement requests in 2003. Grenada received an additional 7 MLAT requests from January-June 2004. As of June 2004, five cases involving drug money laundering have gone to the Grenada courts, with two convictions and three cases still pending. The FIU, with a staff of eight, was investigating another money laundering case. The size of the offshore sector has also been significantly reduced; of the 5 banks still on the register, 4 are in liquidation or are in the process of being wound up while only one is currently operating. Currently, there are approximately 900 registered international companies. GIFSA's structure provides for a staff of 13, although only 4 were filled as of 9 June 2004; Grenada is planning to re-organise the GIFSA as the Grenada Authority for the Regulation of Financial Institutions (GARFIN) under legislation planned for late 2004.

60. Recognising the continued efforts to implement its anti-money laundering regime, the FATF decided in July 2004 to end formal monitoring. As Grenada is a member of the Caribbean Financial Action Task Force (CFATF), any future monitoring would be conducted within the context of CFATF's relevant evaluation mechanisms.

Israel

61. Israel was identified as an NCCT in June 2000. After that time, Israel adopted legislation and regulations for the money laundering criminal offence, customer identification, and record keeping and reporting requirements. In January 2002, the Israel Money Laundering Prohibition Authority (IMPA) was established and functions as an FIU; the IMPA was admitted into the Egmont Group in June 2002. After substantial implementation of these reforms, Israel was de-listed in June 2002.

62. As of September 2003, Israel had made significant progress in further implementing a comprehensive and effective AML regime, including customer identification procedures for existing customers of banks and portfolio managers. The Israeli Central Bank had completed general inspections of all 27 banking groups—resulting in 11 sanctions (10 for minor violations and one for a major violation). An amendment to the banking regulations addressed funds in accounts which had not been adequately identified. The IMPA received 544 STRs in 2002, and 578 STRs from January-July 2003. These resulted in 126 files being disseminated to the Israel Police and 28 referrals to foreign FIUs. The Israel Police initiated 29 money laundering cases from January-July 2003; prosecutors were also pursuing several money laundering cases.

63. Recognising the sustained efforts by Israel to implement its anti-money laundering regime, the FATF decided in October 2003 to end formal monitoring of Israel.

Lebanon

64. Lebanon was identified as an NCCT in June 2000. Law No. 318 of 26 April 2001 and Circular No. 83 of 18 May 2001 addressed the criminalisation of money laundering, bank secrecy, customer identification, and suspicious transaction reporting. The law also created the Special Investigation Commission as the FIU. The SIC is an independent entity with judicial status that investigates money laundering operations and monitors compliance of banks and other financial institutions with the provisions of Law No. 318. After adequate implementation, Lebanon was de-listed in June 2002.

65. As of September 2003, Lebanon had further improved co-ordination between domestic law enforcement agencies, had taken a more intensive approach to domestic anti-money laundering enforcement, and noted an increase in the number and quality of STRs. In December 2002, Lebanon created an AML National Committee to ensure the necessary awareness and political commitment of all elements of Lebanon's AML regime. In the first eight months of 2003, the SIC received a total of 228 STRs, up from 138 STRs received for all of 2002, and the quality of these STRs improved such that the SIC forwarded approximately 40 money laundering cases to the General Prosecutor. The General Prosecutor was pursuing its first three money laundering cases in criminal court as of October 2003. Since its inception in the fall of 2001, the SIC's Compliance Unit has conducted on-site examinations in 100% of the banking sector, insurance sector, brokerage and leasing sectors.

66. Recognising the sustained efforts by Lebanon to implement its anti-money laundering regime, the FATF decided in October 2003 to end formal monitoring of Lebanon.

The Marshall Islands

67. After the Republic of the Marshall Islands (RMI) was identified as an NCCT in June 2000, it passed the Banking (Amendment) Act of 2000 (P.L. 2000-20) on 31 October 2000. The Act addresses the following areas: criminalisation of money laundering, customer identification for accounts, and reporting of suspicious transactions. On 27 May 2002, the RMI enacted a set of regulations that provide standards for reporting and compliance. The Marshall Islands had increased the number of IBCs from 3,000 in June 2002 to nearly 8,500 in October 2002, but the arrangements for controlling registrations had improved. The RMI was de-listed in October 2002.

68. As of June 2003, the Domestic Financial Intelligence Unit continues to receive AML disclosures from the financial industry. In 2002 and 2003 (up to July) respectively, the Domestic Financial Intelligence Unit received and processed a total of 1,923 and 1,116 currency transaction reports. From January-June 2003, the DFIU received four suspicious transaction reports. One of the four was referred to the Police and the Attorney General's Office for prosecution.

69. Recognising the continued efforts to implement its anti-money laundering regime, the FATF decided in October 2003 to end formal monitoring of the Marshall Islands. As the Marshall Islands is a member of the Asia Pacific Group on Money Laundering (APG), any future monitoring would be conducted within the context of APG's relevant evaluation mechanisms.

Niue

70. After being listed as an NCCT in June 2000, Niue enacted significant reforms to address the deficiencies. The Financial Transactions Reporting Act 2000 addressed requirements dealing with reporting of suspicious transactions, the establishment of an FIU, and partly addressed customer identification. The International Banking Repeal Act 2002, which was brought into force on 5 June 2002, eliminated Niue's offshore banks as of October 2002. Although Niue retained its 5,500 IBCs, company registry information is now maintained in Niue so as to provide local access to current information. As a result of these measures, Niue was de-listed in October 2002.

71. Recognising the continued efforts to implement its anti-money laundering regime, the FATF decided in October 2003 to end formal monitoring of Niue. As Niue is a member of the Asia Pacific Group on Money Laundering (APG), any future monitoring would be conducted within the context of APG's relevant evaluation mechanisms.

St. Vincent and the Grenadines

72. After being listed as an NCCT in June 2000, St. Vincent and the Grenadines enacted significant legislative reforms to address the identified deficiencies, including the Proceeds of Crime and Money Laundering (Prevention) Act No. 39 of 2001, of 18 December 2001 (amended 28 May 2002), and the Proceeds of Crime (Money Laundering) Regulations 2002 of 29 January 2002 (amended 26 April 2002). The Financial Intelligence Unit Act, No. 38 of 2001, creates an FIU. These laws criminalise the laundering of proceeds from any criminal conduct, mandate record keeping requirements for on-shore and offshore institutions, mandate suspicious transaction reporting and create an FIU. The Eastern Caribbean Central Bank (ECCB), in conjunction with local supervisory authorities, now supervises St. Vincent and the Grenadines' offshore banks. Exchange of Information order, 2002 no. 48, expanded the ECCB's authority to share information regarding on-shore financial institutions. After significant implementation of these reforms, St. Vincent & the Grenadines was de-listed in June 2003.

73. Since June 2003, St. Vincent & the Grenadines has continued to implement its anti-money laundering regime. The FIU was admitted into the Egmont Group in July 2003 and received 359 STRs as of 2 June 2004, resulting in 59 investigations. A total of 21 STRs had been disseminated—10 domestically and 11 internationally. A total of 14 requests for legal assistance had been received; authorities had responded to 10, while 2 requests are still pending. The FIU had also responded to all 14 requests from foreign FIUs and foreign law enforcement and regulatory authorities. There have not been any ML prosecutions; however, 3 cases have been selected for further review.

74. Recognising the continued efforts to implement its anti-money laundering regime, the FATF decided in July 2004 to end formal monitoring. As St. Vincent & the Grenadines is a member of the Caribbean Financial Action Task Force (CFATF), any future monitoring would be conducted within the context of CFATF's relevant evaluation mechanisms.

V. CONCLUSIONS AND THE WAY FORWARD

75. The reviews carried out in 2000 and 2001 by the FATF were extremely productive. Most jurisdictions participated actively and constructively in the reviews. The reviews of jurisdictions against the 25 criteria have revealed – and stimulated – many ongoing efforts by governments to improve their systems. As of June 2004, most jurisdictions had enacted significant reforms and are well on their way towards comprehensive anti-money laundering regimes.

76. Nevertheless, serious systematic problems remain in several jurisdictions. Following the progress made by the jurisdictions deemed to be non-cooperative in June 2000, June 2001, and September 2001, the list of NCCTs now comprises the following jurisdictions:

Cook Islands
Indonesia
Myanmar
Nauru
Nigeria
Philippines

77. These jurisdictions are strongly urged to adopt the necessary measures to improve their rules and practices as expeditiously as possible in order to remedy the remaining 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 76 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.

78. Should those countries or territories identified as non-cooperative maintain their detrimental rules and practices despite having been encouraged to make certain reforms, FATF members would need to consider the adoption of counter-measures against such jurisdictions. With respect to those NCCTs whose progress addressing deficiencies has stalled, the FATF will consider the adoption of additional counter-measures as well.

79. The FATF and its members will continue the dialogue with these jurisdictions. FATF members are also prepared to provide technical assistance, where appropriate, to help jurisdictions in the design and implementation of their anti-money laundering systems.

80. All countries and territories that are part of the global financial system are urged to change any rules or practices which impede the fight against money laundering. To this end, the FATF will continue its work to improve its members’ and non-members’ implementation of the FATF Forty Recommendations. It will also encourage and support the regional anti-money laundering bodies in their ongoing efforts. In this context, the FATF also calls on all the jurisdictions mentioned in this report to adopt legislation and improve their rules or practices as expeditiously as possible, in order to remedy the deficiencies identified in the reviews.

81. The FATF intends to remain fully engaged with all the jurisdictions identified in paragraph 76. 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.

82. The FATF will continue to monitor weaknesses in the global financial system that could be exploited for money laundering purposes. Future reports will continue to update the FATF's findings in relation to these matters.

83. 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.

LIST OF CRITERIA FOR DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES⁷

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

⁷ 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 administrative⁸ or judicial authorities⁹ 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.¹⁰

(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.

⁸ The term "administrative authorities" is used in this document to cover both financial regulatory authorities and certain financial intelligence units (FIUs).

⁹ 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.

¹⁰ 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 institution¹¹ 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 institutions¹² on identification¹³ 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

¹¹ 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”.

¹² The agreements and self-regulatory agreements should be subject to strict control.

¹³ 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 excuse¹⁴). 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

¹⁴ "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.