

FATF Recommendations relevant to the Financial Sector*

The scope of application of the Recommendations

- 9 The Recommendations 12 to 29 of this paper should apply not only to banks, but also to non-bank financial institutions.
- 10 The appropriate national authorities should take steps to ensure that these Recommendations are implemented on as broad a front as is practically possible.
- 11 A working group should further examine the possibility of establishing a common minimal list of non-bank financial institutions dealing with cash subject to these Recommendations.

Customer identification

- 12 Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names: they should be required (by law, by regulations, by agreements among financial institutions or by self-regulatory agreements among financial institutions) to identify, on the basis of an official or otherwise reliable identifying document, and record the identity of clients, either occasional or usual, when establishing business relations or conducting transactions (in particular opening of accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, performing large cash transactions).
- 13 Financial institutions should take reasonable measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction is conducted if there are any doubts as to whether these clients or their customers are not acting on their own behalf, in particular, in the case of domiciliary companies (i.e. institutions, corporations, foundations, trusts etc, that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered office is located).

Record keeping

- 14 Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from the

competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of criminal behaviour.

Financial institutions should keep records on customer identification (e.g. copies or records of official documentation of documents like passports, identity cards, driving licences or similar documents), account files and business correspondence for at least five years after the account is closed.

These documents should be available to domestic competent authorities, in the context of criminal prosecutions and investigations.

Handling of suspicious transactions

- 15 Financial institutions should pay special attention to all complex, unusual, large transactions, and all unusual patterns of transactions, which have no apparent economic or visible legal purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.
- 16 If financial institutions suspect that funds stem from a criminal activity, they should be permitted or required to report promptly their suspicions to the competent authorities. Accordingly there should be legal provision to protect financial institutions and their employees from criminal or civil liability for breach of any legislative, regulatory or administrative provision, if they report in good faith, in disclosing suspected activity to the competent authorities, even if they have not known precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.
- 17 Financial institutions, their directors and employees, should not, or, where appropriate, should not be allowed to warn their customers when information relating to them is being reported to the competent authorities.
- 18 In the case of a mandatory reporting system, or in the case of a voluntary reporting system where appropriate, financial institutions reporting their

* the original FATF Recommendations were revised by the FAFT in June 1996 and are reproduced in in Annex C

suspicious should comply with instructions from the competent authorities.

- 19 In countries where no obligation of reporting these suspicions exists, when a financial institution develops suspicions about operations of a customer, and when the financial institution chooses to make no report to the competent authorities, it should deny assistance to this customer, sever relations with him and close his accounts.

Internal systems and controls for financial institutions

- 20 Financial institutions should develop programmes against money laundering. These programs should include, as a minimum:
- (a) the development of internal policies, procedures and controls, including the designation of compliance officers at management level, and adequate screening procedures to ensure high standards when hiring employees;
 - (b) an ongoing employee training programme;
 - (c) an audit function to test the system.

Transactions involving countries that do not apply the FATF Recommendations

- 21 Financial institutions should give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not, or insufficiently apply these Recommendations. Whenever these transactions have no 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.
- 22 Financial institutions should ensure that the principles mentioned above are also applied to branches and majority owned subsidiaries located abroad, especially in countries which do not, or insufficiently apply these Recommendations, to the extent that local applicable laws and regulations permit. When local applicable laws and regulations prohibit their implementation, competent authorities in the country of the mother institution should be informed by the financial institutions that they cannot apply these Recommendations.

Other measures to combat money laundering

- 23 The feasibility of measures to detect or monitor cash at the border should be studied, subject to strict

safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

- 24 Countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerised database, available to competent authorities for use in money laundering cases, subject to strict safeguards to ensure proper use of the information.
- 25 Countries should further encourage the development of modern and secure techniques of money management, including increased use of cheques, payment cards, direct deposit of salary cheques, and book entry recording of securities, as a means to encourage the replacement of cash transfers.

The role of the supervisory authorities

- 26 The competent authorities supervising banks or other financial institutions or intermediaries, or other competent authorities, should ensure that the supervised institutions have adequate programs to guard against money laundering. These authorities should cooperate and lend expertise spontaneously or on request with other domestic, judicial or law enforcement authorities in money laundering investigations and prosecutions.
- 27 Competent authorities should be designated to ensure an effective implementation of all these Recommendations, through administrative supervision and regulation, in all other professions dealing with cash as defined by each country.
- 28 The competent authorities should establish guidelines which will assist financial institutions in detecting suspicious patterns of behaviour by their customers. It is understood that such guidelines must develop over time, and will never be exhaustive. It is further understood that such guidelines will primarily serve as an educational tool for financial institutions' personnel.
- 29 The competent authorities regulating or supervising financial institutions should take the necessary legal or regulatory measures to guard against control of, or acquisition of a significant participation in financial institutions by criminals or their confederates.

Tackling Money Laundering in the Securities Sector

1 Introduction

1.1 Action to combat money laundering has traditionally centred on banks and other deposit-taking institutions. This reflects the historic emphasis on the laundering of street cash derived from the sale of narcotics. However a comprehensive approach to money laundering must involve all aspects of the financial system, and must cover money that has already been placed into the financial system, and also money deriving from other forms of crime that has never been in the form of cash. Clearly such an approach needs to take account of the possibility of money being laundered through securities business as well as more traditional types of financial activity.

2 The Structure of the Securities Industry

2.1 For the purposes of this annex, the securities industry is defined as the following:

- the buying and selling of securities (both equity and debt);
- trading in financial derivatives (including both exchange traded and over the counter instruments);
- the operation and marketing of collective investment schemes;
- participation in share issues, including privatisations.

2.2 There is a wider range of institution/client relationships in securities business than in traditional banking. While there is no exact equivalent of a bank account into which and from which the customer may move money, a stockbroker may hold securities or money on his clients' behalf, usually in nominee accounts. However it is possible for a client to use a stockbroker merely to buy or sell securities, with no long term relationship being established.

2.3 The relationship between financial institutions and the beneficial owners of financial assets may also be more complicated in the securities field. In the case of collective investments, for instance, the beneficial owners are the unit holders whose direct contact is with the scheme operator, while the transactions involving the investment fund itself will be carried out by investment managers. There need be no direct contact between these investment managers and the beneficial owners of the funds that they manage.

2.4 There is also a very wide range of assets involved.

Equities may be held in the form of registered shares, bearer shares, or in dematerialised form within an automated electronic settlement system. Derivatives range from standardised futures and options contracts, tradeable on exchanges, to complex swaps and other "manufactured" contracts, known as OTCs ("Over-the-Counter" contracts).

2.5 Transactions in the securities business may take place on organised markets, involving large numbers of participants, including professional counterparties. These markets often operate at high speed and in circumstances where it is inappropriate for market participants to reveal their identity or that of their customers before the deal is complete, if at all, for fear of moving the market against them.

2.6 Finally, participants in the securities markets do not, in general, accept funds in the form of cash. Most transactions are settled through cheques drawn on or wire transfers from bank accounts. This renders the securities markets unlikely to be used as vehicles for the "placement" phase of money laundering, but vulnerable to the "layering" and "integration" phases.

2.7 With these features of the business in mind, it is possible to consider their relevance to the elements of a strategy to combat money laundering.

3 Customer identification and record keeping (FATF Recommendations 12 – 14)

3.1 In many countries, securities brokers are required to maintain information that can identify their "clients", and in most countries this will be done for commercial reasons in any case. However the extent to which this is effective as an element of an anti-money laundering strategy depends crucially upon what definition is adopted of the word "client".

3.2 Market participants will frequently be asked to deal on behalf of a client who is himself acting on instructions from a third party. Chains of instructions may be long, and may involve participants in more than one country. Individual instructions may be aggregated as they are passed down the chain, or groups of transactions may be broken up and given to different institutions. Clearly it is not practical for all those in the chain of instructions to know the identity of all those involved.

3.3 The most sensible option is probably to ensure that any participant in securities business is fully aware of the identity of his immediate clients, including both

those who instruct or are instructed to deal, and those involved in the settlement of accounts. With effective record keeping procedures, which should not cause particular difficulties in the securities area, it will then be possible, for any transaction, to reconstruct what happened, where the instructions came from, and where the assets, securities and money involved moved from and to.

- 3.4 Where transactions are conducted through a formal exchange, such as a Stock Exchange, the trading and settlement systems may mean that it is impossible, and probably inappropriate, for traders to know who is on the other side of their deals. For practical purposes each participant treats the exchange itself as their counterparty, for both trading and settlement (this latter function may be operated by a separate clearing house). In this situation it is very important that the exchange itself (and where appropriate, the clearing house) is aware of the identities of all its members.
- 3.5 The identification requirements outlined here are unlikely to place much, if any additional burden on financial institutions and financial exchanges and clearing houses. Most securities business involves the extension of credit to those involved, and the carrying of risk. Market participants will therefore be careful to know who it is with whom they are dealing, so that they can make a fair assessment of the degree of risk involved in the transactions.
- 3.6 Indeed the experience of some countries has been that legal identification requirements have had a wholly beneficial effect, empowering the institutions to establish their clients identities more firmly, without the fear of driving legitimate business away.

4 Recognising and handling suspicious transactions (FATF Recommendations 15-19)

- 4.1 One way of identifying a transaction as suspicious is to ask the question “does it make sense”, in the context of the customer involved, and any other available information. The complexity of securities transactions, and the wide variety of instruments and strategies available mean that many transactions that at first glance look unusual may often be entirely sensible in the light of all the circumstances.
- 4.2 Derivatives transactions are particularly relevant here. Clients may take large and complex positions in derivatives markets, and then liquidate them after a few days. Such behaviour might well be unusual in equity or bond markets, but in derivatives markets it might reflect a range of entirely legitimate possibilities: a short term speculative position to benefit from market volatility, or indeed a short term hedge against such volatility; an arbitrage opportunity between markets that disappears fairly quickly; a hedge against a position taken in another market until that position can be laid off.

- 4.3 The close relationship between markets, especially between derivative markets and markets trading their underlying assets, means that an apparent run of loss-making investments in one market may actually be a hedge offset by a corresponding series of profitable investments elsewhere. The transactions and the hedges may well involve different brokers, as well as different markets. As a result, nobody is in a position to see the whole picture, except the beneficial investor himself.
- 4.4 Since the transactions themselves are unlikely to raise suspicions, it is all the more important that they should be considered in the context of the customer. If a normally unadventurous customer starts moving large sums of money, or starts taking risky positions, this may be indicative of something unusual – heavy losses on one market, paid for with criminal proceeds, and offset by profits on a related market paid out in clean funds, for instance. Changes in settlement instructions, especially those involving settlement to overseas banks apparently unrelated to normal business may also be danger signals. A securities institution that knows its customers well will often recognise such signs, and will be in a position not only to consider reporting them to the authorities, but also whether it wishes to continue to do business with such a customer.

5 Internal systems and controls (FATF Recommendation 20)

- 5.1 One factor within much of the securities industry that makes it particularly vulnerable to money laundering is the emphasis on trading as much as possible, as quickly as possible. Securities traders will often see any form of supervision as an inconvenience to be circumvented, so that they can go back to making money. Introducing internal systems and controls, and particularly staff training regimes, is therefore more difficult than in other areas, and at the same time arguably more important.
- 5.2 Ultimately, however, securities firms depend on their reputation almost as much as banks, and it is the threat to that reputation that is the biggest incentive for the introduction of effective internal systems.

6 Conclusion

- 6.1 The nature of the securities industry, the variety of activities involved and the range of relationships and structures all tend to complicate the task of introducing effective money laundering countermeasures. There are however no major impediments to the application of the strategy established in the policy paper to this sector. The ability of securities firms to move and transform large amounts of money very quickly makes them attractive to money launderers. No system of combating laundering can therefore be considered effective if it does not cover the securities sector.

The FATF Forty Recommendations*

A General framework of the recommendations

- 1 Each country should take immediate steps to ratify and to implement fully, the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention).
- 2 Financial institution secrecy laws should be conceived so as not to inhibit implementation of these Recommendations.
- 3 An effective money laundering enforcement program should include increased multilateral co-operation and mutual legal assistance in money laundering investigations and prosecutions and extradition in money laundering cases where possible.

B Role of national legal systems in combating money laundering

Scope of the Criminal Offence of Money Laundering

- 4 Each country should take such measures as may be necessary, including legislative ones, to enable it to criminalise money laundering as set forth in the Vienna Convention. Each country should extend the offence of drug money laundering to one based on serious offences. Each country would determine which serious crimes would be designated as money laundering predicate offences.

NOTE TO 4:

Countries should consider introducing an offence money laundering based on all serious offences and/or on all offences that generate a significant amount of proceeds.

- 5 As provided in the Vienna Convention, the offence of money laundering should apply at least to knowing money laundering activity, including the concept that knowledge may be inferred from objective factual circumstances.
- 6 Where possible, corporations themselves – not only their employees – should be subject to criminal liability.

Provisional Measures and Confiscation

- 7 Countries should adopt measures similar to those set forth in the Vienna Convention, as may be necessary, including legislative ones, to enable their competent authorities to confiscate property laundered, proceeds from, instrumentalities used in or intended for use in the commission of any money laundering offence, or property of corresponding value without prejudicing the rights of bona fide third parties.

Such measures should include the authority to: (1) identify, trace and evaluate property which is subject to confiscation; (2) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; and (3) take any appropriate investigative measures.

In addition to confiscation and criminal sanctions, countries also should consider monetary and civil penalties, and/or proceedings including civil proceedings, to void contracts entered into by parties, where parties knew or should have known that as a result of the contract, the State would be prejudiced in its ability to recover financial claims, e.g. through confiscation or collection of fines and penalties.

C Role of the financial system in combating money laundering

- 8 Recommendations 10 to 29 should apply not only to banks, but also to non-bank financial institutions. Even for those non-bank financial institutions which are not subject to a formal prudential supervisory regime in all countries, for example bureaux de change, governments should ensure that these institutions are subject to the same anti-money laundering laws or regulations as all other financial institutions and that these laws or regulations are implemented effectively.

NOTE TO 8:

The FATF Recommendations should be applied in particular to life insurance and other investment products offered by insurance companies, whereas Recommendation 29 applies to the whole of the insurance sector.

* The forty Recommendations were originally drawn up in 1990. In 1996 these were revised to take into account the experience gained over the last six years and to reflect the changes which have occurred in the money laundering problem. During the period 1990 to 1995, the FATF also elaborated various Interpretative Notes which are designed to clarify the application of specific Recommendations. Some of these Interpretative Notes have been updated in the Stocktaking Review to reflect changes in the Recommendations.

- 9 The appropriate national authorities should consider applying Recommendations 10 to 21 and 23 to the conduct of financial activities as a commercial undertaking by businesses or professions which are not financial institutions, where such conduct is allowed or not prohibited. Financial activities include, but are not limited to, those listed in the attached annex. It is left to each country to decide whether special situations should be defined where the application of anti-money laundering measures is not necessary, for example, when a financial activity is carried out on an occasional or limited basis.

NOTE TO 8 AND 9 (BUREAUX DE CHANGE):

Introduction

- 1 *Bureaux de change* are an important link in the money laundering chain since it is difficult to trace the origin of the money once it has been exchanged. Typologies exercises conducted by the FATF have indicated increasing use of *bureaux de change* in laundering operations. Hence it is important that there should be effective counter-measures in this area. This Interpretative Note clarifies the application of FATF Recommendations concerning the financial sector in relation to *bureaux de change* and, where appropriate, sets out options for their implementation.

Definition of *Bureaux de Change*

- 2 For the purpose of this Note, *bureaux de change* are defined as institutions which carry out retail foreign exchange operations (in cash, by cheque or credit card). Money changing operations which are conducted only as ancillary to the main activity of a business have already been covered in Recommendation 9. Such operations are therefore excluded from the scope of this Note.

Necessary Counter-Measures Applicable to *Bureaux de Change*

- 3 To counter the use of *bureaux de change* for money laundering purposes, the relevant authorities should take measures to know the existence of all natural and legal persons who, in a professional capacity, perform foreign exchange transactions.
- 4 As a **minimum** requirement, FATF members should have an effective system whereby the *bureaux de change* are known or declared to the relevant authorities (whether regulatory or law enforcement). One method by which this could be achieved would be a requirement on *bureaux de change* to submit to a designated authority, a simple declaration containing adequate information on the institution itself and its management. The authority could either issue a receipt or give a tacit authorisation: failure to voice an objection being considered as approval.
- 5 FATF members could also consider the introduction of a formal authorisation procedure. Those wishing to establish *bureaux de change* would have to submit an application to a designated authority empowered to grant authorisation on a case-by-case basis. The request for authorisation would need to contain such information as laid down by the authorities but should at least provide details of the applicant institution and its management. Authorisation

would be granted, subject to the *bureau de change* meeting the specified conditions relating to its management and the shareholders, including the application of a "fit and proper" test.

- 6 Another option which could be considered would be a combination of declaration and authorisation procedures. *Bureaux de change* would have to notify their existence to a designated authority but would not need to be authorised before they could start business. It would be open to the authority to apply a "fit and proper" test to the management of *bureaux de change* after the *bureau* had commenced its activity, and to prohibit the *bureau de change* from continuing its business, if appropriate.
- 7 Where *bureaux* are required to submit a declaration of activity or an application for registration, the designated authority (which could be either a public body or a self-regulatory organisation) could be empowered to publish the list of registered *bureaux de change*. As a minimum, it should maintain a (computerised) file of *bureaux de change*. There should also be powers to take action against *bureaux de change* conducting business without having made a declaration of activity or having been registered.
- 8 As envisaged under FATF Recommendations 8 and 9, *bureaux de change* should be subject to the same anti-money laundering regulations as any other financial institution. The FATF Recommendations on financial matters should therefore be applied to *bureaux de change*. Of particular importance are those on identification requirements, suspicious transactions reporting, due diligence and record-keeping.
- 9 To ensure effective implementation of anti-money laundering requirements by *bureaux de change*, compliance monitoring mechanisms should be established and maintained. Where there is a registration authority for *bureaux de change* or a body which receives declarations of activity by *bureaux de change*, it should carry out this function. But the monitoring could also be done by other designated authorities (whether directly or through the agency of third parties such as private audit firms). Appropriate steps would need to be taken against *bureaux de change* which failed to comply with the anti-laundering requirements.
- 10 The *bureaux de change* sector tends to be an unstructured one without (unlike banks) national representative bodies which can act as a channel of communication with the authorities. Hence it is important that FATF members should establish effective means to ensure that *bureaux de change* are aware of their anti-money laundering responsibilities and to relay information, such as guidelines on suspicious transactions, to the profession. In this respect it would be useful to encourage the development of professional associations.

Customer identification and record-keeping rules

- 10 Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names: they should be required (by law, by regulations, by

agreements between supervisory authorities and financial institutions or by self-regulatory agreements among financial institutions) to identify, on the basis of an official or other reliable identifying document, and record the identity of their clients, either occasional or usual, when establishing business relations or conducting transactions (in particular opening of accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, performing large cash transactions).

In order to fulfill identification requirements concerning legal entities, financial institutions should, when necessary, take measures:

- (i) to verify the legal existence and structure of the customer by obtaining either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;
 - (ii) to verify that any person purporting to act on behalf of the customer is so authorised and identify that person.
- 11 Financial institutions should take reasonable measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction conducted if there are any doubts as to whether these clients or customers are acting on their own behalf, for example, in the case of domiciliary companies (i.e. institutions, corporations, foundations, trusts, etc. that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered office is located).

NOTES TO 11, 15-17

Whenever it is necessary in order to know the true identity of the customer and to ensure that legal entities cannot be used by natural persons as a method of operating in reality anonymous accounts, financial institutions should, if the information is not otherwise available through public registers or other reliable sources, request information – and update that information – from the customer concerning principal owners and beneficiaries. If the customer does not have such information, the financial institution should request information from the customer on whoever has actual control.

If adequate information is not obtainable, financial institutions should give special attention to business relations and transactions with the customer.

If, based on information supplied from the customer or from other sources, the financial institution has reason to believe that the customer's account is being utilised in money

laundering transactions, the financial institution must comply with the relevant legislation, regulations, directives or agreements concerning reporting of suspicious transactions or termination of business with such customers.

Note to 11: *A bank or other financial institution should*

know the identity of its own customers, even if these are represented by lawyers, in order to detect and prevent suspicious transactions as well as to enable it to comply swiftly to information or seizure requests by the competent authorities. Accordingly Recommendation 11 also applies to the situation where an attorney is acting as an intermediary for financial services.

- 12 Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic or international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of criminal behaviour.

Financial institutions should keep records on customer identification (e.g. copies or records of official identification documents like passports, identity cards, driving licences or similar documents), account files and business correspondence for at least five years after the account is closed.

These documents should be available to domestic competent authorities in the context of relevant criminal prosecutions and investigations.

- 13 Countries should pay special attention to money laundering threats inherent in new or developing technologies that might favour anonymity, and take measures, if needed, to prevent their use in money laundering schemes.

Increased diligence of financial institutions

- 14 Financial institutions should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.

NOTE TO 14:

(a) *In the interpretation of this requirement, special attention is required not only to transactions between financial institutions and their clients, but also to transactions and/or shipments especially of currency and equivalent instruments between financial institutions themselves or even to transactions within financial groups. As the wording of Recommendation 14 suggests that indeed all transactions are covered, Recommendation 14 must be read to incorporate these inter-bank transactions.*

(b) *The word transactions should be understood to refer to the insurance product itself, the premium payment and the benefits.*

- 15 If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

- 16 Financial institutions, their directors, officers and employees, should be protected by legal provisions from criminal or civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the competent authorities, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.
- 17 Financial institutions, their directors, officers and employees, should not, or, where appropriate, should not be allowed to, warn their customers when information relating to them is being reported to the competent authorities.
- 18 Financial institutions reporting their suspicions should comply with instructions from the competent authorities.
- 19 Financial institutions should develop programs against money laundering. These programs should include, as a minimum:
 - (i) the development of internal policies, procedures and controls, including the designation of compliance officers at management level, and adequate screening procedures to ensure high standards when hiring employees;
 - (ii) an ongoing employee training programme;
 - (iii) an audit function to test the system.

Measures to cope with the problem of countries with no or insufficient anti-money laundering measures

- 20 Financial institutions should ensure that the principles mentioned above are also applied to branches and majority owned subsidiaries located abroad, especially in countries which do not or insufficiently apply these Recommendations, to the extent that local applicable laws and regulations permit. When local applicable laws and regulations prohibit this implementation, competent authorities in the country of the mother institution should be informed by the financial institutions that they cannot apply these Recommendations.
- 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.

Other measures to avoid money laundering

- 22 Countries should consider implementing feasible measures to detect or monitor the physical cross-

border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

NOTE TO 22:

(a) *To facilitate detection and monitoring of cash transactions, without impeding in any way the freedom of capital movements, members could consider the feasibility of subjecting all cross-border transfers, above a given threshold, to verification, administrative monitoring, declaration or record keeping requirements.*

(b) *If a country discovers an unusual international shipment of currency, monetary instruments, precious metals, or gems, etc., it should consider notifying, as appropriate, the Customs Service or other competent authorities of the countries from which the shipment originated and/or to which it is destined, and should co-operate with a view toward establishing the source, destination, and purpose of such shipment and toward the taking of appropriate action.*

- 23 Countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerised data base, available to competent authorities for use in money laundering cases, subject to strict safeguards to ensure proper use of the information.
- 24 Countries should further encourage in general the development of modern and secure techniques of money management, including increased use of checks, payment cards, direct deposit of salary checks, and book entry recording of securities, as a means to encourage the replacement of cash transfers.
- 25 Countries should take notice of the potential for abuse of shell corporations by money launderers and should consider whether additional measures are required to prevent lawful use of such entities.

Implementation, and role of regulatory and other administrative authorities

- 26 The competent authorities supervising banks or other financial institutions or intermediaries, or other competent authorities, should ensure that the supervised institutions have adequate programs to guard against money laundering. These authorities should co-operate and lend expertise spontaneously or on request with other domestic judicial or law enforcement authorities in money laundering investigations and prosecutions.

NOTE TO 26:

In respect of this requirement, it should be noted that it would be useful to actively detect money laundering if the competent authorities make relevant statistical information available to the investigative authorities, especially if this information contains specific indicators of

money laundering activity. For instance, if the competent authorities statistics show an imbalance between the development of the financial services industry in a certain geographical area within a country and the development of the local economy, this imbalance might be indicative of money laundering activity in the region. Another example would be manifest changes in domestic currency flows without an apparent legitimate economic cause. However, prudent analysis of these statistical data is warranted, especially as there is not necessarily a direct relationship between financial flows and economic activity (e.g. the financial flows in an international financial centre with a high proportion of investment management services provided for foreign customers or a large inter-bank market not linked with local economic activity).

- 27 Competent authorities should be designated to ensure an effective implementation of all these Recommendations, through administrative supervision and regulation, in other professions dealing with cash as defined by each country.
- 28 The competent authorities should establish guidelines which will assist financial institutions in detecting suspicious patterns of behaviour by their customers. It is understood that such guidelines must develop over time, and will never be exhaustive. It is further understood that such guidelines will primarily serve as an educational tool for financial institutions personnel.
- 29 The competent authorities regulating or supervising financial institutions should take the necessary legal or regulatory measures to guard against control or acquisition of a significant participation in financial institutions by criminals or their confederates.

NOTE TO 29:

Recommendation 29 should not be read as to require the introduction of a system of regular review of licensing of controlling interests in financial institutions merely for anti-money laundering purposes, but as to stress the desirability of suitability review for controlling shareholders in financial institutions (banks and non-banks in particular) from a FATF point of view. Hence, where shareholder suitability (or fit and proper) tests exist, the attention of supervisors should be drawn to their relevance for anti-money laundering purposes.

D Strengthening of international co-operation

Administrative Co-operation

Exchange of general information

- 30 National administrations should consider recording, at least in the aggregate, international flows of cash in whatever currency, so that estimates can be made of cash flows and reflows from various sources abroad, when this is combined with central bank information. Such information should be made available to the International Monetary Fund and the Bank for International Settlements to facilitate international studies.

- 31 International competent authorities, perhaps Interpol and the World Customs Organisation, should be given responsibility for gathering and disseminating information to competent authorities about the latest developments in money laundering and money laundering techniques. Central banks and bank regulators could do the same on their network. National authorities in various spheres, in consultation with trade associations, could then disseminate this to financial institutions in individual countries.

Exchange of information relating to suspicious transactions

- 32 Each country should make efforts to improve a spontaneous or upon request international information exchange relating to suspicious transactions, persons and corporations involved in those transactions between competent authorities. Strict safeguards should be established to ensure that this exchange of information is consistent with national and international provisions on privacy and data protection.

Other forms of co-operation

Basis and means for co-operation in confiscation, mutual assistance and extradition

- 33 Countries should try to ensure, on a bilateral or multilateral basis, that different knowledge standards in national definitions – i.e. different standards concerning the intentional element of the infraction – do not affect the ability or willingness of countries to provide each other with mutual legal assistance.

NOTE TO 33:

Subject to principles of domestic law, countries should endeavour to ensure that differences in the national definitions of the money laundering offences, - e.g. different standards concerning the intentional element of the infraction, differences in the predicate offences, differences with regard to charging the perpetrator of the underlying offence with money laundering – do not affect the ability or willingness of countries to provide each other with mutual legal assistance.

- 34 International co-operation should be supported by a network of bilateral and multilateral agreements and arrangements based on generally shared legal concepts with the aim of providing practical measures to affect the widest possible range of mutual assistance.
- 35 Countries should be encouraged to ratify and implement relevant international conventions on money laundering such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

Focus of improved mutual assistance on money laundering issues

- 36 Co-operative investigations among countries' appropriate competent authorities should be encouraged. One valid and effective investigative technique in this respect is controlled delivery

related to assets known or suspected to be the proceeds of crime. Countries are encouraged to support this technique, where possible.

NOTE TO 36:

The controlled delivery of funds known or suspected to be the proceeds of crime is a valid and effective law enforcement technique for obtaining information and evidence in particular on international money laundering operations. It can be of great value in pursuing particular criminal investigations and can also help in obtaining more general intelligence on money laundering activities. The use of these techniques should be strongly encouraged. The appropriate steps should therefore be taken so that no obstacles exist in legal systems preventing the use of controlled delivery techniques, subject to any legal requisites, including judicial authorisation for the conduct of such operations. The FATF welcomes and supports the undertakings by the World Customs Organisation and Interpol to encourage their members to take all appropriate steps to further the use of these techniques.

- 37 There should be procedures for mutual assistance in criminal matters regarding the use of compulsory measures including the production of records by financial institutions and other persons, the search of persons and premises, seizure and obtaining of evidence for use in money laundering investigations and prosecutions and in related actions in foreign jurisdictions.
- 38 There should be authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate proceeds or other property of corresponding value to such proceeds, based on money laundering or the crimes underlying the laundering activity. There should also be arrangements for co-ordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.

NOTE TO 38:

- (a) *Each country shall consider, when possible, establishing an asset forfeiture fund in its respective country into which all or a portion of confiscated property will be deposited for law enforcement, health, education, or other appropriate purposes.*
- (b) *Each country should consider, when possible, taking such measures as may be necessary to enable it to share among or between other countries confiscated property, in particular, when confiscation is directly or indirectly a result of co-ordinated law enforcement actions.*
- 39 To avoid conflicts of jurisdiction, consideration should be given to devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country. Similarly, there should be arrangements for co-ordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.
- 40 Countries should have procedures in place to extradite, where possible, individuals charged with a money laundering offence or related offences. With

respect to its national legal system, each country should recognise money laundering as an extraditable offence. Subject to their legal frameworks, countries may consider simplifying extradition by allowing direct transmission of extradition requests between appropriate ministries, extraditing persons based only on warrants of arrests or judgements, extraditing their nationals, and/or introducing a simplified extradition of consenting persons who waive formal extradition proceedings.

Miscellaneous Note: Deferred arrest and seizure

Countries should consider taking measures, including legislative ones, at the national level, to allow their competent authorities investigating money laundering cases to postpone or waive the arrest of suspected persons and/or the seizure of the money for the purpose of identifying persons involved in such activities for evidence gathering. Without such measures the use of procedures such as controlled deliveries and undercover operations are precluded.

List of Financial activities undertaken by business or professions which are not financial institutions

- 1 Acceptance of deposits and other repayable funds from the public.
- 2 Lending. Including *inter alia*:
consumer credit
mortgage credit
factoring, with or without recourse
finance of commercial transactions (including forfeiting).
- 3 Financial leasing.
- 4 Money transmission services.
- 5 Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques and banker's drafts ...)
- 6 Financial guarantees and commitments.
- 7 Trading for account of customers (spot, forward, swaps, futures, options ...) in:
money market instruments (cheques, bills, CDs, etc.);
foreign exchange;
exchange; interest rate and index instruments;
transferable securities;
commodity futures trading.
- 8 Participation in securities issues and the provision of financial services related to such issues.
- 9 Individual and collective portfolio management.
- 10 Safe-keeping and administration of cash or liquid securities on behalf of clients.
- 11 Life insurance and other investment related insurance.
- 12 Money changing.