

APPENDIX 1

LIST OF CRITERIA FOR DEFINING NON-COOPERATIVE COUNTRIES OR TERRITORIES

A. Loopholes in financial regulations

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

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

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

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

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

(ii) *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.

(iii) *Excessive secrecy provisions regarding financial institutions*

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

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

(iv) *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.

A. 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.

B. 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.

A. 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.