THE FATF 'BLACKLIST'

On 22 June 2000, the Financial Action Task Force published its 'Review to identify non-cooperative countries or territories (NCCTs): increasing the worldwide effectiveness of anti-money laundering measures'. This report was picked up by many of the world's newspapers with many stories referring to the report as providing a 'blacklist' of countries that are negligent in their response and attitude to money laundering. It should also be noted that this was the review of the first set of jurisdictions – not a complete overview of all countries.

The countries named as being 'non-cooperative' in June 2000 with the reasons for this are:

1. Bahamas:
   - Lack of information about beneficial ownership of trusts and IBCs (which issue bearer shares).
   - Certain intermediaries can avoid revealing the identity of their clients.
   - Delays and restricted responses to requests for assistance from other jurisdictions.
2. Cayman Islands:
   - No legal requirements for customer identification and record keeping.
   - No mandatory regime for the reporting of suspicious transactions.
   - Large class of management companies unregulated.
3. Cook Islands:
   - No relevant information on *circa* 1,200 IBCs registered there.
   - Seven offshore banks are registered that do not have to identify customers or keep records.
4. Dominica:
   - Outdated proceeds of crime laws.
   - Company law provisions frustrate identification of beneficial ownership.
5. Israel:
   - No anti-money laundering legislation.
6. Lebanon:
   - The country has a strict banking secrecy regime that frustrates investigations and international cooperation; suspicious customer relationships can be terminated without reporting to relevant authorities.
7. Liechtenstein:
   - System for reporting suspicious transactions is inadequate.
   - No proper laws for exchanging information about money laundering and international cooperation.
   - Resources devoted to tackling money laundering are inadequate.
8. Marshall Islands:
   - Absence of a basic set of anti-money laundering regulations including criminalization of money laundering, customer identification and reporting of suspicious transactions.
   - 3,000 IBCs registered here with strong secrecy concerning beneficial owners.
9. Nauru:

– Absence of a basic set of anti-money laundering regulations including criminalization of money laundering, customer identification and reporting of suspicious transactions.
– It has licensed 400 offshore 'banks' that are badly supervised – no disclosure of relevant information on such entities or IBCs.

10. Niue:
– Lapses in customer identification requirements.
– Strong concerns about regulation of five offshore banks and *circa* 5,000 IBCs registered here.

11. Panama:
– Money laundering (apart from drug trafficking) is not criminalized.
– Strange system of reporting suspicious transactions.

12. Philippines:
– Absence of a basic set of anti-money laundering regulations including customer identification and reporting of suspicious transactions.
– Excessive secrecy of bank records; no suspicious transaction reporting procedure.

13. Russia:
– Lack of comprehensive money laundering law and regulations.
– No customer identification requirements; no suspicious transaction reporting procedure.
– No central reporting/intelligence unit.
– FATF commented: 'Russia faces a unique challenge in combating money laundering as it continues its transition to a market economy. The existence of a continued large scale capital flight, underdeveloped market institutions and lack of fiscal resources all complicate the fight against money laundering.'

14. St Kitts and Nevis:
– Money laundering is only a criminal offence in relation to narcotics trafficking.
– No reporting of suspicious transactions.
– In Nevis: little supervision of the offshore sector; no relevant procedures in place; non-residents can operate an offshore bank account with no ID being taken; strong bank secrecy laws which hide beneficial owners even in criminal cases; company law frustrates customer identification even more.

15. St Vincent and the Grenadines:
– No anti-money laundering regulations/guidelines exist for offshore financial institutions – thus no customer identification.
– No system to require reporting of suspicious transactions.

Crucially the FATF report recommended that 'financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from the non-cooperative countries' (ie the list of 15 territories given above).

On 22 June 2001 the FATF issued their revised blacklist; removed from the previous year's list were:

- Bahamas;
- Cayman Islands;
- Liechtenstein;
- Panama.

All were commended for making significant progress over the previous 12 months in tackling the problems of money laundering and introducing significant new legislation/regulation to control it.

However, FATF singled out three countries as having failed to make any progress in fighting money laundering. These were:

- Russia;
- Philippines;
- Nauru.

Each of these jurisdictions was given until 30 September 2001 to make progress on money laundering issues in line with FATF's overall strategy. Punishments against these countries unless they 'enact significant legislation before 30/09/01 to address these problems' were stated as possibly to include: requiring US and other banks to gather detailed information before doing business with any individual or company from any of these countries; and issuing official warnings to international companies against doing business in any of the three countries.
As at 22 June 2001 the FATF 'blacklist' of countries in full was:

- Russia: no progress – remained on list from previous year;
- Philippines: no progress – remained on list from previous year;
- Nauru: no progress – remained on list from previous year;
- Cook Islands: remained on list from previous year;
- Dominica: remained on list from previous year;
- Israel: remained on list from previous year;
- Lebanon: remained on list from previous year;
- Marshall Islands: remained on list from previous year;
- Niue: remained on list from previous year;
- St Kitts and Nevis: remained on list from previous year;
- St Vincent and the Grenadines: remained on list from previous year;
- Egypt: new listing;
- Guatemala: new listing;
- Hungary: new listing;
- Indonesia: new listing;
- Myanmar (Burma): new listing;
- Nigeria: new listing.

On 7 September 2001 the FATF issued an update on the 'Non-cooperative countries and territories (NCCTs) list', together with a recommendation that:

> *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.*

In June 2001 FATF singled out three nations as major problems, and gave these countries until 30 September 2001 to enact significant money laundering legislation. These were Russia, Nauru and the Philippines. FATF considered the progress made by each of these countries, and concluded:

- Russia: remained on the main NCCTs list, but because of significant legislation that had been enacted was removed from the 'top three'.
- Nauru: had enacted an Anti-Money Laundering Act but FATF commented that 'this new legislation is found to have several deficiencies and does not address the major money laundering problem in Nauru'. FATF urged the Nauru Government to amend the legislation accordingly, and, if it did not, countermeasures would apply to Nauru from 30 November 2001.
- Philippines: put simply, this country had done nothing and FATF called for its members to implement countermeasures unless the Philippines enacted significant legislation by 30 September 2001.

Additionally FATF added Ukraine and Grenada to the main NCCTs list, for the following reasons:

- Grenada: authorities had inadequate access to customer account information and inadequate authority to cooperate with foreign counterparts; Grenadian financial institutions did not have adequate qualification procedures for owners of financial institutions.
- Ukraine: lacked a complete set of anti-money laundering measures; no efficient mandatory system for reporting suspicious transactions; inadequate resources to tackle the problem.

The 'blacklist' of countries as at 7 September 2001 in full was:

- Cook Islands;
- Dominica;
- Egypt;
- Grenada;
- Guatemala;
- Hungary;
- Indonesia;
- Israel;
- Lebanon;
- Marshall Islands;
- Myanmar (Burma);
- Nauru;
- Nigeria;
- Niue;
- Philippines;
- Russia;
- St Kitts and Nevis;
- St Vincent and the Grenadines;
- Ukraine.

On 21 June 2002 the FATF updated the list by removing four countries: but perhaps somewhat surprisingly in view of events since 11 September 2001 no new countries were added.
The four removals from the list were Hungary, Israel, Lebanon and St Kitts and Nevis. All four will be under observation for some time. Israel was removed from the list because of the laws that had been recently enacted and the country's plans to introduce a proper financial regulator. The Justice Minister of Israel rather pre-empted FATF's announcement by confirming that the country had been removed from the blacklist a few hours before

the official announcement. Hungary escaped from the list because it has introduced a law banning anonymous accounts.

Russia edged closer to removal from the list: it had, by this stage, introduced the laws requested by FATF but the organization wants to see how and whether they actually work before taking the country off the list. Grenada and St Vincent and the Grenadines were also identified as making progress.

The full list as at 21 June 2002 comprised 15 states and territories, as follows:

- Cook Islands;
- Dominica;
- Egypt;
- Grenada;
- Guatemala;
- Indonesia;
- Marshall Islands;
- Myanmar (Burma);
- Nauru;
- Nigeria;
- Niue;
- Philippines;
- Russia;
- St Vincent and the Grenadines;
- Ukraine.

The FATF also commented that it would recommend taking sanctions against Nigeria at the end of October 2002 if the Government failed to enact legal reforms. Ukraine is also a subject of concern – FATF officials commented that, 'in plain English, nothing has been done'.

At the time of the issue of this list I observed in an interview on BBC TV that it actually predated 11 September 2001, and thus had no specific focus on money laundering by terrorists. Moreover, none of the countries identified by the US administration as the 'axis of evil' (Iraq, Iran and North Korea; and in an expanded form also Cuba, Libya and Syria) appear on the list. Moreover, based on intelligence concerning the entry point into the global banking system of terrorist funds, it is equally surprising that no Middle Eastern country (or countries) is on the blacklist. I also expressed concern as to whether money laundering has now 'bypassed' the banking system and is being carried out through such methods as:

- the purchase of gold and diamonds;
- informal money transmission services (such as hawala and hundi);
- money transmitted through casinos;
- property transactions;
- the use of professional advisors such as lawyers and accountants.

On 11 October 2002 the FATF changed its list of non-cooperative countries. By this stage, as it had been widely observed that the task of tracing terrorist funds had not been wholly successful and was a long term, uphill struggle, I was somewhat surprised that FATF managed substantially to reduce the number of blacklisted countries. In summary the changes were as follows:

- Countries added: none.

- Countries removed: Russia (implementation of significant reforms to its anti-money laundering system), Marshall Islands, Niue and Dominica (all removed because of progress made in improving their anti-money laundering systems).
- Remaining on the blacklist: Cook Islands, Egypt, Grenada, Guatemala, Indonesia, Myanmar (Burma), Nauru, Nigeria, Philippines, St Vincent and the Grenadines, Ukraine.
- Still subject to countermeasures: Nauru.
- New countermeasures: to be imposed on Nigeria and Ukraine if suitable steps were not taken by each country to improve their anti-money laundering regimes. Date for implementation: 15 December 2002.

I could not help but be cynical about what criteria are used to select countries for inclusion on the blacklist, what political pressures are exerted to have countries taken off the blacklist (or not included in the first place), whether the list bears any relation to the reality of the global money laundering problem (particularly as it relates to the funding of terrorism) and whether the list has any practical effects. Little wonder then that there are growing calls for an international body to be set up that solely deals with the problem of terrorist money laundering.
Following a FATF meeting on 14 February 2003, the FATF blacklist was as follows:

- Cook Islands;
- Egypt;
- Guatemala;
- Indonesia;
- Myanmar (Burma);
- Nauru (subject to countermeasures);
- Nigeria;
- Philippines (may be subject to countermeasures from March 2003);
- St Vincent and the Grenadines;
- Ukraine.

Grenada was taken off the blacklist because of its 'implementation of significant reforms to its anti-money laundering system'. The Philippines may (or may not) be the subject of 'countermeasures' if the country does not improve its AML regime. Ukraine, on the other hand, subject to countermeasures for just under two months since December 2002 had those countermeasures withdrawn because of the country's recent enactment of 'comprehensive' AML legislation, but it remains on the main blacklist.

In the Philippines this latest move has not been well received, one commentator observed of the FATF that it is 'a body whose authority to dictate on countries no one seems able to pin down, whose membership makes the countries under its threat want to throw up, and whose exceptions of the usual suspects enrage everyone else'.

The FATF also confirmed that no further countries would be blacklisted for a year because of the discussions going on between the FATF, the IMF and World Bank. Various commentators have speculated that because of these moves this may be the final FATF blacklist. Based on the somewhat haphazard nature of the FATF blacklist to date (both in terms of countries included and those not even considered for inclusion) it is my hope that these discussions would lead to a more effective world body to robustly tackle the problems of money laundering and terrorist financing.

In June 2003 St Vincent and the Grenadines was removed from the list and early the next year (2004) Ukraine and Egypt were delisted because of the "substantial" AML reforms that both countries had enacted. Simultaneously the FATF noted that Myanmar and Nauru could not be removed as they made insufficient progress to justify their removal.

In July 2004 it was Guatemala's turn to step down after the FATF concluded that the country had "took significant steps, including passing laws requiring offshore banks to be licensed and supervised; requiring enhanced customer identification for financial institutions; and requiring reporting by banks to authorities of any suspicious transactions"

After February 2005 the blacklist was down to three countries, as the FATF removed the Cook Islands, Indonesia and the Philippines as each of these countries were "implementing AML measures to remedy deficiencies that were identified by the FATF". In October 2005 the list was reduced to its current "rump" when Nauru got the green light to become respectable and was removed from the list after it had abolished its 400 shell banks which, in the words of the FATF "removed the major money laundering risk".

Thus as at February 2006, only two countries – Myanmar and Nigeria – remain "blacklisted". Yet frequent references are made to other countries where weak or non-existent AML controls exist. Whilst the FATF exercise has clearly improved AML regulation in numerous countries has this process simultaneously (for whatever reason) allowed other jurisdictions to pass under the radar screen and carry on facilitating the washing of dirty money?

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