

Annex IV

The Financial Action Task Force Forty Recommendations on Money Laundering and Interpretive Notes

The Forty Recommendations on Money Laundering

General Framework of the Recommendations

- *Recommendation 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)

- *Recommendation 2*

Financial institution secrecy laws should be conceived so as not to inhibit implementation of these recommendations.

- *Recommendation 3*

An effective money laundering enforcement program should include increased multilateral co-operation and mutual legal assistance in money

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laundering investigations and prosecutions and extradition in money laundering cases, where possible.

Role of National Legal Systems in Combating Money Laundering

SCOPE OF THE CRIMINAL OFFENCE OF MONEY LAUNDERING

- *Recommendation 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. (See Interpretative Note.)

- *Recommendation 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.

- *Recommendation 6*

Where possible, corporations themselves—not only their employees—should be subject to criminal liability.

PROVISIONAL MEASURES AND CONFISCATION

- *Recommendation 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.

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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.

Role of the Financial System in Combating Money Laundering

- *Recommendation 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. (See Interpretative Notes: Recommendation 8 and Recommendations 8 and 9.)

- *Recommendation 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. (See Interpretative Note.)

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CUSTOMER IDENTIFICATION AND RECORD-KEEPING RULES

• *Recommendation 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.

• *Recommendation 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). (See Interpretative Notes: Recommendation 11 and Recommendations 11 and 15 through 18.)

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- *Recommendation 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 licenses 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.

- *Recommendation 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

- *Recommendation 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. (See Interpretative Note.)

- *Recommendation 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. (See Interpretative Notes: Recommendation 15 and Recommendations 11 & 15 through 18.)

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- *Recommendation 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. (See Interpretative Note.)

- *Recommendation 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. (See Interpretative Note.)

- *Recommendation 18*

Financial institutions reporting their suspicions should comply with instructions from the competent authorities. (See Interpretative Note.)

- *Recommendation 19*

Financial institutions should develop programs against money laundering. These programs should include, as a minimum:

- 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;
- an ongoing employee training programme;
- an audit function to test the system.

MEASURES TO COPE WITH THE PROBLEM OF COUNTRIES WITH NO OR INSUFFICIENT ANTI-MONEY LAUNDERING MEASURES

- *Recommendation 20*

Financial institutions should ensure that the principles mentioned above are also applied to branches and majority owned subsidiaries located abroad, espe-

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cially 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.

- *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.

OTHER MEASURES TO AVOID MONEY LAUNDERING

- *Recommendation 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. (See Interpretative Note.)

- *Recommendation 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.

- *Recommendation 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

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entry recording of securities, as a means to encourage the replacement of cash transfers.

- *Recommendation 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 unlawful use of such entities.

IMPLEMENTATION AND ROLE OF REGULATORY AND OTHER ADMINISTRATIVE AUTHORITIES

- *Recommendation 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. (See Interpretative Note.)

- *Recommendation 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.

- *Recommendation 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.

- *Recommendation 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. (See Interpretative Note.)

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Strengthening of International Cooperation

ADMINISTRATIVE CO-OPERATION

EXCHANGE OF GENERAL INFORMATION

- *Recommendation 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.

- *Recommendation 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

- *Recommendation 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.

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OTHER FORMS OF CO-OPERATION

BASIS AND MEANS FOR CO-OPERATION IN CONFISCATION, MUTUAL ASSISTANCE AND EXTRADITION

- *Recommendation 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. (See Interpretative Note.)

- *Recommendation 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.

- *Recommendation 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

- *Recommendation 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. (See Interpretative Note.)

- *Recommendation 37*

There should be procedures for mutual assistance in criminal matters regarding the use of compulsory measures including the production of records by

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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.

- *Recommendation 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 coordinating seizure and confiscation proceedings which may include the sharing of confiscated assets. (See Interpretative Note.)

- *Recommendation 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 coordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.

- *Recommendation 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.

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ANNEX TO RECOMMENDATION 9: LIST OF FINANCIAL ACTIVITIES UNDERTAKEN BY BUSINESS OR PROFESSIONS WHICH ARE NOT FINANCIAL INSTITUTIONS

- Acceptance of deposits and other repayable funds from the public.
- Lending¹
- Financial leasing.
- Money transmission services.
- Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques and bankers' drafts...)
- Financial guarantees and commitments.
- 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.
- Participation in securities issues and the provision of financial services related to such issues.
- Individual and collective portfolio management.
- Safekeeping and administration of cash or liquid securities on behalf of clients.
- Life insurance and other investment related insurance.
- Money changing.

Interpretative Notes to The Forty Recommendations

Interpretative Note to Recommendation 4

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

1. Including *inter alia*: consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfaiting).

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Interpretative Note to Recommendation 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.

Interpretative Note to Recommendations 8 and 9 (Bureaux de Change)

INTRODUCTION

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

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 an 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

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.*

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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.

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.”

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.

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.

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.

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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 could 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.

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.

Interpretative Note to Recommendations 11, 15 through 18

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.

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Interpretative Note to Recommendation 11

A bank or other financial institution should know the identify 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.

Interpretative Note to Recommendation 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, it must be read to incorporate these interbank transactions.
- b. The word “transactions” should be understood to refer to the insurance product itself, the premium payment and the benefits.

Interpretative Note to Recommendation 15²

In implementing Recommendation 15, suspicious transactions should be reported by financial institutions regardless of whether they are also thought to involve tax matters. Countries should take into account that, in order to deter financial institutions from reporting a suspicious transaction, money launderers may seek to state inter alia that their transactions relate to tax matters.

2. The FATF adopted this Interpretative Note on 2 July 1999.

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Interpretative Note to Recommendation 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.

Interpretative Note to Recommendation 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).

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Interpretative Note to Recommendation 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.

Interpretative Note to Recommendation 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.

Interpretative Note to Recommendation 36 (Controlled delivery)

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. In certain countries, controlled delivery techniques may also include the monitoring of funds. 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 undertak-

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ings by the World Customs Organisation and Interpol to encourage their members to take all appropriate steps to further the use of these techniques.

Interpretative Note to Recommendation 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.

Interpretative Note on 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 or for evidence gathering. Without such measures the use of procedures such as controlled deliveries and undercover operations are precluded.

