



CARIBBEAN FINANCIAL ACTION TASK FORCE



FINANCIAL ACTION TASK FORCE GROUPE D'ACTION FINANCIÈRE



FATF Report

Money Laundering Using Trusts and Company Service Providers

October 2010



THE FINANCIAL ACTION TASK FORCE (FATF)

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering and terrorist financing. Recommendations issued by the FATF define criminal justice and regulatory measures that should be implemented to counter this problem. These Recommendations also include international co-operation and preventive measures to be taken by financial institutions and others such as casinos, real estate dealers, lawyers and accountants. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

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TABLE OF ABBREVIATIONS AND ACRONYMS

AML/CFT	Anti-Money Laundering/Counter-Terrorism Financing
CDD	Customer due diligence
CFATF	Caribbean Financial Action Task Force
CSP	Company Service Provider
G-20	Group of Twenty Finance Ministers and Central Bank Governors
FATF	Financial Action Task Force
FSF	Financial Stability Forum
IAIS	International Association of Insurance Supervisors
IOSCO	International Organisation of Securities Commissions
KYC	Know your customer
ML/FT	Money Laundering/Financing Terrorism
OECD	Organisation for Economic Co-operation and Development
OGBS	Offshore Group of Banking Supervisors
PEP	Politically Exposed Person
RBA	Risk Based Approach
SAR	Suspicious Activity Report
STR	Suspicious Transaction Report
TCSP	Trust and Company Service Provider
TSP	Trust Service Provider
WGEI	Working Group on Evaluations and Implementation (FATF Working Group)

EXECUTIVE SUMMARY

1. Trust and Company Service Providers (TCSPs) play a key role in the global economy as financial intermediaries, providing an important link between financial institutions and many of their customers. They provide often invaluable assistance to clients in the management of their financial affairs and can therefore significantly impact transactional flows through the financial system.

2. There have been a number of studies over the years which highlight the use of legal persons and legal arrangements to facilitate money laundering. Little information is available at the current time with regard to the use of such structures in the financing of terrorism but this does not mean that such vehicles have not or cannot be used in this regard. Therefore, although the research provided will centre on the role that TCSPs have played with regard to combating money laundering, it is hoped that this report will be of value in relation to the fight against both money laundering and terrorist financing.

3. TCSPs are often involved in some way in the establishment and administration of most legal persons and arrangements; and accordingly in many jurisdictions they play a key role as the gatekeepers for the financial sector. This report provides a number of case studies which demonstrate that TCSPs have often been used, wittingly or unwittingly, in the conduct of money laundering activities. The following factors are borne out by the case studies as contributing to the crime of money laundering:-

- Weak or ineffective Anti-Money Laundering/Counter-Terrorism Financing (AML/CFT) frameworks in some jurisdictions, in areas which can impact the operation of TCSPs;
- The presence in the TCSP sector of persons that are willing to get involved in or to perpetrate criminal activities; and
- The proliferation of TCSPs whose management/staff do not have the required expertise, knowledge or understanding of key matters that are relevant to the operation of their business, such as their clients' affairs. This lack of knowledge and skill can promote and facilitate illegal activities.

4. In this regard, it is important to note that a number of jurisdictions have chosen not to recognise or put in place an AML/CFT supervisory framework for the TCSP sector because of the nature of their legal systems. However, there are still persons in those jurisdictions that are carrying out, as a business, the activities that can be attributed to this sector. Other jurisdictions have had difficulty in developing an appropriate oversight regime for TCSPs due to various complexities related to the number and type of persons carrying out the related services. These issues have resulted in potentially important gaps in the global network to address the money laundering risks associated with this sector.

5. The FATF has already established standards which apply to this sector. In addition there are other bodies that have done significant work in this area and have developed some key principles and guidelines that can positively impact the operation of TCSPs. Notwithstanding, consideration should be given to additional work to enhance the international requirements that apply to TCSPs, so that jurisdictions can implement more effective AML/CFT measures in relation to their TCSP sectors.

CHAPTER 1: INTRODUCTION AND BACKGROUND

1.1 Introduction

6. Over the last five years, a number of important studies have been conducted that have explored issues relating to the misuse of corporate vehicles for illicit purposes including money laundering and terrorist financing. Despite the considerable body of work in this area, there remains a need for further research into the operation, regulation and supervision of TCSPs; the challenges caused by the illegal use of TCSPs; and the ineffective implementation of the international AML/CFT requirements relating to TCSPs.

7. This typologies research project will therefore evaluate the effectiveness of the practical implementation of the Financial Action Task Force Forty Recommendations and Nine Special Recommendations (the FATF 40 + 9 Recommendations) as they relate to TCSPs. The FATF Recommendations relating to beneficial ownership information, governance and transparency will also be used to determine what is necessary to ensure there is effective cooperation between agencies and jurisdictions. Currently, as part of the preparation for the 4th Round of country evaluations, the FATF is assessing and clarifying Recommendations 33 and 34 in order to determine how the important purposes of these Recommendations can be most effectively achieved. The key findings from this typology study will be fed into these discussions. In addition, consideration will be given to whether the international standards relating to the oversight and operation of TCSPs should contain some of the requirements imposed regarding oversight of financial institutions.

1.2 Need for Typology

8. There has been an increasing international focus on the misuse of legal vehicles and, more specifically, the use of TCSPs to help facilitate this misuse. In recent years, the use of complex multi-jurisdictional legal structures has continued to cause concern for many international organisations, governments and national regulatory authorities. The international bodies which are often seeking to exert pressure for more transparency in the formation and administration of legal vehicles include the G20, the Financial Stability Forum (FSF), the European Commission, the International Organisation of Securities Commissions (IOSCO) and the Organization for Economic Co-operation and Development (OECD). The need for enhanced effective international cooperation in this regard has also been frequently highlighted.

9. By way of background and for the purposes of this project, the term 'Trust and Company Service Providers' has the meaning used by the FATF¹ and thus includes **all** those persons and entities that, on a professional basis, participate in the creation, administration and management of trusts and corporate vehicles. There are a considerable number of jurisdictions, both large and small, with sizeable TCSP sectors and many are still grappling with how to best exercise effective control over the activities of TCSPs. It is important to note that there are also many jurisdictions that do not specifically classify TCSPs as a separate and distinct sector. However, in these jurisdictions trust and company services may well be provided by lawyers and other professionals, who may be regulated.

10. Whilst the majority of TCSPs appear to be established for legitimate purposes, it is clear from the research that some TCSPs are being used, unwittingly or otherwise, to help facilitate the

¹ As defined in FATF Recommendation 12 and the Glossary to the FATF 40+9 Recommendations.

misuse of trust and corporate vehicles. Criminal organisations and individuals may use TCSPs to assist with illicit activities by seeking professional services and advice on the most appropriate vehicles or jurisdictions to use to further their ill-intended agendas. This potential for misuse of TCSPs has contributed to the extension of the scope of the FATF 40 + 9 Recommendations to lawyers, accountants and other TCSPs. The changes relate particularly to Recommendation 5, which addresses customer due diligence and record-keeping; and Recommendations 33 and 34, which address transparency of legal persons and arrangements.

11. Although a number of jurisdictions do license and regulate TCSPs, there are no internationally agreed “fit and proper” requirements² imposed on the providers of these services. Further, other than the requirements set out by the FATF, the Offshore Group of Banking Supervisors is the only body which has done work to develop standards for the establishment and overall operation of these entities to enhance their integrity, transparency and effectiveness, particularly with regard to addressing money laundering and terrorist financing. Their work will be discussed later in this report.

1.3 Scope

12. The overarching aim of this project is to consider, with the support of cases, how the effectiveness of the FATF and other international standards, as applied to the TCSPs, can be enhanced. The project will seek to evaluate:

- i. The role of TCSPs in the detection, prevention and prosecution of money laundering and terrorist financing;
- ii. The effectiveness of the FATF 40 + 9 Recommendations as they apply to TCSPs; and
- iii. The potential need for additional international requirements or sector-specific international standards for TCSPs.

13. The following are key issues that need to be addressed:

- i. Assessment of the adequacy and role that the information, required from TCSPs in accordance with the FATF 40 + 9 Recommendations, plays in combating money laundering and terrorist financing.
- ii. Determination of the difficulties experienced by TCSPs in obtaining the FATF required information from clients and the steps that need to be taken to overcome these difficulties.
- iii. Assessment of the national and international cooperation issues ensuring and/or enhancing access to and exchange of, in particular, information on beneficial owners.
- iv. Evaluation of the following standard-setting related questions:
 - a. How can the FATF Recommendations and guidance more effectively address the role of TCSPs in the combating of money laundering and terrorist financing?

² As referred to in the interpretative note of FATF Recommendation 23: [www.fatf-gafi.org/document/28/0,3343,en_32250379_32236920_33988956_1_1_1_1,00.html#Interpretative Note to R 23](http://www.fatf-gafi.org/document/28/0,3343,en_32250379_32236920_33988956_1_1_1_1,00.html#Interpretative+Note+to+R+23)

- b. Is there a need for an international standard for TCSPs to address issues such as the “fit and proper” prerequisite and other minimum requirements (*e.g.*, Systems and Controls, Corporate Governance, Authorization criteria)?
 - v. Assessment of what steps can and should be taken to ensure effective implementation of the international requirements.
14. Other benefits which may result from the project include:
- Addressing concerns about the impact of the operation of TCSPs on Money Laundering and Terrorist Financing;
 - Enhancing the framework under which TCSPs operate; and
 - Broadening the knowledge and understanding of TCSPs more generally.

1.4 Methodology

15. This typology is in essence a follow up to the October 2006 FATF Typologies Study on “The Misuse of Corporate Vehicles, including Trust and Company Service Providers” that highlights the vital role that beneficial ownership information can play in the detection and prevention of the misuse of corporate vehicles. Other studies in this area were also taken into consideration, and they are discussed in further detail below.

16. Between late September and early October 2009, a Concept Note regarding the proposed TCSP typologies exercise was developed. During the 30th Plenary Meeting of the Caribbean Financial Action Task Force (CFATF) in October 2009, the Concept Note was distributed to delegates to encourage discussion and garner support for the initiative. At the FATF/CFATF Joint Typologies meeting held in the Cayman Islands in November 2009, representatives from Belgium, Belize, Bermuda, CFATF, the Cayman Islands, the Channel Islands, Italy, the Netherlands, the Netherlands Antilles, St. Vincent and the Grenadines, the United States of America, the British Virgin Islands, as well as an industry representative from the TCSP sector in one of these jurisdictions, all attended and participated in a workshop focussed on the TCSP sector. During the workshop, the TCSP Project Working Group was created with the objective of conducting research and preparing a report on money laundering and terrorist financing using TCSPs. The following jurisdictions joined the working group and contributed to the study: Bermuda (as project Chair), the British Virgin Islands, the Cayman Islands, Jersey, the Netherlands Antilles, and the United States of America. During the course of the study, the project working group also received assistance from Austria, the World Bank, Guernsey and the Offshore Group of Banking Supervisors (OGBS). The secretariats of both the FATF and CFATF provided invaluable assistance and support throughout the various stages of the project.

17. As the starting point for the research project, the Project Working Group agreed that questionnaires would be developed and circulated to FATF and CFATF members, requesting that they provide relevant information on their TCSP sectors. In particular, information was sought on the breadth and scope of the services provided by this sector; the legislative framework vis-à-vis corporate vehicles; the nature of regulatory and AML/CFT supervision and monitoring for this sector, if any; and any problems being encountered by the sector in fulfilling mandated requirements. Most importantly, questionnaire respondents were required to provide case studies demonstrating either the misuse of TCSPs for AML/CFT purposes, or their importance in stemming the money laundering and financing of terrorism (ML/FT) tide.

18. The questionnaire was designed in two formats: a long-form, comprehensive version and a short-form, streamlined version. It was envisaged that by using two versions of the questionnaire, the Project Working Group would be able to broaden its sample in efforts to capture a wider audience.

Given this, the long form was sent to all thirty (30) CFATF member jurisdictions, the United Kingdom Crown Dependencies, the United Kingdom, the United States of America, Canada, Australia, Switzerland, Ireland and Singapore. The short-form was sent to other members of the FATF that are not listed above and CFATF observer organisations.

19. Responses have been received from thirty-seven (37) jurisdictions representing some of the membership of both CFATF and the FATF, as well as other FATF Style Regional Bodies (FSRB). Twenty-two (22) jurisdictions provided information using the long form questionnaire and fifteen (15) answered the short form questionnaire.

20. The Project Working Group wishes to thank the FATF and CFATF Secretariats and all those who participated in and contributed to this study.

1.5 Structure and Nature of the Sector

21. The FATF 40 + 9 Recommendations refer to TCSPs as being persons and businesses that, by way of business, provide any of the following services to third parties:

- Acting as a formation agent of legal persons;
- Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- Providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangements;
- Acting as (or arranging for another person to act as) a trustee of an express trust;
- Acting as (or arranging for another person to act as) a nominee shareholder for another person.

22. TCSPs are categorized in the FATF Methodology as Designated Non-Financial Businesses and Professions (DNFBPs). Countries are therefore required under Recommendation 24 to ensure that this class of business is subject to effective systems for monitoring and is compliant with AML/CFT measures. TCSPs are often subsidiaries of banks, financial services businesses, law or accountancy firms; but they may also be single person stand-alone operations. In some jurisdictions TCSPs carry out a broad range of corporate services, but this may account for only a portion of the primary business of the entity. The variety and scope in the nature of the business and the structural makeup of TCSPs contribute to variations in the degree of regulation of corporate vehicles from jurisdiction to jurisdiction. A few jurisdictions regulate TCSPs in a manner similar to the internationally recognized and required prudential regulation of financial institutions. However, it has previously been found that a majority of jurisdictions still do not regulate or in any way supervise the operation of TCSPs³, despite the fact that lawyers and other professionals are providing trust and company services. For example, in almost all jurisdictions lawyers will be involved in the formation of foreign companies for clients. The same is true for trusts, as lawyers or other professionals within the jurisdiction may well be engaged in the administration of trusts, even if the jurisdiction does not recognize this. However, there may be no barrier in such jurisdictions to a resident professional acting as a trustee for a trust

³ OGBS (2004)

established under the law of a jurisdiction that does recognize trusts.⁴ Given this, the effectiveness of the FATF Recommendations and guidance (as they apply to TCSPs) can be challenging to measure.

1.6 Overview of previous work

23. The FATF has issued guidance on the risk based approach for legal professionals, accountants and other TCSPs.⁵ Other work has been carried out on matters pertaining to TCSPs by various groups and individuals. As can be seen below from the summaries of a few studies done in this area, many issues remain unresolved today. This project will seek to provide a timely follow-up to some of the key outstanding issues which are outlined below, as well as addressing some of the concerns expressed by the G20, and others, relating to international cooperation and the prevention of the misuse of TCSPs and AML/CFT efforts more generally.

1.6.1 *OECD: Behind the Corporate Veil – Using Corporate Entities for Illicit Purposes, 2001*

24. In May 2000, the Financial Stability Forum (FSF) asked the Organisation for Economic Co-operation and Development (OECD) to undertake the drafting of a report to develop mechanisms to reduce the vulnerability of corporate vehicles being misused for illicit purposes. The OECD Steering Group on Corporate Governance drafted this report which was submitted to the OECD Ministers, G-7 Finance Ministers and FSF. The report was recognised at the May 2001 OECD annual meeting. The paper stated that in order to develop mechanisms to prevent the misuse of corporate vehicles, supervisors and law enforcement authorities should ensure that they are able to obtain, on a timely basis, information on the beneficial ownership and control of corporate vehicles and to share that information with foreign authorities.

1.6.2 *FATF: The Misuse of Corporate Vehicles, Including Trust and Company Service Providers, 2006*

25. One of the more recent studies, the October 2006 FATF Typologies Study on “The Misuse of Corporate Vehicles, including Trust and Company Service Providers”, highlights the vital role that beneficial ownership information can play in the detection and prevention of the misuse of corporate vehicles. This study led to the following conclusions:

- The level of misuse of corporate vehicles could be significantly reduced if the information regarding the ultimate beneficial owner, knowledge of the source of assets and the business objective of the company or a trust within a structure were readily available to the authorities that might need it.
- It matters less who maintains the required information, provided that the information on beneficial ownership exists, that it is complete and up-to-date and that it is available to competent authorities.
- Company registers are an important source of information on legal ownership. Legal ownership information held by other public entities such as filings with financial regulatory authorities or stock exchanges should also be accurate and current.
- Individuals and corporate vehicles have legitimate expectations of privacy and business confidentiality in their affairs and, from the information obtained through the survey, it is evident that jurisdictions adopt different approaches to protect legitimate privacy interests.

⁴ FATF (2006)

⁵ FATF (2008a, 2008b, 2008c)

- Certain of the arrangements and practices however, including the absence of appropriate regulation/supervision, would appear to contribute to the potential for corporate vehicle misuse by making it very difficult, and perhaps even impossible, for the authorities to identify beneficial owners and controllers.
- There is a need to strike a balance between the need for robust regulation and/or supervision to prevent corporate vehicle misuse and the need to avoid unnecessary restrictions on legitimate business.

26. The findings also indicated that in order to provide a more robust framework for the prevention of money laundering and terrorist financing in the area of TCSPs, there are various matters which need to be explored in greater depth. In particular:

- Are the existing AML/CFT standards as a whole adequate to discourage the misuse of corporate vehicles?
- Are the specific FATF Recommendations 12, 16 and 24 sufficient as a basis for dealing with the issue of corporate vehicle misuse?
- What more can be done to ensure that adequate, accurate and timely information on the beneficial ownership and control of legal persons/legal arrangements may be obtained or accessed in a timely fashion by competent authorities?
- What can be done to ensure that those engaged in the formation and administration of corporate vehicles are “fit and proper”? Is there a need for an international standard for TCSPs or professionals engaged in providing trust and company services?
- What steps can and should be taken to ensure that the actions of those engaged in the formation and administration of corporate vehicles are properly monitored or subject to investigation as necessary?
- Should TCSPs be regulated or should there be enhanced regulation of such service providers, including lawyers and accountants where they offer similar services?
- Should existing corporate governance standards (such as the OECD Principles) be extended to include factors relating to the role of TCSPs, lawyers and accountants in relation to the potential misuse of corporate vehicles?
- Should guidance in other forms be produced – for example risk assessment check lists – to help the competent authorities focus their risk-based approaches in relation to the different types of misuse of legal persons and legal arrangements?
- Where should beneficial ownership information be held?
- What more needs to be done to enhance the effectiveness of company registers and other publicly available information?
- Is there any practical action that needs to be or can be taken, to enhance the information publicly available in respect of legal arrangements?

27. With this current typologies exercise being undertaken, many of these findings and questions will be examined in greater detail.

1.6.3 OGBS: Trust and Company Service Providers: Statement of Best Practice, 2002

28. The Offshore Group of Banking Supervisors' (OGBS) working group consisted of representation from France, Italy, Netherlands, the United Kingdom, FATF, the International Monetary Fund, OECD and the OGBS. This group acknowledged and agreed that inclusion of TCSPs in the regulatory net is important to the effectiveness of financial services regulation as regards AML and CFT, given that TCSPs are intermediaries and introducers of businesses to institutions that handle/manage funds or assets.

29. The group's Statement of Best Practice,⁶ which was completed in September 2002, highlighted that the same degree of regulation was not necessarily appropriate for those TCSPs that do not engage in the management of client funds. These types of TCSPs were described as carrying out "lower risk" business, which, it was suggested, may justify a lighter touch being applied. Lower risk business includes business that consists solely of:

- Company, partnership formation;
- Provision of registered office or business address;
- Providing corporate services, not including discretionary services, to local trading companies.

30. The document also addresses the core areas of regulatory concern and suggests best practices for licensees in the following areas:

- i. Fitness and propriety of individuals that are involved in managing assets/funds;
- ii. Structure and established controls for a TCSP;
- iii. Requirements for TCSPs to know their customer per the Basel Committee's CDD paper⁷ of October 2001;
- iv. Proper business conduct;
- v. Maintenance of financial soundness by the TCSP;
- vi. Proper systems and procedures to ensure such financial integrity; and
- vii. Storing and accessing information to accommodate easy, unimpeded sharing of information, including transactional information, with relevant authorities.

31. The document also highlighted some best practice considerations, namely that jurisdictions should have to:

- i. Establish safeguards for clients when the TCSPs, for whatever reason, are no longer able to conduct business;
- ii. Utilize auditors and give them the necessary statutory protections to report breaches of relevant legislation or other material concern;
- iii. Conduct regular independent reviews of TCSPs; and

⁶ Attached as Annex IV

⁷ Basil Committee on Banking Supervision (2001)

- iv. Ensure that TCSPs are caught by **national** AML legislation.

1.6.4 OGBS: Securing Effective Exchange of Information and Supervision, 2004

32. At the meeting of the OGBS Trust and Company Service Providers Working Group held on the 8th January 2003, it was agreed that a paper should be prepared to address the following matters relating to TCSP business:-

- Existing restrictions on the flow of information;
- The necessary gateways for effective consolidated supervision; and
- Whether information exchange should be restricted to information on the TCSPs rather than their clients.

33. Studies by the Working Group concluded that there were significant restrictions on the flow of information in this sector. The restrictions arise for a number of reasons springing largely from:

- A lack of a universally accepted and understood definition of what constitutes trust and corporate services;
- The very diverse range of ownership and control of the entities that might be carrying out the activities of TCSPs; and
- According to the nature of that ownership and control, a correspondingly diverse range of regulatory controls and oversights which may already be in place. These range from (in the case of activity carried out by a bank) full consolidated supervision, to (in the case of the activity carried out by an independent small company) no supervisory oversight at all in most jurisdictions globally.

34. The Working Group concluded that such restrictions led to ineffective co-operation, representing a significant weakness in the global defences against money laundering and the financing of terrorism, as well as a genuine lack of customer protection in respect of the sector's clients.

35. The overriding recommendation by the Working Group was the call for regulation of this sector to be introduced. In the absence of such regulations, the Working Group stated that responsibility should be allocated to a competent authority to ensure such TCSPs are monitored for compliance with anti-money laundering legislation and legislation designed to combat the financing of terrorism. The competent authority should preferably be one with gateways to exchange information with regulators of this sector in other jurisdictions.

1.7 Current complementary work

36. As stated by the FATF President Paul Vlaanderen in October 2009,⁸ there are currently three transparency related issues already under review within the FATF. *“The first issue relates to **customer due diligence obligations and beneficial ownership**. One of the main principles of the FATF standards is the obligation for financial institutions to identify their customers and underlying beneficial owners. The FATF is revisiting its recommendations to consider whether the current standard still is the best tool for providing maximum customer transparency. This question of customer due diligence is closely related to the second issue, that deals with the transparency of **legal persons and legal arrangements**. The review of the recommendations dealing with this topic will seek*

⁸ At the XVI Caribbean Financial Action Task Force (CFATF) Council of Ministers Meeting, Willemstad, Curaçao, Netherlands Antilles

*to improve the transparency of such persons and arrangements. That should provide authorities with better and more timely access to beneficial ownership information. Finally, **financial institution secrecy laws and cross-border exchange of information** will also be looked at. The FATF will examine whether certain types of laws may inhibit the implementation of the FATF recommendations.”* The FATF is actively reviewing the scope of Recommendations 33 and 34 which state that countries should take measures to prevent the unlawful use of legal persons/legal arrangements by money launderers. Results and recommendations from this typologies exercise may assist in that undertaking.

1.8 The Project

37. This typologies exercise will draw from the research and conclusions that were made in the previous work and literature referred to above. In the chapters which will follow, the role of the TCSP industry will be examined, in relation to the detection, prevention and prosecution of money laundering. This will be done through analysing the jurisdictions' responses to the questionnaire as well as the case studies obtained from various sources. Additionally, key findings and observations related to the money laundering vulnerabilities of the TCSP sector will be extrapolated from the information provided by the various sources. In concluding, issues for further consideration will be presented which it is hoped will help to reduce the use of TCSPs for money laundering purposes.

CHAPTER 2: ANALYSIS OF QUESTIONNAIRE RESPONSES

38. This section of the report will focus on the jurisdictions' responses to the questionnaires, and will summarise and analyse the information provided. It is evident from the responses, that the jurisdictions that participated in this research project have adopted varying approaches to protecting their TCSP sectors from the money laundering and terrorism financing threat. The decision by any jurisdiction to subject its TCSP sector to any form of legislation is dependent on the type and sophistication of the business conducted within the sector, and also on the jurisdiction's risk tolerance and priority ranking. Notwithstanding, wherever TCSPs operate it is expected that some level of vulnerability to the risk of money laundering and terrorism financing is also likely to exist. This section therefore aims to ascertain the following from the responses to the questionnaire:

- i. The definition of TCSP in different jurisdictions
- ii. The types of services generally provided by TCSPs;
- iii. The persons who act as TCSPs;
- iv. The use of TCSPs for incorporation/registration of a company;
- v. Licensing requirements for and supervision of TCSPs;
- vi. The information that TCSPs are required to maintain;
- vii. ML/FT vulnerabilities faced by TCSPs;
- viii. The role played by TCSPs in the detection and investigation of ML/FT; and
- ix. The adequacy of international standards pertaining to TCSPs.

39. As previously mentioned, jurisdictions provided responses to either a long form or a short form questionnaire.⁹ The more comprehensive long form questionnaire had a total of 33 questions comprised in six parts. Part A required background information related to the responding jurisdiction; Part B required details on the TCSP sector within each jurisdiction; while Part C required information on the oversight or regulation of this sector for AML/CFT purposes. Part D required jurisdictions to indicate what type of information and other requirements, if any, apply to their TCSP sectors, while Part E required case studies as well as information and statistics on suspicious activity reporting and investigations relating to AML/CFT in the TCSP sector. Part F required jurisdictions to provide their views on the adequacy and role of international standards in relation to this sector and on whether or not additional standards or a purpose-created international body was necessary for TCSPs. The short form questionnaire did not require any information on the areas covered by Parts C, D and E of the long form, but did require the jurisdictions that responded to this version of the questionnaire to give some information about the definition of TCSP in their laws, this being the first question in Part B in the long form version. The short form questionnaire also covered all the questions addressed in Part F of the long form version.

⁹ See Annex III - Questionnaire

2.1 Definition of TCSP

40. Jurisdictions were asked to give the definition of TCSP provided for under their legislation. Thirty-six jurisdictions responded to this question. Of that number, five jurisdictions indicated that their legislation recognised and defined the specific concept of TCSPs,¹⁰ and, for the most part, the definitions were consistent with or exact duplications of the definition of the term found within the FATF Methodology. Sixteen jurisdictions indicated that while there was no specific definition for TCSP per se, their laws did recognise and distinguish the sector by virtue of the types of services provided by them¹¹. While the essential features of the FATF definition of TCSP are for the most part present in the definition of the services provided by specified sectors in the sixteen 16 responding jurisdictions, there are cases where the definitions either expand on or restrict the scope of services covered. For instance, in one jurisdiction in addition to the FATF-defined services, the definition of ‘regulated fiduciary services’ includes acting as executor of a will or administrator for an estate,¹² and in another jurisdiction, ‘company management business’ includes corporate services involving the control of the whole or substantial part of the assets of a company.¹³ On the other hand, in another jurisdiction, the definition of ‘TCSP’ did not refer to the provision of directorial and secretarial services, nor did it refer to the provision of nominee shareholder services.¹⁴

41. Among the jurisdictions that define by reference to the services, certain terms and concepts were common within their laws, namely: trust business/trust company/trust service provider¹⁵; registered agents¹⁶; and company management business/service.¹⁷

42. Of the remaining 15 jurisdictions, 7 respondents indicated that while TCSPs are not recognised or regulated under their laws as a separate business sector, nevertheless lawyers, accountants and notaries or fiduciaries in some cases carry out the services identified in the FATF definition of TCSPs in the jurisdictions.¹⁸ Two of the respondents identified trust services as the only TCSP-type service recognised under the laws in their jurisdictions, and that only certain financial institutions were permitted to act as trustees.¹⁹ Two jurisdictions specified that no provisions were

¹⁰ BG, DK, EE, IT & GB

¹¹ AI, AT, BS, BM, VG, KY, GG, JP, JE, LI, NL, AN, LC, VC, TC and US

¹² GG

¹³ KY

¹⁴ BG

¹⁵ AI, BS, BM, VG, KY, JP, JE, NL, AN, VC and US. In LI they have what is called ‘trust enterprises’. It should be noted that though the terms ‘trust company’ and ‘trust service provider’ are used in the laws of NL and AN respectively, these businesses essentially operate as company service providers as the concept of ‘trusts’ is not known in NL and AN law. It should be noted, however, that the Dutch regime recognizes the trustee services provided by Dutch TCSPs to foreign trusts.

¹⁶ VC and US

¹⁷ AI, VG and BS

¹⁸ AU, BE, CA, DO, HK, MO and CH. It should be noted however, that the corporate service business referred to by DO involved law firms buying and selling companies incorporated in foreign jurisdictions; while trusts are not known to DO law. In CH, some fiduciaries carry out TCSP services, and the class of professionals that make up this group is dependent on the specific services that they offer, whether it be administrative, trust or payment services. It should be noted that it is not possible to set up a trust under CH law

¹⁹ GT and MX

made under their laws for TCSPs, but did not clarify whether the services were being provided within other sectors.²⁰ Four of the respondents did not provide sufficient information for analytical purposes.

43. From these responses, it can be seen that the majority of jurisdictions have attempted to make some provision within their laws for TCSPs, whether by adopting the FATF terminology and definition, or by extracting from the Methodology the services that are relevant to the business carried on in their jurisdictions and making specific provisions for the persons and entities that provide those services. Either approach has merit depending on the individual circumstances in each jurisdiction, but a more tailored approach may be more suitable to address the specific sectoral features in respective jurisdictions. In the case of one jurisdiction,²¹ although TCSP is defined and regulated under the law as if it is a discrete sector, that jurisdiction's response to a later question in the questionnaire indicates that the term, "TCSP", does not always fit with practice in that jurisdiction. This is demonstrated by the fact that some of the TCSP services, particularly in the area of trusts, are offered only as an ancillary activity to the business of many firms; and because trusts have such wide-ranging uses in that jurisdiction, a very wide range of professions and companies will be involved in some way in trust business.

44. While the tailored approach may be more attractive for many jurisdictions, variations in the approach to defining the sector in different jurisdictions may also result in a confusing array of laws governing an international industry that is becoming increasingly more globalised, as TCSPs in different countries engage in business overseas or court foreign clients.

2.2 Services generally provided by TCSPs

2.2.1 Common types of TCSP businesses found in jurisdictions

45. Responses to the questionnaire show that the services provided by TCSPs vary from jurisdiction to jurisdiction. The nature, size and complexity of the economies of respective jurisdictions affect the type of services that are provided by the TCSP sector. Jurisdictions were therefore asked to classify and rank their TCSP sector based on whether or not they carried out solely trust business or corporate services business or a mixture of both. Twenty-one jurisdictions responded to this question, and, from their answers, it is evident that the most prevalent TCSPs are those that carry on both trust business and corporate services business. This class of TCSP business ranked as the most prevalent in nine jurisdictions.²² TCSPs that provide only corporate services are ranked as the next most common type of TCSP business, with six respondents ranking them as the most common TCSP business in their jurisdiction.²³ The third most common TCSP businesses are those that are licensed financial institutions or are subsidiaries or branches of local or foreign financial institutions which are also permitted to carry on TCSP business. Three jurisdictions ranked this type of TCSP business as the most prevalent.²⁴ There were a few jurisdictions where it was most common for TCSP to carry out only Trust business, and TCSP Business to be provided by only licensed financial institutions, or by other professionals such as lawyers and accountants.

2.2.2 Services provided by TCSPs

46. By reference to the TCSP services as defined in the FATF Methodology, jurisdictions were asked to indicate whether or not TCSPs provided these types of services and to provide some statistics

²⁰ LV and NP

²¹ GB

²² AI, VG, KY, CA, GG, HN, JE, CH and TC

²³ BS, BM, NL, AN, LC and US

²⁴ GT, PA and VE

on the number of TCSPs within the jurisdictions to provide the respective services listed. Twenty-one jurisdictions responded to this question. TCSP's provide various services and this is evidenced by the responses received to the questionnaire.²⁵

47. In the majority of jurisdictions some type of TCSP business in the jurisdiction provides variants of all of the above services,²⁶ but there are two respondent jurisdictions where only the trust related service is recognised as being provided in those jurisdictions, and then only by financial institutions.²⁷

2.3 Persons who can act as TCSPs

48. Jurisdictions were asked whether there were any limitations on the types of persons who could carry on TCSP business by reference also to the categories of service provided. Eighteen jurisdictions responded to this question, indicating that Corporations, Accountants, Lawyers and non-professional individuals were the persons providing these services. In some cases, the jurisdiction also required the person in question to be licensed or otherwise duly authorised to carry on the business. The table below provides an overview of the information received and indicates not only how many jurisdictions use the above-noted entities as TCSP's, but also indicates the types of TCSP business that the respective entities provide.

49. The responses indicated that in some jurisdictions the various entities were subject to specified conditions in order to act as TCSPs. Therefore, they had to either be licensed pursuant to domestic legislation; registered with a relevant supervisory authority under ML regulations; or have a trust license or dispensation. Additionally, the other entities that were able to act as TCSP's included: licensed and unlicensed individuals and partnerships; natural persons with trust licenses or dispensations; authorized persons; trust companies; and consultants. The table below provides a comprehensive breakdown of the information.

Who can act in capacity of: (yes or no)	Jurisdictions allowing Corporations to be TCSPs	Jurisdictions allowing Accountants to be TCSPs	Jurisdictions allowing Lawyers to be TCSPs	Jurisdictions allowing Others to be TCSPs
TCSP: Incorporating a Company	16 (6 of these require licence /other form of authorisation)	10 (3 of these require licence/other form of authorisation)	12 (4 of these require licence/ other form of authorisation)	7^a
TCSP: providing Company Administration/Corporate Services Business	16 (7 of these require licence /other form of authorisation)	11 (3 of these require licence/ other form of authorisation)	12 (4 of these require licence/ other form of authorisation)	6^b
TCSP: acting as a Trustee	15 (6 of these require licence/other form of authorisation)	11 (3 of these require licence/other form of authorisation)	12 (4 of these require licence/ other form of authorisation)	6^c

²⁵ See Annex I – Table 1

²⁶ With the exception of the jurisdictions mentioned in footnote 27 below; and NL and AN, as trusts cannot be formed under Dutch or AN law.

²⁷ GT and HN

Who can act in capacity of: (yes or no)	Jurisdictions allowing Corporations to be TCSPs	Jurisdictions allowing Accountants to be TCSPs	Jurisdictions allowing Lawyers to be TCSPs	Jurisdictions allowing Others to be TCSPs
TCSP: providing Trust Administration Services/ Trust Business	15 (7 of these require licence/other form of authorisation)	9 (3 of these require licence /other form of authorisation)	11 (4 of these require licence/ other form of authorisation)	6 ^d

Table notes:

- a. These included: - partnerships or individuals (one required they be licensed); consultants; licensed individuals; natural persons that have a trust license or dispensation; managers; persons authorized by FSA; and one Jurisdiction allowed any individual to incorporate a company.
- b. These included: - licensed partnerships or individuals; consultants; licensed individuals; natural persons that have a trust license or dispensation; managers; persons authorized by FSA; and one jurisdiction had no specific requirements to be a company service provider.
- c. These included: - licensed partnerships or individuals; trust companies and consultants; individuals; any individual or company; managers; and persons authorized by FSA.
- d. These entities included: - licensed partnerships or individuals; trust companies and consultants; individuals; only banks; managers; persons authorized by FSA.

2.4 Use of a TCSP for incorporation/registration of a company

50. Jurisdictions were asked to provide information on their incorporation process and specifically to address whether TCSPs are required to be used to incorporate a company or whether this can be done by direct central registration. Sixteen jurisdictions gave relevant responses to this question, and from this it is evident that jurisdictions tend to adopt one of two alternate routes to incorporation.

Route 1: TCSPs are required in the incorporation process of all companies; and

Route 2: Direct central registration is available as an option even though TCSPs may also be used.

51. As highlighted in the table below, a larger number of jurisdictions, as an option, allow for incorporation by direct registration, while only five jurisdictions by law mandate incorporation of all companies by a TCSP. Direct central registration is typified by the direct approach to the authorities during the incorporation process by the individuals who are forming their own companies.

	Route 1 TCSP Required for Company Incorporation	Route 2 Direct Central Registration for Company Incorporation is available as an option
Number of Jurisdictions	5	11
Jurisdictions	AI, VG, GG, LC, VC	BS, BM, CA, KY, JE, NL, AN, CH, TC, GB and US

52. It is interesting to note that the five jurisdictions that mandate the involvement of TCSPs in the incorporation process are all jurisdictions that impose licensing requirements on TCSPs, which are also subjected to prudential and AML/CFT supervision. Further, some of the jurisdictions that allow direct central registration of companies as an option require a TCSP to be used in the incorporation of an international business company (IBC). However, for those jurisdictions, local companies that are not classed as IBCs or exempt companies can be registered without the involvement of a TCSP. Like the jurisdictions that adopt Route 1 as their required means of incorporation, these jurisdictions also operate a licensing and prudential supervision regime for all TCSPs.

53. In one jurisdiction, although direct central registration is an option and no TCSP is required to be involved in the incorporation of any type of company, the practice in the jurisdiction is that 99% of all companies incorporated are done using a TCSP, with additional scrutiny being carried out by a regulatory body. Furthermore, the authorities automatically subject applications that do not come from TCSPs to a higher level of review.²⁸

54. In two jurisdictions where TCSPs are not required for the incorporation of companies, it was noted that notaries have to be involved in some way. However, it is not in the capacity of a person providing TCSP services but more for the purpose of notarising required documents. In one of these jurisdictions, although TCSPs are not separately defined and supervised as a discrete sector, it was recognised that lawyers and other professionals carry out the services and they are all subject to AML laws. In the other, “Trust Offices” are defined and regulated as a separate sector providing corporate services; and companies, partnerships and natural persons can be permitted to act as Trust Offices.

55. In another major financial centre, direct central registration is the norm and is done at a state, rather than at a federal, level. However, in the states where there appears to be a proliferation of ‘registered agents’ providing corporate registration services to clients, the concept of ‘commercial registered agents’ has been developed, which recognises such persons or entities that have numerous clients²⁹ on whose behalf they act as registered agents. In these states it is therefore likely that TCSPs have a higher frequency of involvement in the corporate registration process.

2.5 Licensing and Supervision of TCSPs

56. Eighteen out of twenty of those who responded to this section of the questionnaire indicated that TCSPs are required to be licensed in their jurisdiction. However, a closer review of the responses revealed that in some jurisdictions where licensing is required, the licences do not pertain specifically to the provision of the TCSP services. Additionally, some jurisdictions require licensing and regulation of trust service providers but there are no licensing requirements for corporate service providers.³⁰ In some jurisdictions, only financial service intermediaries and banks³¹ that are licensed under separate legislation are allowed to provide services akin to those described by the FATF as being provided by TCSPs, in particular trust services.

57. In jurisdictions that choose to directly licence TCSPs, these are subject to fit and proper assessment and ongoing prudential supervision. Such fit and proper tests are applied to directors, senior officers, shareholders and other connected persons. In relation to the ongoing supervision of TCSPs in countries that have licensing criteria, most respondents indicated that those entities are also subject to onsite supervision to ensure compliance.

58. In jurisdictions that have chosen to licence TCSPs, the implementation of licensing and regulation of TCSPs appears to have had marginal impact on the number of TCSPs operating in the jurisdiction. Statistical data provided indicates that in most cases, there was not a noticeable decline in the number of TCSPs after the introduction of licensing requirements or regulation to this sector. However, a few respondents did indicate that the introduction of regulation of TCSPs may have inspired consolidation within the sector, whereby the smaller operators exited or were taken over by larger TCSPs. Respondents have also indicated that a positive result of the regulation of TCSPs is the

²⁸ BM

²⁹ In the US, in the state of DE a commercial registered agent represents more than 50 legal entities. In the state of WY the minimum number is 10.

³⁰ BM and US

³¹ Of the respondents to the question on whether TCSPs are subject to licensing requirements, 5 of the 23 respondents indicated this is only so where the institution is a financial institution or Bank, meaning that they were licensed under banking legislation.

improvement in the quality of information now available to competent authorities from TCSPs. That is, better information is available to facilitate exchange of information and international cooperation with other regulators and law enforcement agencies.

59. In many jurisdictions lawyers, accountants and other such professionals provide the TCSP services as defined by the FATF. In relation to this class of TCSP, the responses to the questionnaire show that, in many jurisdictions, the licensing and/or authorization and oversight of these persons generally come within the purview of their respective professional bodies.

60. The FATF requirements stipulate that designated non-financial businesses and professions (DNFBP) should be subjected to effective mechanisms for the prevention of money laundering and terrorism financing. As TCSPs come within the FATF's definition of DNFBPs, jurisdictions are required to apply the requirements in the FATF's Recommendations 5, 6, 8, 11, 13, 15 and 21 to the TCSP sector. The questionnaire therefore required jurisdictions to indicate whether TCSPs are subject to any AML/CFT legislation and requirements and, if so, to provide some details of this. Twenty respondents addressed this question and of that number, 18 indicated that TCSPs, by whatever definition, are subject to AML/CFT requirements.³² In the remaining two jurisdictions, only trust service providers are subjected to the AML/CFT requirements.³³ In one of the two jurisdictions, it was indicated that all persons in business, including CSPs, are subject to various currency transaction reporting requirements and are prohibited from engaging in transactions with persons and countries identified on a terrorist list; but there are no specific AML/CFT requirements applied to CSPs in that jurisdiction as contemplated by the relevant FATF Recommendations.³⁴ In the other jurisdiction the only AML/CFT obligation imposed on CSPs relates to suspicious activity reporting, as all persons in a business, profession, trade or employment are subject to the requirement to report suspicious transactions to the national FIU.

61. Where TCSPs are subject to AML/CFT legislation, this should include penalties for non-compliance. All the responding jurisdictions, with one exception, reported that a variety of criminal penalties, including fines, were available to be imposed for breaches of the legislation by TCSPs. Additionally, those jurisdictions that have licensing criteria for TCSPs, also have additional regulatory mechanisms for dealing with regulatory breaches or issues of compliance identified at TCSPs. The administrative penalties span a range from minor to serious, with the ultimate penalty being licence revocation.

62. Jurisdictions were also asked to indicate whether TCSPs are subject to ongoing monitoring and supervision and if so to name the competent authority responsible for carrying out this function. Details on the nature and requirements of ongoing monitoring and supervision were also requested. There were 20 respondents to this question, 15 of whom indicated that full prudential supervision, including AML/CFT monitoring, of TCSPs is conducted on an ongoing basis in their jurisdictions. This type of supervision involves both onsite and off-site inspections; consultations with management; review of audited or other financial statements; and review of records and policies and procedures. One jurisdiction carries out AML/CFT supervision only. There are four jurisdictions which differentiate between trust service providers and company service providers for ongoing monitoring and supervision purposes, in that trust service providers, being licensed, are subjected to both prudential and AML/CFT supervision and monitoring in all four jurisdictions. However, the

³² AI, BS, BM, VG, CA, KY, GT, GG, HN, JE, NL, AN, PA, LC, VC, CH, TC, GB and VE. In the case of BM all of the AML/CFT requirements had not yet been extended to CSPs in that jurisdiction.

³³ BM and US

³⁴ US did indicate in the introductory remarks in their response that trust companies are licensed to provide certain fiduciary services and for AML/CFT purposes were classified as banks. The remainder of their response was directed at addressing the CSP sector.

company service providers in one jurisdiction are not supervised at all;³⁵ in two jurisdictions they are licensed and only subjected to AML/CFT supervision;³⁶ and in the other case, in two regions of that jurisdiction³⁷ they are subjected to some level of conduct of business review.³⁸

63. Table 2 of Annex I provides details of the jurisdictions' responses to the questions pertaining to licensing and ongoing monitoring and supervision.

2.6 Information required to be gathered by TCSPs

2.6.1 What information is required of TCSPs?

64. The FATF Recommendations 33 and 34 stipulate that jurisdictions should take measures to prevent the unlawful use of legal persons/legal arrangements by money launderers. Jurisdictions are also required to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons; and in the case of legal arrangements or express trusts, adequate, accurate and up-to-date information on the settlor, trustee and beneficiaries should be obtained in a timely manner and made available in a timely fashion to competent authorities.

65. The jurisdictions were asked to indicate whether beneficial ownership information is required to be disclosed to competent authorities at the time of all company formations; and whether information on settlors and beneficiaries is required to be disclosed to competent authorities at the time of all trust formations. The questionnaire also called for information on whether the terms 'beneficial ownership', 'settlors' and 'beneficiaries' are defined in the laws of the responding jurisdictions. Twenty jurisdictions responded to these questions with seven of them requiring automatic disclosure of beneficial ownership information to competent authorities at the time of company formation³⁹; and another eight not requiring such disclosure.⁴⁰ One jurisdiction has adopted a unique approach,⁴¹ in that all of its companies are required to obtain consent from the regulator to issue shares and admit members; and this is only one of three methods used by the regulator to capture this information. This process involves disclosure to the regulator of the ownership and control structure of the company, which the regulator will then verify before granting consent. This process is also applicable whenever a company seeks to change ownership, unless the company is administered by a TCSP, in which event the need for consent is waived but the TCSP is required to capture and verify the information themselves.

66. Among the jurisdictions that had no requirement for the disclosure of such information to the authorities at the time of incorporation, six⁴² required TCSPs to obtain this information, verify its accuracy, retain it in their records, update the information periodically and make the information available to competent authorities upon request. From the responses it can be seen that the majority of jurisdictions mandated that this information be disclosed at the time of incorporation either to a

³⁵ BM

³⁶ BS and CA

³⁷ US – in the states of DE and WY

³⁸ Conduct of business supervision focuses on ensuring orderly and transparent financial market processes, proper relationships between market participants and the exercise of due care by financial undertakings in dealing with clients.

³⁹ AI, BS, BM, KY, JE, NL and AN. CA required only information on the directors, not shareholders, while LC permitted public filing of such information but did not mandate it.

⁴⁰ VG, GT, GG, VC, CH, TC, GB and US. Five other respondents failed to provide relevant responses.

⁴¹ JE

⁴² VG, GT, GG, VC, TC and GB

competent authority or to a TCSP. Within these jurisdictions that required the capture of beneficial ownership information by either method, provisions were made in their laws to define or describe the terms relevant for an appropriate understanding of beneficial ownership.

67. In relation to trusts, only one jurisdiction indicated that it had a Registrar of Trusts, to whom disclosure had to be made of the beneficial ownership information pertaining to all trusts, including information on the settlor and beneficiary.⁴³ This necessitated the filing of the trust deed or settlement with the Registrar and included the filing of any resolution that resulted in changes being made to the ownership and beneficial interest in the trust. Fourteen jurisdictions indicated that they had no central registry for trusts and that therefore no information on the beneficial ownership details of trusts was required to be automatically disclosed to a competent authority. However, this information was required to be maintained by TCSPs in 12 of these 14 jurisdictions.

68. Nineteen jurisdictions indicated that under AML/CFT and/or other regulatory laws, TCSPs are required to request information on beneficial ownership, as well as information on settlors and beneficiaries of trusts and to conduct CDD, verification and record retention in relation to such information and to make this information available to competent authorities upon request.⁴⁴ Many of these jurisdictions also require TCSPs to request information from their clients on their source of funds and the nature of the business undertaken by them; and such information is required to be maintained and kept up-to-date. In this regard, 16 jurisdictions require TCSPs to capture information on source of funds; 17 jurisdictions require TCSPs to capture information on the nature of the business being undertaken; and 16 of these jurisdictions require TCSPs to keep the required information up-to-date.

69. Jurisdictions were also asked whether TCSPs were experiencing any difficulties in obtaining the FATF required information from clients. Ten⁴⁵ of the 29 respondents to this question indicated that TCSPs in their jurisdictions experienced no difficulties in this regard. Of the respondents that indicated that there was some degree of difficulty, four⁴⁶ highlighted problems related to trusts, three⁴⁷ noted difficulties connected to obtaining information from long-standing clients and one advised of difficulties in identifying PEPs.⁴⁸ Other issues raised were:

- client confidentiality and professional relationship conflicts;
- clients unwillingness to provide information out of legitimate fears of identity theft;
- obtaining sufficient detail about the intended purpose and/or activities of a proposed legal person or legal arrangement;
- lack of statutory record-keeping and CDD requirements for TCSPs, and absence of legal backing for TCSPs to obtain the required information;
- lack of awareness and full knowledge by TCSPs of their obligations; and

⁴³ VC

⁴⁴ AI, BS, BM, VG, CA, KY, GT, GG, HN, JE, NL, AN, PA, LC, VC, CH, TC, GB and VE

⁴⁵ AI, BS, KY, EE, GT, HN, LV, LI, PA, and VC

⁴⁶ BE, CH, GB, and VE

⁴⁷ BM, AN and TC

⁴⁸ BG

- the unwilling attitude of some TCSPs under supervision and the need to threaten the possibility of imposing Cease and Desist Orders to get the relevant information.

70. Whatever approach is adopted by the jurisdiction and regardless of the attendant difficulties in obtaining the required information, a matter of signal importance in the capture and maintenance of beneficial ownership information is the accuracy of the information and whether or not it is current. Jurisdictions that supervise TCSPs and subject them to periodic onsite and offsite inspections, stand a better chance of ensuring that TCSPs take appropriate steps to verify and update the information that is subjected to the record-keeping requirements; thereby assuring a higher quality of information available for disclosure and international exchange.

2.6.2 *The Adequacy of the Information Requirements*

71. Jurisdictions were asked to provide an assessment of the adequacy and role in AML/CFT efforts of the information required from TCSPs in accordance with the FATF Recommendations. The majority of respondents to this question expressed the view that the information captured by TCSPs plays an essential role in the efforts to effectively combat money laundering and terrorist financing. The fact that TCSPs can alert authorities to suspicious activity through filing Suspicious Activity Reports (SARs), as well as the fact that they can provide detailed information on beneficial ownership and the source of funds, in circumstances where competent authorities require this information to assist in enquiries about suspected money laundering activity, are both powerful tools in the AML/CFT arsenal. One respondent highlighted the fact that the information available to TCSPs is not only a tool for the authorities in combating money laundering and terrorist financing, but also beneficial for the TCSPs themselves in creating risk profiles of clients to assist them in determining whether to commence business relationships or terminate them, as well as to assess what level of CDD and monitoring of those client accounts ought to take place.

72. In relation to the question on the adequacy of the information, most jurisdictions were of the view that the information required to satisfy the FATF requirements is adequate to meet the needs of combating money laundering and terrorist financing. While a few respondents did express concern about the limitations of the information available through TCSPs, these limitations for the most part appeared to be a result of non-compliance or less than full compliance with the FATF requirements rather than an inadequacy in the requirements themselves.

2.7 *Vulnerabilities faced by TCSPs*

73. The questionnaire required respondents to give their opinions on what constitutes the greatest threats to money laundering and terrorist financing in their jurisdictions. Eighteen jurisdictions responded to this question, providing a diverse array of perspectives on the issue. Aside from two jurisdictions, both of which indicated a significant minimisation of AML/CFT risk to their TCSP sectors⁴⁹, the remaining 16 respondents provided input on the areas of potential weakness for TCSPs. An area of weakness that seems to concern several jurisdictions pertains to customer due diligence and the reliability of information obtained on customers/clients/beneficial owners. In this regard, there is also concern that lack of resources for TCSPs to access intelligence tools such as World-Check and C6; as well as inadequate training for TCSP employees, both contribute to weakness in the verification of know your customer (KYC) documents and information. Another resource issue pertains to smaller TCSP businesses, in that they often do not have the capacity to fully apprise themselves of their obligations under AML/CFT legislation. Several jurisdictions⁵⁰ also

⁴⁹ BS indicated that the reduction in ML/FT risk resulted from the application to the TCSP sector of the same AML/CFT obligations to which the prudentially regulated sectors are subjected. GT indicated that the minimisation of ML/FT risk to trust providers results from the fact that only banks and financial companies are permitted to act as trustees.

⁵⁰ BM, LC, VC, GB and VE

expressed concern about the ability of TCSPs to gather reliable information on individuals and beneficial owners of companies and trusts, thereby leaving them open to be abused or misused by criminals.

74. The area of training was also cited as another potential area of vulnerability for TCSPs, in that inadequacy in the training of TCSP staff to assist them to more effectively conduct CDD and verification of CDD information; and to enable them to more readily identify how vehicles are structured for use in supporting both ML and TF schemes, has the potential to greatly reduce a TCSP's ability to effectively vet clients and circumvent risky schemes. As an adjunct to the training issue, a point was raised in respect of the probity and character of TCSP employees, in that the TCSP and the jurisdiction as a whole can be more vulnerable to ML/TF where employees misrepresent the level of skill or competence they have in relation to AML/CFT matters; or they deliberately flout AML/CFT policies, procedures and obligations. It was also suggested that TCSPs may be undermined by their inability to maintain up to date information on international actions to sanction individuals, companies or countries. This, of course, is a burgeoning area of concern given the increasing spate of international sanctions applied to individuals and entities in countries where terrorist financing and proliferation financing in particular are deemed to be significant threats.⁵¹

75. It was also suggested that another great challenge faced by TCSPs relates to their ability to effectively conduct ongoing monitoring of the business activities of underlying businesses and arrangements. It is often difficult enough for TCSPs to do due diligence and monitoring for their clients in relation to the primary business conducted by them; it is therefore easy to see how going beneath that surface to vet secondary or ancillary businesses can potentially pose even greater problems. Another potential challenge for many TCSPs results from their involvement in international business in various jurisdictions, all of which have varying standards on AML/CFT. It is understandable how this unlevel playing field can mystify and undermine TCSPs trying to navigate through this uneven terrain.

76. One jurisdiction suggested that TCSPs are vulnerable in complex or difficult cases where they are unable to fully understand the purpose or activities of wider structures with which they are involved. Such transactions will require more tenacious checks for information on both the clients and the wider purpose and structure of the scheme, beyond the confines of the TCSP's direct involvement. But even this can pose resource challenges and raise questions as to how wide the net for information ought to be cast.

77. Several jurisdictions also identified a number of red-flag indicators where TCSPs may be utilised in money laundering schemes:⁵²

- Transactions that utilise complex and opaque legal entities and arrangements;
- Cases of corruption where the company paying the bribe to secure a contract or the person brokering a contract will seek to secure a successful outcome by utilising a TCSP to operate a trust with the funds held on deposit for the benefit of the person approving the contract;
- The use of foreign private foundations that operate in jurisdictions with secrecy laws;

⁵¹ Referring in particular to UNSC Resolution 1737 (2006) and its associated UNSC Resolutions up to and including UNSCR 1929 (2010) pertaining to IR; and UNSC Resolution 1267 (1999) and the resulting associated UNSC Resolutions up to and including UNSCR 1904(2009) pertaining to Al'Qaida and the Taliban.

⁵² CA, JE, NL, AN and US

- The use by prospective clients of nominee agreements to hide from the TCSP the beneficial ownership of client companies;
- Clients who allow TCSPs to have full discretionary authority over the client's accounts may entice unethical TCSP principals or employees to conduct unauthorised/illegal transactions from these accounts;
- The carrying out of intercompany loan transactions and/or multijurisdictional wire transfers;
- The operation of virtual offices overseas which provide TCSP services;
- The formation by TCSPs of shell companies that can then be used by money launderers.

2.8 TCSP's role in detection and investigation of Money Laundering

78. The questionnaire required jurisdictions to provide information on whether or not TCSPs are required to file SARs and to give statistics on the number of SARs filed by the sector between the years 2006 and 2009. An important gauge of the significance of TCSPs in detecting money laundering or terrorist financing was the request for information on the percentage of total SARs that was represented by TCSP filings for that period. Twenty of 21 responding jurisdictions indicated that TCSPs in their jurisdictions were required to file SARs.⁵³ For the jurisdiction that answered in the negative, this would only apply to their company service providers, because trust companies are classified as banks and would therefore be subject to the same reporting obligations as banks.⁵⁴

79. In relation to statistics, the same 20 jurisdictions responded to this query, with 13 of them being able to provide statistics for the relevant period⁵⁵. One jurisdiction was distinct, in that its TCSP sector accounted for between 71% to 84% of the SAR filings in that jurisdiction for the relevant period.⁵⁶ This may be an indicator of the relative importance of this sector in that economy, when compared to the banking sectors in most other jurisdictions which generally account for the largest percentage of SARs filed. Only two of the responding jurisdictions indicated that no SARs were filed for this period but no explanation was provided for why this was likely to be so. Four jurisdictions provided no statistics on TCSP-filed SARs⁵⁷, with at least one of them⁵⁸ indicating that they were unable to answer given the fact that the majority of TCSPs are not standalone firms and it was impossible to distinguish between the SARs filed under their TCSP functions and those under their other functions. See Table 3 in Annex I for a compilation of these statistics.

⁵³ AI, BS, BM, VG, CA, KY, GT, GG, HN, JE, NL, AN, PA, LC, VC, CH, TC, GB and VE. HK, in responding to the short form questionnaire, also volunteered this information in response to another question. In subsequent correspondence JP also indicated that trust companies are also required to file SARs under their law.

⁵⁴ The US prefaced its response to the questionnaire by indicating that trust companies are licensed to provide certain fiduciary services and for AML/CFT purposes were classified as banks. The remainder of their response was directed at addressing the CSP sector.

⁵⁵ AI, BM, VG, KY, GG, HN, HK, JE, NL, AN, CH, TC and VE. CH gave aggregate statistics for number of SARs attributed to fiduciaries and legal professionals, with the proviso that there was no way of telling what proportion of the number related exclusively to TCSP activity.

⁵⁶ VG

⁵⁷ BS, CA, PA and GB

⁵⁸ GB

80. Respondents also provided information on the typical subject areas of TCSP SAR filings in their jurisdictions. The following is a sampling of these responses:

- Unusually large transactions;
- Suspected fraud offences;
- Suspected politically exposed persons;
- Suspected securities fraud;
- Suspected tax offences;
- Suspected corruption;
- Suspected money laundering;
- Subject of transaction name appearing on international database;
- Subject of transaction suspected of involvement in international fraud;
- Trust account opened which then receives multiple cash deposits;
- Trust accounts opened with high amounts that are inconsistent with customer profile;
- Trust accounts opened with funds originating from foreign banks;
- Opening of trust accounts for civil projects, the representatives of which are people with criminal records or are alleged fraudsters;
- Multiple trusts accounts opened with the same beneficiary; and
- Natural persons who open multiple trust accounts with different businesses declared upon each opening.

81. In respect of the level of cooperation received from TCSPs when competent authorities follow up on SARs or conduct ML investigations, 12 jurisdictions reported having no difficulties with their TCSPs in this regard.

82. In general, responding jurisdictions appeared to be of the view that TCSPs can play a significant role in the detection and investigation of money laundering offences which take place within their domain. Through case studies and otherwise, some jurisdictions confirmed their positive involvement. TCSPs act as intermediaries both as introducers of business to other institutions and as entities responsible for handling and managing assets. As gate keepers to the financial sector, they are uniquely placed to observe the behaviour and activities of their clients, enquire into their background and business activities, collect due diligence information and evaluate the rationale of prospective and ongoing business. One jurisdiction has taken the unique approach of encouraging its TCSP sector to establish and maintain “Declined Business Logs”⁵⁹; examination of which has satisfied the authorities there that numerous cases had been turned away, which more than likely would have involved financial crime. This is an encouraging sign that regulation of the sector and implementation of

⁵⁹ In GG this practice started after the introduction of AML/CFT regulation in 2001

measures such as this can have a positive impact on reducing crime and in providing signals of this trend to both the authorities and practitioners/service providers.

83. The role of TCSPs in detection and investigation is twofold. Firstly, they must implement effective due diligence measures to capture accurate information on clients and beneficial owners, to enable competent authorities to expeditiously obtain key information during an investigation or enquiry. Secondly, TCSPs' proper fulfilment of their duty to file SARs is equally important as they have the earliest opportunity to identify suspect schemes and arrangements. It has been suggested that not only do these obligations assist in the detection of money laundering and other crimes but can also operate to mitigate the risk of a TCSP being misused in this way. Where detailed information is obtained on the individuals who are to own and control a company, or are to settle and benefit from a trust; and a service provider has a full understanding of the service they are to provide and why they are to provide it, this should serve to mitigate the risk that any company formed or trust settled will be used for illicit purposes.

84. Jurisdictions provided several case studies to demonstrate the role played by TCSPs in detecting money laundering schemes. These will be discussed in Chapter 3.

2.9 Adequacy of international standards pertaining to TCSPs

85. Jurisdictions were asked whether the FATF Recommendations and guidance need to more effectively address the role of TCSPs in AML/CFT efforts. Thirty jurisdictions responded, with 11 of them responding in the negative and one providing a non-applicable response. The minority view seemed to coalesce around the notion that the existing FATF Recommendations and guidance are adequate and that the measures to enhance effectiveness had to take place at the jurisdictional level. One of the reasons given for this latter view was that, at the jurisdictional level, company formation, trust law and AML/CFT controls vary considerably as a result of the differences in legal traditions in each jurisdiction.

86. Varied replies from the remaining 18 respondents provide some insight into the areas of concern of the individual jurisdictions. The suggestions provided in these responses are outlined below.

- i. The FATF guidance on the relevant Recommendations should be more specifically tailored to TCSP activities to ensure that TCSPs have clear and unambiguous direction on what is required of them. Additionally, updated Recommendations and guidance should more comprehensively capture the role of TCSPs.
- ii. The FATF should give strong consideration to extending the "fit and proper" requirements to TCSPs. This is necessary because considerable expertise is required to understand business structures and their intended purposes; as well as to conduct effective vetting of owners. It is important to ensure that the persons carrying out senior roles in TCSPs therefore have the relevant experience, knowledge and good character. This type of requirement applied to senior executives and board members of TCSPs will help to ensure that a positive AML/CFT compliance culture will start in the Board room and executive offices and filter down to the persons who carry out the day to day interface with clients and operation of the services.
- iii. Recognising the international and fiduciary nature of many trust companies, in particular, extending the FATF requirements regarding branches and subsidiaries to the TCSP sector would also be beneficial.

- iv. The FATF should give consideration to reclassifying TCSPs as financial services businesses as this better reflects the risks involved in the TCSP business.⁶⁰ This will give due value to the efforts of jurisdictions that require TCSPs to operate within a regulated environment. As currently classified in the Methodology within the DNFBP grouping, many jurisdictions do not get credit for the AML/CFT measures applied in the regulation of the TCSP sector as examiners are not allowed to weigh the ratings to take account of this fact.
- v. Ongoing work in the context of the development of the FATF's 4th Round Methodology should clarify the beneficial owners' requirement under Recommendations 5, 33 and 34, as well as the meaning of 'beneficiary'. In particular, should 'beneficiary' be understood to cover identification only of classes of beneficiaries or specific individuals?
- vi. It would be helpful to have some guidance on the persons to be identified in the case of legal persons and arrangements that are not companies and trusts. In particular, who are the persons on which CDD is to be done in the case of 'foundations'?
- vii. Consideration should be given to requiring the imposition of an obligation to centralise the records of trusts.⁶¹
- viii. Allowance should be made to enable financial institutions to apply reduced or simplified CDD measures under Recommendation 5 to relationships established with trust company businesses.
- ix. Further guidance is required in the FATF Methodology to bring clarity to the conflict between legal professional privilege and the obligation to report suspicious transactions. The FATF should conduct a study on this issue and provide more sophisticated guidance for jurisdictions to follow.⁶²

87. Jurisdictions were also asked whether there appeared to be a need for the establishment of an international body dedicated solely to TCSPs; and whether there is a need for the development of international standards specifically for TCSPs to address issues such as fitness and propriety, systems and controls, corporate governance, authorisation and information sharing. There were 34 respondents to these questions providing an illuminating array of viewpoints.

88. The majority⁶³ of respondents were of the view that no international governing body for TCSPs is necessary. It is necessary to note however, that among this group are respondents whose views on this are informed by the fact that in their jurisdictions the trust sector and, in some cases, other TCSP activities are carried out primarily by financial institutions, all of which are already well overseen by recognised specialist international standards bodies.⁶⁴ The other 19 jurisdictions that are against the idea of a new international body are generally of the view that the FATF alongside the

⁶⁰ This suggestion was put forward by VG, KY and GG, all of which operate full licensing regimes with supervision of TCSPs.

⁶¹ This suggestion comes from HN in which only specified banks are authorized to carry out trust business.

⁶² This is a suggestion from MO which expressed concern over the ongoing conflict between the requirement to file SARs and professional codes of conduct requiring lawyers to protect clients' information.

⁶³ Twenty-two out of 34 respondents.

⁶⁴ HN, GT and PA. MO also made a similar point indicating that a dedicated international body for TCSPs could therefore result in duplication of the work of Basel and others.

other international bodies that provide standards in the areas of banking and other key financial sectors, are sufficient to meet the needs of the TCSP sector. Nevertheless, it was suggested that it would be beneficial were the FATF to pursue additional work on TCSPs to enhance the sector specific guidance available for TCSPs; and also if some thematic approach were adopted by international organisations – *e.g.*, to consider the abuse of trusts in concealing the proceeds of corruption.⁶⁵ In this regard, it was suggested that this type of analysis could be carried out by existing organisations in the anti-corruption framework.

89. On the other hand, ten jurisdictions have expressed the view that an international body would be beneficial to this sector.⁶⁶ The reasoning articulated for this view is that an international body would serve to develop a uniform set of internationally accepted minimum standards and best practices, as well as to provide typologies on an ongoing basis for TCSPs; also to serve as a forum for regulatory agencies to discuss trends that are unique to this industry. The prospect of such a body being well poised to provide guidance for the establishment of regulatory agencies in jurisdictions that have not yet established a regulatory framework for the sector, is of particular value. Some jurisdictions are of the view that the standards set by such a body should of necessity include minimum requirements in relation to licensing and supervision. However, one jurisdiction went further in suggesting that membership to this body should be circumscribed by these minimum requirements as there is no advantage, and possibly even some disadvantage to well-regulated jurisdictions, to have a body which would be open to jurisdictions that do not have a high standard of supervision for TCSPs. In that regard it was being suggested that admission to membership to this body should be predicated on the jurisdiction having a high standard for regulation and supervision of this sector. The view was also expressed that having only a handful of jurisdictions, all of which are non-OECD countries, applying licensing and prudential regulation to this sector, opens this sector up to greater vulnerability to money laundering and other crimes. It should be noted that of the ten jurisdictions that favour the establishment of such a body, the majority of that group would be classified as major offshore financial centres and they subject their significant TCSP sectors to vigorous prudential and AML/CFT oversight. However, it should be highlighted that two of the jurisdictions that support this position are onshore jurisdictions, one of which is an OECD member country.

90. In relation to the development of international standards specifically for TCSPs, a large majority of the responding jurisdictions, including all of those with rigorous prudential/licensing regimes for TCSPs, strongly supported this idea. It was suggested that international standards would help to harmonise performance and assessment criteria for TCSPs; and in time would close the loopholes and eliminate the opportunities for regulatory arbitrage. Respondents were strongly in favour of the requirement for the application to this sector of fit and proper assessment, as well as other more general supervisory requirements akin to those recommended by the Basel Committee, International Association of Insurance Supervisors (IAIS) and International Organisation for Securities Commissions (IOSCO).

⁶⁵ This was a suggestion from the GB

⁶⁶ BE, VG, BG, KY, GG, JE, AN, LC, VC and TC. Though BM responded in the negative, in its response it pointed to the views of TSPs in BM that are in favour of the institution of an international body.

CHAPTER 3: ANALYSIS OF MONEY LAUNDERING TYPOLOGIES

91. In the responses to the questionnaire, several jurisdictions provided case studies to demonstrate the misuse of TCSPs in their jurisdictions and in others, as well as to show how the implementation of AML/CFT requirements in this sector, together with the conduct of supervisory arrangements for TCSPs, contribute to the fight against money laundering. No case studies were provided on terrorism financing and so the ensuing chapter will focus only on the money laundering vulnerabilities of TCSPs. The typologies presented and discussed in this chapter are based on these case studies.

92. However, it should be noted that, in addition to the cases provided in the responses to the questionnaire, case studies were also extracted from a number of other sources, including the 2006 FATF Typologies Study on the *Misuse of Corporate Vehicles*, the Egmont Group website,⁶⁷ publications of the United States Senate's Permanent Sub-Committee on Investigations and the website of the Jersey Financial Services Commission⁶⁸. The case studies used within this chapter are only a representation of all the cases gathered from the sources mentioned above. Other relevant cases are included in Annex II to this report.

93. This chapter has been divided into two main sections; the first section dealing with money laundering threats and the second section dealing with combating the money laundering threats. The typologies addressed in the first section relate to the threats that have been identified in the case studies received. The threats have been sub-divided in the following three main categories:

- A. Threats posed by the jurisdiction as a whole;
- B. Threats posed by TCSPs; and
- C. Threats posed by professional intermediaries.

94. Category (A) highlights the importance of a robust AML/CFT regime at a national level and underscores the money laundering vulnerabilities that emanate from less vigorous AML/CFT regimes. Categories (B) and (C) focus on the threats and vulnerabilities posed by TCSPs and professional intermediaries as facilitators or perpetrators of money laundering. Throughout this report, professionals such as lawyers and accountants have been considered as part of the TCSP landscape whenever they perform the designated services. However, for the purpose of analysis of the typologies, they have been separately considered to take account of the fact that, in many jurisdictions, professionals are treated separately from the rest of the TCSP sector whether or not their services account for a significant portion of the TCSP services provided in the jurisdiction. The case studies may help to demonstrate their relative role within that sector.

95. Finally, in the second section of this chapter, the case studies dealt with in Category D are used to highlight ameliorative measures that can be taken to address the threats identified in the cases.

⁶⁷ The Egmont Group (2006)

⁶⁸ www.jerseyfsc.org

3.1 Money Laundering Threats

3.1.1 Threats posed by the jurisdiction as a whole

96. Deficiencies within the national laws and systems of a jurisdiction can pose a threat to the international financial system where there is weakness in AML/CFT laws and procedures. This has been highlighted in the FATF NCCT⁶⁹ process and more recently in the FATF's work to name and shame jurisdictions through the International Co-operation Review Group's (ICRG) review process and the public statement mechanism. There are obvious ways in which jurisdictions can constitute a threat, primarily among which is no or inadequate AML/CFT laws as well as no or ineffective regulation of the financial sector. However, even where the laws in place conform to the FATF 40+9 standards, there are other less obvious ways in which the legal or regulatory environment can motivate and attract criminals to bring business within that country's borders. Lack of financial or technical resources to enforce and give effect to laws and regulations are issues that affect many jurisdictions, especially those that have poorer economies or overwhelming social problems that utilise the bulk of limited resources.

97. The case studies considered in this section focus on how weaknesses within the AML/CFT regime of the jurisdiction as a whole, encourages the misuse of TCSPs for ML/FT purposes, or facilitates rogue TCSPs in their bid to establish schemes that assist criminals to have easier access to their criminal proceeds and/or to legitimise them. The typologies below focus in on factors such as bank secrecy laws and poor bank regulation; inadequate corporate registration requirements and weak regulation of TCSPs; and the use and proliferation of shell companies.

i. The presence of bank secrecy laws, poor bank regulation and other areas of deficiency in certain jurisdictions facilitate money laundering schemes created by or participated in by TCSPs; and can prevent or prolong detection by or cooperation with the home State of the money launderer.

98. Bank secrecy has a history spanning many decades and emanates from jurisdictions with extensive banking sectors that emphasised confidentiality for their clients through devices such as the use of numbered bank accounts to facilitate anonymity. Historically, bank secrecy laws have become notorious for providing cover for war operatives to funnel and secure money procured by them through looting the property of war prisoners; for enabling rogue leaders and dictators from impoverished countries to find a secure resting place for the millions of dollars of corruptly obtained lucre which further impoverished their nations; and more recently for becoming a harbour for criminal/money laundering schemes.

99. Secrecy in the banking sector restricts competent authorities from obtaining or sharing information on banking relationships and account activities; thereby preventing local or foreign authorities from ferreting out inappropriate or criminal behaviour within the banking sector. Unrestrained bank secrecy is therefore an area of AML/CFT vulnerability for jurisdictions; because criminals will seek out such jurisdictions in order to gain the protection afforded them from free exchange of information with other jurisdictions and law enforcement authorities. The case study below exemplifies how bank secrecy, exacerbated by extremely weak bank regulation and supervision can be misused by money launderers, predicate criminals and collusive banking officials. See also Case A in Annex II.

⁶⁹ This process was undertaken by the FATF between 2000 and 2006 to identify non compliant countries and territories (NCCT). During this time 23 countries were listed due to lack of an effective AML/CFT system and they were subjected to annual review during this period to determine whether they could be removed from the list. The last country was removed from the list in 2006. Visit the FATF website at www.fatf-gafi.org for more information on this.

Example Case Study

Case No. 1: TCSPs role in laundering fraud proceeds and the benefits of bank secrecy laws

Bank X was an offshore bank licensed in 1997 to operate in a small jurisdiction which was known at the relevant time for its bank secrecy laws. One of Bank X's wholly owned affiliates was a corporate service company which was used primarily to form the trusts and corporations that made up Bank X's accountholders. These trusts and corporations, known as International Business Corporations (IBC), routinely received nominee director and shareholder services from the corporate service company. In 1998 Bank X became the fulcrum for a money laundering scheme established by Mr. K, a US citizen who operated a fraudulent high yield investment programme that targeted victims in the US. Mr. K relied on the bank and the corporate service company to establish IBCs for himself, his victims and co-conspirators; to open accounts for these IBCs with Bank X; to receive the 'investment' funds from victims and to transfer them into various accounts belonging to himself and his conspirators for onward transmission to other accounts and locations. Investigation by US law enforcement resulted in money laundering and fraud charges being laid against Mr. K. During the course of the investigation, numerous efforts through legal channels to procure information from Bank X about Mr. K's activities were refused by Bank X on the basis of the secrecy laws. US law enforcement was unable to obtain the detailed information about the transactions and the movement of the funds in Mr. K's bank accounts until Mr. K cooperated and instructed the Bank to provide the requested information. At the material time, although one of only seven (7) offshore banks licensed in that jurisdiction, BANK X was subjected to very minimal regulatory oversight.

Source: *Extrapolated from Minority Staff of the Permanent Subcommittee on Investigations (US Senate)*

100. In this case it is evident that the TCSP, which was closely affiliated with the poorly regulated offshore bank, was utilised to establish the corporate network to facilitate the activities of both the banks and the criminal players using the banks. The TCSP played an integral role in establishing and managing the accounts used by the criminal network to defraud its victims and then carry out the laundering process which followed. The TCSPs involved carried out the bidding of senior banking officials who were their principals, and in so doing appeared to have little separate corporate identity or independence.

ii. Jurisdictions with limited corporate registration requirements; unrestricted bearer share usage; limited beneficial ownership information requirements; and/or lax regulation of TCSPs.

101. The case studies reviewed in this regard highlight that regulatory and supervisory deficiencies in relevant sectors represent AML/CFT risk. The deficiencies in the cases relate to: the use of intermediaries in circumstances where there is an insufficiency in the corporate registration requirements; the unrestricted use of bearer shares; and inadequate requirements relating to beneficial ownership; and what can only be overall weaknesses in the regulation or supervision of TCSPs. Because TCSPs provide services in relation to the establishment and management of corporate structures, trusts/foundations, and structuring of investments, criminals will often target TCSPs or other intermediaries in jurisdictions that have weak laws and/or inadequate enforcement of laws in these areas. They will seek to capitalise on these weaknesses and use the intermediaries to distance themselves from the money laundering and other criminal schemes established on their behalf. The cases also show that while some offshore jurisdictions have been vulnerable to misuse in this way, TCSPs in onshore jurisdictions were at liberty to take advantage of these circumstances due to inadequate restrictions on their operations.

Example Case Study – Jurisdictions that have insufficient beneficial ownership requirements to facilitate international cooperation

Case No. 2: Inadequate beneficial ownership information requirements

Acting on information from the foreign Central Bank and STR from an Austrian Bank, the Austrian FIU conducted enquiries into suspected cases of tax evasion and money laundering being carried out by foreign banks with correspondent relationships with banks in Austria. The STR related to transactions by the foreign banks involving different offshore companies amounting to about USD 45 000 000.

The A-FIU analysed the transactions relating to the correspondent banking accounts and tried to link these transactions with a predicate offence. The A-FIU also made requests to several FIUs in other jurisdictions.

The responses received from these foreign FIUs, and also the A-FIU's own investigations, confirmed that the transactions involved approximately 72 offshore companies (as sender and receiver) but no information regarding the beneficial owner or the registration country of the different offshore companies involved was able to be obtained. The A-FIU were able to establish and trace the existence of only six offshore companies (receiver of the money) and made requests for further information. However unfortunately the only information available was that the companies were registered but the work regarding the due diligence and the real beneficial owners was done in another jurisdiction by lawyer companies.

Source: submitted by AT

102. Bearer shares are shares that can be readily moved from share holder to share holder without any requirements for the recording of the ownership details with the company or any competent authority. Ownership of these shares vests in the person or entity that has physical possession of the shares at any given time. This type of share ownership affords anonymity to the shareholder who can freely obtain and pass on these shares. The unrestricted use of bearer shares not only prevents competent authorities from being able to identify the legal or beneficial ownership of corporate structures, but in tandem with inadequate AML/CFT requirements for and oversight of TCSPs, it also provides a veritable blank cheque for rogue TCSPs to design and operate money laundering schemes using corporate vehicles for the benefit of their criminal clients.

Example Case Study – Jurisdictions that allow unrestricted use of bearer shares

Case 3: Concealment of beneficial ownership information through use of bearer shares

As a result of a drug importation investigation, approximately USD 1.73 million was restrained in combined assets from residential property and bank accounts. These assets were located in four countries in various regions. Significant assets restrained involved two offshore companies incorporated in Country A. Investigators also seized original bearer shares of three offshore companies and original articles of incorporation. The investigation revealed that one of the suspects used the services of a lawyer from Country B to design a money laundering scheme that included the incorporation of offshore companies with bearer shares. The lawyer hired the services of a management company in Country C, who in turn used the services of a company in Country A to incorporate bearer share companies in Country A.

There was no requirement to register the names of the shareholders at the corporate registry office, company head office or anywhere else. The only names that appeared were the original incorporators of the company in Country A, who then forwarded the bearer shares and articles of incorporation to the Country B management company. The management company then forwarded the original bearer shares and articles of incorporation to the lawyer, who in turn handed them over to his client. The files held by the management company only contained the names of the nominee directors, nominee administrators and the directions given by the Country B lawyer who acted on behalf of the suspect shareholder.

The use of bearer shares companies and professional intermediaries in this investigation almost offered absolute anonymity to the person in possession of the bearer shares and is clearly a powerful tool to conceal proceeds of crime. If investigators had not seized the bearer shares in the possession of the suspect, it would have been impossible to determine the owner of these companies and ultimately to identify and restrain their assets as proceeds of crime. In this case, the offshore companies held significant assets alleged to be the proceeds of crime - bank accounts in Country C, and residential property in Country B and Country D.

Source: extracted from website of JE Financial Services Commission^a

- a. Found on the JE FSC website in “**Anti-Money Laundering/Countering the Financing of Terrorism Typologies from a Jersey perspective**” published on October 28, 2008 and produced by BakerPlatt on behalf of the Law Officers, Joint Financial Crimes Unit and the JE Financial Services Commission. The purpose of the publication was to raise awareness of typologies that are relevant to JE including the risks arising from the nature of the customer base and products associated with Jersey as an international finance centre. Both local and international cases were used. The cases included within this report with the annotation “Extracted from website of JE Financial Services Commission” are the international cases referenced in the October 2008 publication. The origins of the international cases used in the publication are not noted therein.

103. Many jurisdictions operate central registries of companies, requiring a record of all corporate structures established in the jurisdiction to be stored there. Company registries may have various minimum requirements for the information that needs to be submitted to them. Beneficial ownership information is often one type of information required to be submitted to a company registry at the time of a company's formation. However, as can be seen from the responses to the questionnaire, many jurisdictions choose to either share between TCSPs and the company registry the responsibility for capturing and maintaining beneficial ownership information; or they place the entire

responsibility on TCSPs alone. However, there are jurisdictions where no one is charged with this duty and this becomes an area of vulnerability as it provides anonymity for beneficial owners of companies formed in the jurisdiction. This can become an allurements for money launderers and other criminals who wish to use corporate structures to launder their criminal proceeds, as they are no doubt aware that secrecy surrounding company ownership is a significant obstacle in combating money laundering and other financial crimes.

Example Case Study– Jurisdictions whose corporate registration processes do not require the submission of beneficial ownership information to competent authorities or the capture by TCSPs of such information

Case No. 4: Registration process that does not require identification of beneficial ownership

In 2002, U.S. Immigration and Customs Enforcement (ICE) (through its legacy agency U.S. Customs) received a request for assistance from a foreign customs service concerning alleged customs fraud with respect to the importation of various kinds of used trailers, semi-trailers, container-transporters, and transport-vehicles equipped with supplemental cranes. The foreign customs service alleged that the invoices and customs entry documents undervalued the actual cost of the vehicles, and misrepresented the country of origin of the merchandise. The customs entry documents and accompanying invoices identified a US-based company in Washington DC as the exporter of the vehicles.

As a result of the foreign request, ICE was asked to interview company officers located in Washington, DC, in an attempt to determine the origin of the suspected fraudulent invoices. The investigation revealed that the suspect company was incorporated in the District of Columbia and the Registered Agent was a Washington, DC “corporate registration agency.” The President of this corporate registration agency was interviewed and told agents that his company “provides assistance to mostly foreign companies with U.S. export documentation, and serves as a U.S. incorporation agent.” He went on to advise that his company had been requested by a corporate registration agency from Delaware to assist in filing the District of Columbia incorporation papers on behalf of the suspect company. He advised that approximately 60% of his business was referrals from the Delaware corporate registration agency. The agents were told that no documents relating to the suspect company were maintained by his registration agency and they should contact the Delaware registration agency for those documents.

Agents contacted the Delaware registration agency and were told the suspect company was “ordered and paid for” by a foreign corporation registration agent. The agents were told that if they wanted additional information, they would have to contact the foreign corporate registration agency located in an offshore jurisdiction. According to its website, the foreign corporate registration agency provides advisory, management, and administrative services relating to offshore companies.

Because there is no requirement in the U.S. for the identification of beneficial ownership at the time of incorporation, the ICE investigation was unable to obtain the information that the foreign customs authorities had requested.

Source: submitted by US

iii Use of Shell companies

104. Shell companies are corporate entities that are used for legitimate purposes such as to hold stock or intangible assets of another business entity. However, they can also be misused by illicit actors and have no legitimate commercial purpose. While it is arguable whether shell corporations can have appropriate application in the operations of legitimate corporate groups, they can be used by white-collar criminals in money-laundering operations, mutual-fund schemes, tax fraud and internal business fraud. To facilitate these types of schemes, shell companies may be used to generate false invoices, fictitious consultancy fees or bogus loans.⁷⁰ Where shell companies are permitted under the corporate registration laws of a jurisdiction or where its usage is unrestricted, this may present a money laundering and financial crime vulnerability which criminals will take advantage of. It has

⁷⁰ This issue was discussed in the APG/FATF “Anti-Corruption/AML/CFT Research Paper”, 2007 prepared for the FATF/APG Project Group on Corruption and Money Laundering by Dr. David Chaikin and Dr. Jason Sharman (7 September 2007). This paper was presented to the FATF Plenary in 2007 and the APG Plenary in 2008.

been acknowledged that tackling the problem of anonymous shell companies is a crucial factor in combating a range of high priority international problems such as organised crime, tax evasion, corruption and money laundering.⁷¹

105. Shell companies together with other tools used in financial crimes, can be used in both the placement and layering phases of the money laundering process to disguise the trail of evidence. The cases below show various ways in which shell companies have been used to establish layers between the criminal and the laundering, fraudulent or corrupt transaction; and between the predicate crime and the criminal proceeds. Where jurisdictions allow their incorporation processes to be indiscriminately used in this way, TCSPs will have no reason to self regulate to prevent criminals from taking advantage of this facility.

Example Case Studies

Case No. 5: Use of shell companies to facilitate corrupt payments

An operational business goes through a TCSP with the objective of getting control (via a fiduciary/trust contract) of a shell company domiciled under European law, giving it the appearance of being operational. The objective is to pay the shell company a compensation for fictitious consulting services. This fee is then paid by the TCSP, on behalf of the shell company, to a third person who in turn is responsible for bribing a public official who grants access to a public exchange to the above-mentioned operational business. This corruption can be done with or without the knowledge of the TCSP.

Source: submitted by CH

Case No. 6: Use of domestic and foreign shell companies in the placement and layering stages of money laundering

ICE initiated an investigation against a criminal organisation involved with defrauding investors out of millions of dollars and laundering the fraudulently obtained proceeds. The investigation revealed an enterprise of individuals offering fictitious instruments for investment programs described as "currency leasing trading programs," leading to more than USD 14 million in fraudulent transactions. These funds were laundered through a network of domestic and foreign bank accounts utilizing shell corporations, many of which had been established in the United States.

The perpetrators of the scheme operated an Internet web site out of Las Vegas, Nevada, which offered investors the opportunity to "lease" \$1 million for a fee of USD 35 000. Once "leased," victims were told these funds would be placed into a high yield international trading program. The contracts provided to the investors indicated an expected return on their investment of as much as 25 percent every two weeks.

An additional co-conspirator in the scheme was responsible for establishing a complex web of bank and brokerage accounts, and shell companies. This individual established corporations in Delaware, Nevada, California, and Massachusetts in the United States along with companies in several foreign jurisdictions. Another co-conspirator opened cash management accounts at brokerages utilizing the shell corporations. Investors were told to send their USD 35 000 fee to the accounts established utilizing the shell corporation names. Once in this account, the funds were transferred to secondary accounts. From these accounts, the funds were then disbursed to various foreign and domestic accounts and liquidated through the use of checks, debit cards, and ATM cards.

In the end, six individuals pled or were found guilty in the United States of violating money laundering, wire fraud, and international transportation of stolen funds statutes. The defendant's use of domestic and foreign shell companies to layer the funds prevented full recovery of the fraudulently obtained funds.

Source: submitted by US

⁷¹ Sharman, Dr. Jason C. "Behind the Corporate Veil: Financial Anonymity and Crime", 2008. Dr. Sharman is a Professor at Griffith University in Brisbane, Australia and works jointly with the Centre for Governance and Public Policy and the Griffith Asia Institute. This paper is based on research done to assess the effectiveness of international standards that prohibit anonymity within the global financial system.

106. These cases show that money launderers and other criminals will use TCSPs to take advantage of systems that allow for the establishment of corporate structures with no apparent legitimate commercial purpose.

3.1.2 Threats posed by TCSPs

107. The typologies addressed in this section relate to the threats posed by TCSPs, which have been identified from the case studies and responses. These typologies address the vulnerability of TCSPs for being used by both internal and external persons/entities for money laundering purposes.

i. Criminal culpability of TCSPs involved in money laundering schemes or the predicate crimes which give rise to it

108. The responses received from the jurisdictions that participated in this typologies exercise, reveal that TCSPs are increasingly involved in money laundering schemes. TCSPs and/or their principals have in many jurisdictions been under investigation, and at times convicted, for money laundering and proceeds of crime related offences. While some countries have reported more cases of misuse of TCSPs by criminals for money laundering purposes than others, it remains undoubtedly the case that the potential risk for misuse is evident across jurisdictions. Given the diverse nature of activities of TCSPs within and across jurisdictions and the diverse oversight regime governing these activities, it is difficult to determine whether the lack of money laundering cases in some jurisdictions is due to the absence of abuses within those jurisdictions or the inability thus far of regulatory and law enforcement authorities to detect such abuses. Nonetheless, the threat resulting from the potential role of TCSPs in facilitating money laundering and terrorist financing constitutes a major concern among jurisdictions where TCSP businesses are prevalent.

109. It is in this context that this typologies exercise sought to understand the types of misuse of TCSPs for money laundering and terrorist financing purposes and the specific “red flags” that may be indicative of it. More specifically, the potential vulnerabilities that appear to be inherent to the very nature of the activities of TCSPs have been examined.

110. Although TCSPs are less conducive to the initial placement of criminally derived funds than for example, banking institutions, they are prone to be used particularly in the layering stage of money laundering. TCSPs possess many characteristics that make them vulnerable to misuse for money laundering and terrorist financing purposes. Their fiduciary responsibility allow them often times to have discretionary control over the accounts and funds of their clients. Due to the broad scope of their fiduciary responsibility, the risk exists that TCSPs may abuse this responsibility entrusted to them. Furthermore, the ease with which the sources and uses of funds as well as legal beneficial ownership information can be concealed through the establishment of multiple accounts and the conduct of complex transactions on behalf of clients, constitutes another area of potential threat.

111. The case examples presented in this section highlight the areas of vulnerability to money laundering of TCSPs, as well as the risk of being misused in a variety of ways and for different purposes within the framework of money laundering. More specifically, the cases highlight the following money laundering related misconducts: misappropriation of clients’ assets, and facilitation of money laundering for organised crime groups by abusing discretionary control over clients’ funds. Case F and others in Annex II also demonstrate money laundering misconduct by TCSPs through misrepresentation of clients’ beneficial ownership information, among other things.

Example Case Studies

Case No. 7: Criminal culpability of TCSPs based on co-mingling of clients’ funds

A company service provider on the island State of Country A embezzled USD 35 million from its clients over an 11-month period. The money was sent to some international criminal network organisations in Country B. The CSP was co-mingling its clients’ funds with its own assets. The owner of the CSP was convicted and sent

to prison.

Source: submitted by AN

Case No. 8: Criminal culpability of TCSPs as facilitator of ML

A Company Formation Agent involved in the financial services sector was prosecuted for money laundering offences, for laundering funds on behalf of organised crime groups. He carried out a complex process of funnelling criminal proceeds through a system of trusts and front and shell companies, linked to a complex matrix of inter-account bank transfers. As administrator of all the trusts used in the scheme he exercised full control of the funds flowing through them. Trusts, as well as front and shell companies were used deliberately to disguise the source of the money, and to provide a veil of legitimacy to the financial transactions.

Source: submitted by the GB

112. From the cases it is evident that TCSPs can play a significant role in facilitating money laundering and that the perpetration of money laundering crimes can take place in various forms. Cases such as the White Whale case⁷² also highlight the fact that not only can TCSPs be used by criminals for the entering or mediation of transactions from or intended for criminal activities, but also their principals and/or employees can play an important facilitating role in the money laundering process. This internal risk factor is one that should be monitored closely.

ii. Misuse of TCSPs by money launderers and terrorists to establish sophisticated/complex legal structures to facilitate money laundering.

113. Although the nature of the services provided by TCSPs vary from one institution to another and at times from one jurisdiction to another, it is generally noted that TCSPs are prone to be used for the set up and management of complicated structures through which money may be laundered or terrorist funds channelled. Structures created by TCSPs to facilitate legitimate business activities might also be attractive to money launderers and terrorists, particularly at the layering stage. A money launderer may seek the service of a TCSP to set up legal structures or arrangements in multiple jurisdictions. Jurisdictions that do not require identification of beneficial owners; or that refuse to disclose such information when requested by competent authorities; or that do not have a robust regime of combating money laundering and terrorist financing, are jurisdictions often times of particular interest to the money launderers and terrorists. Once the legal entities or legal arrangements are established, the money launderer or terrorist typically uses the companies or legal arrangements, by moving funds through the various company accounts, for money laundering or terrorist financing purposes.

114. It should also be noted that money launderers are well aware of the fact that investigation of a money laundering scheme is more complicated when there are more jurisdictions involved, since some jurisdictions may be unable or unwilling to provide information on the legal entities or arrangements. As a result, the authorities investigating a particular money laundering scheme will be unable to establish the link between the funds and the criminal.

115. The ease of formation of companies and legal arrangements in various jurisdictions, some of which have a less robust oversight regime than others, make it also easier for money launderers to layer the proceeds of their criminal activities and integrate them into the financial system. Furthermore, advances in technology, financial engineering and innovation, have contributed significantly to the use of sophisticated legal structures and multiple accounts to facilitate money laundering and terrorist financing. This has made it more difficult to identify who is actually controlling the structures and accounts thereby contributing to a lack of transparency.

⁷² See Case No. 11: *TCSPs obscuring beneficial ownership through the use of pre-constituted companies*

116. Although it is likely that a majority of the sophisticated/complex structures established by TCSPs for their clients are set up for legitimate purposes, the obvious potential for abuse nevertheless remains a concern. The following case, along with others in this report, highlights the money laundering risk inherent in these complex structures that are created and/or administered by TCSPs.

Example Case Studies

Case No. 9: Complex multijurisdictional structures to facilitate money laundering

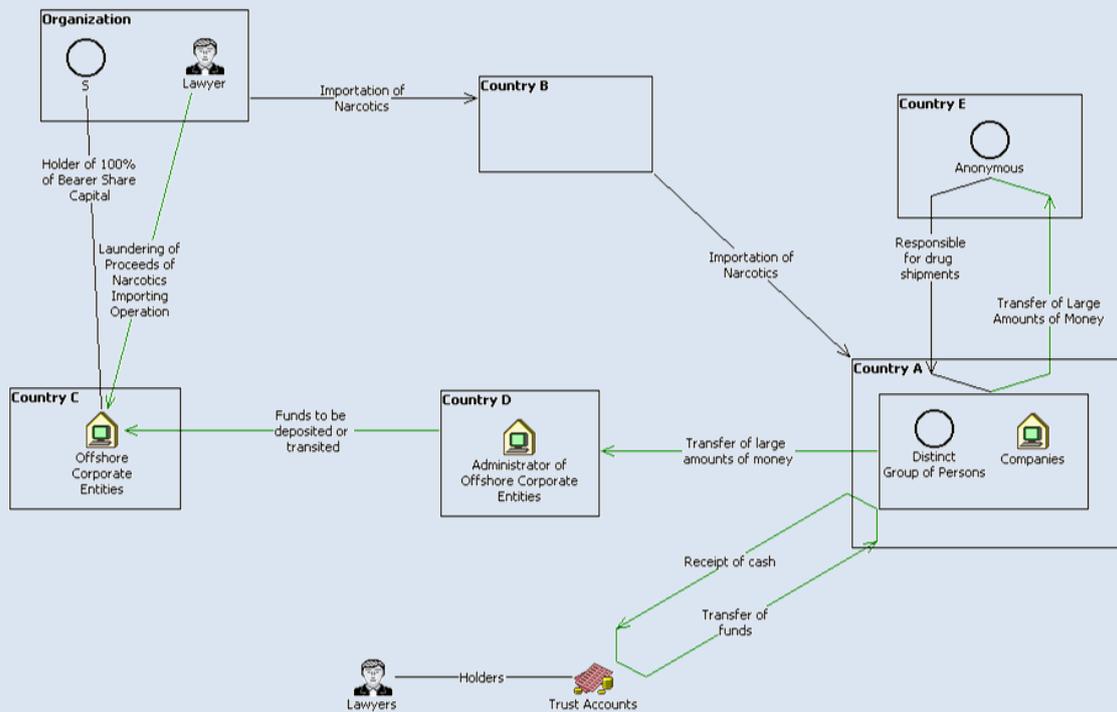
S headed an organisation importing narcotics into Country A, from Country B. A lawyer was employed by S to launder the proceeds of this operation.

To launder the proceeds of the narcotics importing operation, the lawyer established a web of offshore corporate entities. These entities were incorporated in Country C, where scrutiny of ownership, records, and finances was not strong. A local management company in Country D administered these companies. These entities were used to camouflage movement of illicit funds, acquisition of assets, and financing criminal activities. S was the holder of 100% of the bearer share capital of these offshore entities.

In Country A, a distinct group of persons and companies without any apparent association to S transferred large amounts of money to Country D where it was deposited in, or transited through S's offshore companies. This same web network was found to have been used to transfer large amounts of money to a person in Country E who was later found to be responsible for drug shipments destined for Country A.

Several other lawyers and their trust accounts were used to receive cash and transfer funds, ostensibly for the benefit of commercial clients in Country A. When they were approached by law enforcement during the investigation, many of these lawyers cited "privilege" in their refusal to cooperate. Concurrently, the lawyer established a separate similar network (which included other lawyers' trust accounts) to purchase assets and place funds in vehicles and instruments designed to mask the beneficial owner's identity. The lawyer has not been convicted of any crime in Country A. Investigators allege however that his connection to and actions on behalf of S are irrefutable.

Diagram of the complex money laundering scheme



Source: extracted from website of JE Financial Services Commission^a

a. Found on the JE FSC website in "Anti-Money Laundering/Countering the Financing of Terrorism Typologies from a Jersey perspective" published on October 28, 2008 and produced by BakerPlatt on behalf of the Law Officers, Joint Financial Crimes Unit and the JE Financial Services Commission. The purpose of the publication was to raise awareness of typologies that are relevant to JE including the risks arising from the nature of the customer base and products associated with Jersey as an international finance centre. Both local and international cases were used. The cases included within this report with the annotation "Extracted from website of JE Financial Services Commission" are the international cases referenced in the October 2008 publication. The origins of the international cases used in the publication are not noted therein.

Case No. 10: Complex structures to facilitate money laundering

This case is concerned with the use of seven (7) International Business Companies which were incorporated in AI by a foreign national, Mr. D, using a local TCSP. The seven companies were then used to open bank accounts in AI at two local private banks; these accounts were then utilized as the flow through points for money obtained from elaborate investment wire fraud scheme targeting persons from across the Americas, Asia and Europe. The monies would flow through bank accounts in AI and another jurisdiction then onwards to accounts in Europe. Over USD 4 million was defrauded from investors who were investing into the schemes of Mr. D. Mr. D was arrested by the authorities in the other jurisdiction and extradited to the USA for prosecution for fraud and money laundering. The remaining USD 80 000 which Mr. D had in AI was subject to a civil recovery process for forfeiture to the State.

Source: submitted by AI

iii. Complex methodology used by TCSPs on behalf of money launderers to obscure beneficial ownership of legal structures used in money laundering schemes

117. A subject closely related to the lack of transparency in complex structures which was addressed above, is the risk involved with the concealment of beneficial ownership of legal structures. This is a subject that has been significantly debated over the past years, considering the perceived confidentiality inherent in the services provided by TCSPs. The reduction or elimination of face-to-face contact between the service provider and its customer has made it even more difficult to know who is actually controlling the structures and/or accounts.

118. The responses received highlight the fact that the identification of a customer at the beginning of a business relationship may not be sufficient for the detection of serious or organised money laundering crimes developed after the client acceptance phase. Both the relationship and the beneficial ownership must continue to be monitored after the initial client acceptance stage. If not adequately monitored, the TCSP may lose sight of the true person(s) controlling the legal structure.

119. Although the concealment of beneficial ownership may take place in various forms, as reflected in the cases below, the concern was also raised during this typology exercise of the difficulty in identifying beneficial owners, particularly in the case of legal entities, such as foundations; and legal arrangements, such as trusts. In those cases, there is no generally agreed upon definition of beneficial ownership. The issuance of bearer shares also seems to be an area of risk that may obscure beneficial ownership.

Example Case Studies

Case No. 11: TCSPs obscuring beneficial ownership through the use of pre-constituted companies**THE WHITE WHALE CASE**

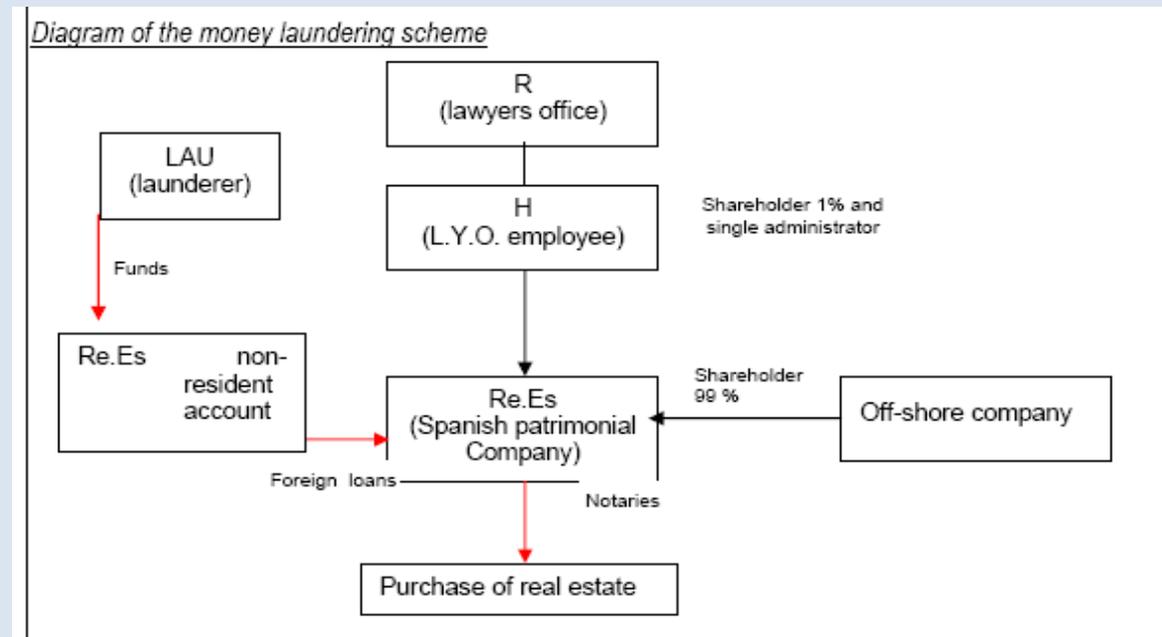
The investigations started in September 2003 by cross referencing data from an investigation on drug trafficking, with information coming from another investigation on assets owned by Eastern European citizens living in the Costa del Sol (Malaga). In such cross referencing of information, it arose that [H] appeared as administrator of more than 300 companies established through [R], a lawyer's office in Marbella (Malaga). All of the companies had similarities: companies established off-shore, except one held by [H] who was the single administrator of the companies and, at the same time, an employee of [R]. Giving support to clients of [H] by establishing companies was one of the activities of [R], which also offered the management of client's bank accounts and real estate buying and selling. The investigators knew that several clients of [R] were allegedly connected with international organized crime groups and/or with people involved in serious crimes in Spain and abroad.

The board of [R] was aware of the likely criminal activities of some of H's clients, because they had been the subject of media and press reports as possible criminals, and because the board knew that some clients were in prison in Spain or in other countries since documents had been sent to them there. In other cases, members of the board were called to testify as witnesses in judicial proceedings against those clients. Additionally, the board deliberately ignored the activities of their clients. In their advertisements they even advertised that the office conducted company "engineering", that they guaranteed anonymity and that they did not ask any questions or respond to requests for information.

The Spanish companies were established for use as an instrument for money laundering schemes based on the real estate market. They were companies created exclusively for the management and administration of real estate properties. Re.Es. was one of these companies. The off-shore companies which participated in the Spanish companies were “shell companies” established in an American State whose laws allow a special tax regime for these companies and for their transactions. The companies were pre-constituted in the name of an agent (usually a lawyer) before the incorporation of the company. In other words, the document of incorporation of the company would remain inactive in the hands of the agent until the company was bought by a client, and at that moment the company would be effective.

Therefore, the board of the companies when first registered was made up of the agent and his associate, without any link with the real owners of the company who subsequently purchased the shell. Consequently, the ultimate beneficiaries of the off-shore companies and, consequently, of the Spanish companies, remained hidden. The launderer (LAU) transferred funds from a foreign country to a non-resident account owned by Spanish company Re.Es. The use of non-resident accounts provided other advantages, including the advantage of being subject to less control by the tax authorities. The funds described above were gathered in the account of Re.Es under the guise of foreign loans received. The destination of the funds received was the purchase of real estate properties in the name of Re.Es. in the last stage of the money laundering process, taking advantage of the hidden situation of the launderer and of the beneficial owners.

Three public notaries documented all the transactions, from the incorporation of the companies to the purchase of real estate. The suspicion of money laundering was clear: incorporation of several companies by the same persons in a short period of time, concurrence of the same partners in several companies, several real estate purchases in a short period of time, etc. Despite this, and even though the public notaries were obliged to report under the Spanish anti-money laundering law, such transactions were not disclosed to the Spanish FIU



Source: extracted from 2006 FATF Typologies Study – Submitted by ES

Case No. 12: TCSPs instrumental in obscuring beneficial ownership by PEP

Mr. X, a foreign lawyer, utilized the services of several Trust and Company Service Providers to set up several offshore entities in various offshore Financial Services Centres including Countries A, B and C. The offshore entities included a private growth Fund which was registered in Country B. The subscriptions which were paid into the Fund were routed through the various offshore entities in order to obscure the true source of the funds. At least two of the offshore entities were known to have bank accounts at a financial institution in Country B, where significant funds were located.

A joint investigation was subsequently initiated by authorities in Countries A and B, following allegations that the structures were set up to disguise the true source of the funds which allegedly came from a PEP in an Eastern European country and that these funds were the proceeds of corruption. Information regarding the true ownership and purpose of the offshore entities was requested from TCSPs in the respective jurisdictions. The resultant information was incomplete. Though the foreign Lawyer claimed ultimate beneficial ownership of the entities, the authorities believed he was acting on behalf of the PEP. Investigation indicated that the private growth fund was established on behalf of a prominent Minister of Government in the Eastern European

country, who used the fund and the several other offshore entities to create a number of fictitious consultancy agreement entities, for the purpose of concealing millions of dollars he made as a result of investments in the sector which fell under his ministerial portfolio during his time as Minister.

The investigation ultimately resulted in criminal charges being brought against several of Country A registered offshore entities. These charges led to the successful prosecution and confiscation of USD 47 000 000.00 which was shared equally between the Countries A and B.

Source: submitted by the VG

3.1.3 Threats posed by Professional Intermediaries

i. Use of professional intermediaries to facilitate money laundering.

120. Lawyers, accountants, notaries and other such professionals provide services to clients to help them navigate the often complex and sometimes treacherous world of finance, law and corporate governance. They have essential knowledge and expertise in relation to the technical rules and regulations that pertain to the operation of business, as well as experience in crafting legal strategies in relation to investment, mergers and acquisitions, tax liability, corporate structuring, among others. These professionals can be important service providers for businesses, high net worth investors and anyone who has wealth or assets which need to be managed or channelled appropriately. However, these same skills and expertise are attributes that are desired by criminals, who require assistance in organizing their affairs, to enable them to distance proceeds from their criminal origins; and to liberate these proceeds for eventual use in 'legitimate' endeavours. For this purpose criminals seek out the services of professional intermediaries to help them establish corporate structures, set up trusts, transfer funds and negotiate deals. The important advantages to the criminal are: the concealment of the proceeds of crime; the granting of access to various financial centres through the diverse mechanisms which can be used by these intermediaries; and the creation of confusing audit trails to stymie law enforcement's efforts with regard to these transactions.

121. The nature of the relationship established with the professional, the integrity of the individuals involved and the level of regulation and regulatory oversight can all affect the degree of knowledge or involvement of the professional in the criminal scheme being pursued. However, it is safe to say that the more complex the scheme being established and the more economically senseless the approach adopted, then the more likely it is that the professional intermediary involved knows, strongly suspects or is wilfully blind to the true nature of the activities which underpin the professional services being provided.

122. The following cases provide some examples of the role played by professional intermediaries in money laundering schemes.

Example Case Study

Case No. 13: Use of professional intermediaries to facilitate money laundering

A law enforcement operation identified an accountant, J, who was believed to be part of the criminal organisation involved in money laundering and re-investment of illicit proceeds derived from drugs trafficking led by X. J's role was mainly that of a "legal and financial consultant". His task was to analyse the technical and legal aspects of the investments planned by the organisation and identify the most appropriate financial techniques to make these investments appear legitimate from a fiscal stance. He was also to try, as much as possible, to make these investments profitable. J was an expert in banking procedures and most sophisticated international financial instruments. He was the actual financial "mind" of the network involved in the re-investment of proceeds available to X. J operated by sub-dividing the financial transactions among different geographical areas through triangle transactions among companies and foreign credit institutions, by electronic transfers and stand-by credit letters as a warrant for commercial contracts which were later invested in other commercial activities.

Source: extracted from website of JE Financial Services Commission^a

a. See Case No. 3: Concealment of beneficial ownership information through use of bearer shares, note a

Case No. 14: Use of professional intermediaries to facilitate money laundering

A criminal involved in smuggling into GB set up a Trust in order to launder the proceeds of his crime, with the assistance of a collusive Independent Financial Adviser (IFA) and a Solicitor, who also appeared to be acting in the knowledge that the individual was a criminal. The Trust was discretionary and therefore power over the management of the fund was vested in the Trustees, namely the criminal, his wife and the IFA. This example illustrates the complexity of Trusts used to hide the origins of funds from any law enforcement scrutiny. One way in which this was done was through the purchase of a garage. The criminal's daughter, who was a beneficiary, was given the property by her father and she in turn leased it to a company. The property was eventually sold to this company, the purchase funded by a loan provided by the Trust. The company subsequently made repayments of several thousand pounds a month, ostensibly to the Trust, but in practice to the criminal. Thus the criminal who had originally owned the garage probably maintained control despite his daughter's ownership. Through controlling the Trust he was able to funnel funds back to himself through loaning funds from the Trust and receive payments on that loan.

Source: submitted by GB

3.2 Countering the Money Laundering Threats

3.2.1 Measures that can reduce money laundering threats

i. Application of suspicious transaction reporting, CDD and other such measures enhance TCSPs role in the detection, investigation and/or prosecution of players in the money laundering scheme

123. The cases below are good examples of how the operation of an appropriate AML system within TCSPs can facilitate law enforcement's efforts to address money laundering transactions and activities which might otherwise go undetected. The cases below range from instances of mere suspicion triggered by unusual or questionable transactions resulting in the filing of STRs, to active instances of sleuthing by the TCSP as a result of suspicion aroused through implementation of regular CDD procedures or because of suspicious activity.

Example Case Studies

Case No. 15: Detection of illegal activities by TCSP, reporting to the FIU, and international cooperation between FIUs

Mr. A established a KY revocable trust in 2004, with himself as settlor and a local Trust Company B as service provider acting as trustee. Mr. A also arranged for the incorporation of a KY company known as company C, with the Trust Company B also acting as registered office.

In 2008, Trust Company B, in conducting its risk assessment of its clients, became aware of allegations relating to Mr. A and his involvement in an oil and gas contract scam which also involved members of a foreign jurisdiction's government. Mr. A was the representative of the oil and gas company and was allegedly involved in a kickback scandal in which his company was awarded a contract by the foreign jurisdiction's government.

According to allegations in media reports, Mr. A was the money source who provided several officials from the foreign jurisdiction's government with the means to buy the support of other government officials, in order for them to participate in the scam.

Trust company B reported in its suspicious activity report, that between 2004 and late 2005, Mr. A's trust and underlying company had received numerous transfers of funds and property from what was now deemed to be questionable sources, which in turn heightened its suspicions, thereby prompting its reporting to the FRA.

An analysis of the trust accounts, undertaken by the FRA, reflected outgoing funds to individuals named in numerous media reports who allegedly took part in the kickback scandal. The FRA in turn requested information from the FIU of the foreign jurisdiction to enquire if there were any investigations or criminal proceedings underway involving Mr. A. The foreign FIU responded that Mr. A was being investigated for money laundering and corruption of government officials. The FRA was also able to construct a timeline of events which revealed that funds and other assets were being added to the trust around the same time the alleged criminal activity of Mr. A and others was reported.

As a result of the FRA's analysis and information from the FIU of the foreign jurisdiction, a disclosure was made to that FIU based on the premise that a KY trust and company was being used to house the proceeds of Mr. A's criminal activity. The information disclosed by the FRA was useful to the overseas FIU and the

investigations of the foreign jurisdiction, and the matters before the courts are still pending.

Source: submitted by KY

Case No. 16: Detection of fraudulent malpractice insurance and international cooperation

Mr. L, a citizen of country A with prior criminal convictions, set up two medical liability insurance companies in third countries and offered fraudulent malpractice insurance coverage to medical practitioners and practices in Country A. Mr. L also opened two bank accounts in BM in the name of two of the insurance companies controlled by him, along with a mailing drop box account with a local mailbox service in BM, thereby establishing a nominal office in Bermuda for each of these insurance companies. Both the drop box and the bank accounts were managed by a BM corporate service provider. Mr. L also had other similar drop box and bank account schemes in Country A and in several countries. Premiums collected under these fraudulent insurance contracts were paid through the network of mailing/drop box accounts into related bank accounts. Through ongoing due diligence, the BM service provider became unhappy with responses from Mr. L arising from questions/complaints from customers of the insurance companies. The service provider therefore made a suspicious activity report triggering an investigation locally. This tied in with suspicions originating from a potential customer in Country A, who was also approached and offered insurance coverage, thereby resulting in investigations by local authorities in Country A. The net result was that, in cooperation with law enforcement authorities in Country A, BM secured in excess of \$5,000,000.00 by restraining the accounts of Mr. L's insurance companies in BM, and this amount was eventually repatriated to Country A to assist in making restitution to the victims. BM authorities provided significant evidence to Authorities in Country A via mutual legal assistance to facilitate Mr. L's prosecution for fraud and money laundering.

Source: submitted by BM

ii Benefits of sound regulation of TCSPs

124. The FATF Recommendation 24 requires that TCSPs be subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. There should be a designated competent authority or SRO responsible for monitoring and ensuring compliance of TCSPs. The authority or SRO should have adequate powers to perform its functions, including powers to monitor and sanction. The "Risk-Based Approach Guidance for Trust and Companies Service Providers issued by the FATF on June 17, 2008"⁷³ has also highlighted the fact that the regulation and oversight of TCSPs should have a risk-based character. The regulation and oversight regime should have a targeted function and focus on areas of high risk.

125. From the responses received from the jurisdictions participating in this typology exercise, it is evident that the nature, level and scope of the regulatory and oversight regime applicable to TCSPs, vary from jurisdiction to jurisdiction. Some jurisdictions have a more robust regulatory framework, while others do not. In the responding jurisdictions that have a regulatory framework for TCSPs, this framework more often than not encompasses both off-site and on-site supervision. Some countries have a long-standing history of active regulatory oversight of trust and/or company service providers, while other countries concentrate more on criminal investigation and detailed record-keeping requirements. Other countries have implemented regulatory systems that comprise of aspects such as licensing of both trust service providers and company service providers, detailed customer due diligence requirements, record keeping and reporting requirements, auditing requirements, sanctions and enforcement.

126. Although there are differences in the regulatory approaches of the various countries, the overriding consensus is that additional regulatory guidance will likely be needed to reduce vulnerabilities of TCSPs to misuse for money laundering and terrorist financing purposes. An effective regulatory regime commands a premium. The questionnaire responses from those jurisdictions that have implemented an effective regulatory regime, suggest that they have significantly strengthened their ability to deter and address money laundering and terrorist financing abuse in their jurisdictions. Countries must implement regulatory and supervisory policies and

⁷³ Available on the FATF website at <http://www.fatf-gafi.org/dataoecd/19/44/41092947.pdf>

practices that conform to the scope and complexity of their specific sector. Public confidence in TCSPs, and hence their stability, can even be undermined by adverse publicity as a result of their unwitting use by criminals for money laundering and terrorist financing purposes.

127. The cases below shed further light on this important subject of effective regulatory oversight. They underline the fact that if TCSPs are not subject to an effective and adequate regulatory regime, they may be exposed to a greater level of money laundering and terrorist financing risk.

Example Case Studies

Case No. 17: Effectiveness of on-site inspections to prevent and detect money laundering

Corporate Service Providers (CSP) and Trust Service Providers (TSP) are under regulatory control in the IM. One entity licensed as a CSP was found, at its first full supervisory visit by the Regulator, to have serious Customer Due Diligence (CDD) problems, especially entailing lack of beneficial ownership details. A remedial programme was agreed and put in place with the CSP.

Subsequent supervisory inspections showed that the CSP was not making satisfactory improvements and formal Directions and reporting requirements were issued to them to fully comply and record progress with the remediation programme. A Direction was also issued that no new business was allowed to be taken on.

In the meantime the CSP applied for a licence to carry out TSP work. The Regulatory authority refused to process this application until the CSP side of the business was put in order.

The CSP submitted its required reports on the progress made in improving its CDD standards. A further supervisory visit showed some positive improvements but not as much as had been indicated in the company's reports. The visit also found evidence of further examples of poor CDD standards and lack of beneficial ownership details being obtained.

A formal warning notice was issued to the directors of the company informing them that the regulator found their conduct to be unsatisfactory and future action could be taken against them if the situation did not improve. A Direction was also issued for the appointment of an external compliance resource (pre-approved by the regulator) and paid for by the CSP.

At the present time the IM regulator will not issue a TSP licence to the entity and has informed those involved that consideration was being given to starting action on any one, or combination, of the following; -

- a. to take from them their CSP licence;
- b. to formally refuse their application for a TSP licence;
- c. to start legal proceedings against the company for breach of the IM's AML/CFT legislation, especially with regard to their lack of identification of beneficial ownership when taking on previous business;
- d. to take disqualification action against the company officials for failing to undertake their statutory duties, such as complying with the AML/CFT requirements.

As a direct result of regulatory intervention, the people running the business are now actively working to sell the CSP and the situation is being closely monitored by the Regulator.

Source: submitted by the IM

Case No. 18: Vulnerability arising from lack of AML/CFT oversight

This case occurred in 2002, when one of the directors of a trust company business operating in Country X was approached to set up a discretionary trust by a solicitor in Country Y. The solicitor advised that one of his clients, Mr. A, was acting on behalf of another individual, Mr. B. Mr. A had received monies from the sale of sauna business, which was owned by Mr. B. The solicitor wished to hold the sale proceeds through an offshore trust. The solicitor sent through documents to identify Mr. A, but none in relation to the ultimate client Mr. B. A few days later, over \$850,000 was sent from the solicitor's account to the trust company's client account. Two days later, the solicitor requested the trust company to pay the bulk of those monies to four named entities, none of which had any connection to the trust and which were unknown to the trust company. The trust was established with Mr. A as the sole beneficiary. On the next working day, the trust company made the four payments as requested.

The High Court of Country X found both the trust company and the director of the trust company guilty of failing to comply with client identification requirements of the anti-money laundering law, a decision which was

upheld by the Court of Appeal. The Court of Appeal found that an isolated failure to comply with client identification procedures in the context of financial services business can amount to a criminal offence and that a systemic failure is not required. It was held that Client identification procedures prescribed by the anti-money laundering law must be kept up and that a single breach, provided that it was more than a mere oversight, is sufficient to constitute an offence.

Submitted by JE

CHAPTER 4: KEY FINDINGS

128. The types of entities that operate as Trust and Corporate Service Providers and the depth and nature of supervision to which they are subject, vary from jurisdiction to jurisdiction. Notwithstanding the fact that some jurisdictions do not recognise TCSPs as a formal sector or indeed that the laws of some jurisdictions do not recognise certain types of legal structures, such as trusts, these factors do not preclude the existence of TCSPs or the provision of these services in some way in these jurisdictions. The variance in supervision and the breadth of technical/complex services available from this sector are matters that feed into the money laundering vulnerabilities to which TCSPs are subject.

129. In addition, a review of money laundering cases illustrated how the services offered by TCSPs had been used in obscuring illegal activities in both the regulated and unregulated environments. Other cases highlighted that persons holding positions of trust and/or authority had themselves knowingly assisted in perpetrating money laundering crimes. The following are the key findings from a review of the questionnaire responses and an analysis of the various cases studies.

4.1 Description of Money Laundering Vulnerabilities/Observations

130. Though some jurisdictions do not recognise trusts in their laws, nevertheless case studies show that persons providing the services of a TCSP are able to provide trust vehicles to clients using the laws of other countries to do so. This can make it difficult for the authorities in the TCSP's home country to provide oversight for a legal structure established under foreign law. Additionally, the foreign country under whose laws the trust is established may have lacunae in their laws which allows the foreign TCSP to avoid oversight or supervision for the trusts established in that country. This type of lacuna is a vulnerability that criminals/money launderers capitalise on.

131. Pre-constituted companies are companies that TCSPs incorporate and hold as assets for sale or transfer to clients. After the company is sold there may be no requirement for the information on the new owners to be collected and submitted to the authorities to update the information on the corporation. Jurisdictions that allow TCSPs or professional intermediaries to establish pre-constituted companies, without the need for the ownership structure of those companies to be updated after the company has been sold to clients, might provide a cover to criminals and other persons who wish to use corporate structures to obscure beneficial ownership and thereby hide assets.

132. As the creation of complex structures can often generate higher fees for TCSPs, this can make such structures more attractive to TCSPs thereby potentially reducing their ability to associate an increased use of complex structures with a higher money laundering risk. TCSPs may not have a sufficiently robust risk framework in place that mitigates against the increased risk that may be posed by more sophisticated schemes. The provision of value-added services to a client base by TCSPs may also expose them to regulatory and reputational risks where a client has been found to be carrying out ML/FT.

133. TCSPs operating in highly competitive environments, both regulated and unregulated, may also experience additional challenges in obtaining adequate CDD, where there may be no minimum standard that has been clearly communicated or otherwise established that is in keeping with the FATF Recommendations, particularly Recommendation 5. Further, given the potential in some cases

for “flight to quality” of service providers, in order to attract business, certain TCSPs may operate on CDD requirements that would not be adequate under the FATF Recommendation 5.

134. **Vulnerabilities of Regulated Regime** – The regulated environment does not guarantee the absence of ML/FT activities. In the face of regulation and more consistent application of AML/CFT measures, the ML/FT activities tend to become more sophisticated and complex. As such, the emerging trends of movement from known ML/FT typologies may not be readily detected and discernable by TCSP. This is so because:

- More sophisticated vehicles are being established through TCSPs and ultimately used to perpetrate ML/FT activities;
- TCSP employees may knowingly assist the concealment of ML/FT activities, which may ultimately be more difficult to detect in light of the knowledge of employees; and/or
- Sanctioning powers on rogue individuals within TCSPs may be limited or difficult to apply.

135. **Vulnerabilities of an Unregulated Regime** – Within an unregulated environment, the risk of TCSPs not adequately applying the relevant FATF Recommendations to their operations and client base is greater than that of the regulated environment. Additionally, TCSP practitioners, who have not been subjected to fit and proper testing, may be uneducated about the ML/FT risks and the known typologies for the misuse of corporate vehicles. As such, their operating policies and procedures may be deficient in this regard. Therefore, some of the vulnerabilities include:

- Unknown and/or inconsistent application of the FATF 40 + 9 Recommendations to client base, and in particular Recommendations 5, 6, 8 & 11;
- Little market restriction on practitioners – lack of fit and proper assessment to ensure practitioners have adequate skills, competence and integrity;
- Inconsistent record keeping across practitioners may hamper investigations that do arise;
- TCSPs operating in an unlicensed environment appear to be more susceptible to being misused by money launderers, which may be indicative of the need for appropriate training, as well as the review and/or implementation of robust procedures;
- TCSPs may also rely on other financial institutions to carry out CDD on clients, which have been sourced through related or unrelated financial institutions; and
- Limited dialogue between competent authorities and TCSPs as well as amongst TCSPs from varied backgrounds.

136. Within unregulated environments, nuances in legislation from jurisdiction to jurisdiction can serve to assist in the obscuring of beneficial ownership information. This will be further compounded by the use of unrestricted/mobile bearer shares⁷⁴ within the ownership structures of corporate vehicles thereby opening them up to misuse for ML/FT.

⁷⁴ It is acknowledged that aside from the use of bearer shares, concealing beneficial ownership is also possible with other forms of shares *e.g.*, where nominal shares are used and documents are falsified by a nominee.

137. **Vulnerabilities of Direct Incorporation / Central Registry** - the following vulnerabilities were identified:

- Registry may be under-resourced to perform supervisory functions in the absence of a regulated environment;
- Registry does not conduct CDD and EDD where applicable, or verify the accuracy and completeness of data; and.
- CDD information may become outdated and incorrect, which may also impede investigations where the need arises.

4.2 Other Findings

138. Some of the respondents to the questionnaire believe that proper regulation and/or supervision of TCSPs by jurisdictions according to the FATF standards related to regulation and supervision in Recommendation 23 would provide a better safeguard against money laundering risks.

139. There was insufficient information available from responses to the questionnaire, in relation to jurisdictions that operate a central registry system, on their capacity to verify beneficial ownership and other information, provided to the registry by TCSPs or other persons, on corporate structures established within the jurisdiction. Therefore it is difficult to determine the effectiveness of central registry systems.

140. The questionnaire also highlighted the varied positions amongst jurisdictions on who/what is a TCSP. Some jurisdictions went wider in scope than the FATF definition required, while others applied a more restrictive definition. Therefore, for broad analytical purposes, this could make it difficult to evaluate the application of the FATF Recommendations, whether by competent authorities, examiners or self regulating organisations, and the assessment of whether or otherwise there are appropriate measures in place.

4.3 Money Laundering Indicators

141. The following are money laundering indicators that can be gleaned from the responses to the questionnaire and the case studies provided:-

- Transactions that require the use of complex and opaque legal entities and arrangements;
- The payment of “consultancy fees” to shell companies established in foreign jurisdictions or jurisdictions known to have a market in the formation of numerous shell companies;
- The transfer of funds in the form of “loans” to individuals from trusts and non-bank shell companies. These non-traditional “loans” then facilitate a system of regular transfers to these corporate vehicles from the “borrowing” individuals in the form of “loan repayments”;
- Cases of corruption where the company paying the bribe to secure a contract or the person brokering a contract will seek to secure a successful outcome by utilising a TCSP to operate a trust with the funds held on deposit for the benefit of the person approving the contract;

- The use of TCSPs in jurisdictions that do not require TCSPs to capture, retain or submit to competent authorities information on the beneficial ownership of corporate structures formed by them;
- The use of legal persons and legal arrangements established in jurisdictions with weak or absent AML/CFT laws and/or poor record of supervision and monitoring of TCSPs;
- The use of legal persons or legal arrangements that operate in jurisdictions with secrecy laws;
- The use by prospective clients of nominee agreements to hide from the TCSP the beneficial ownership of client companies;
- The carrying out of multiple intercompany loan transactions and/or multijurisdictional wire transfers that have no apparent legal or commercial purpose;
- Clients who require the use of pre-constituted shell companies in jurisdictions that allow their use but do not require updating of ownership information; and
- TCSPs that market themselves and/or their jurisdictions as facilitating anonymity and disguised asset ownership.

CHAPTER 5: CONCLUSIONS

142. This section details significant conclusions arising from the responses to the questionnaire and the analysis of the cases presented.

143. TCSPs vary from jurisdiction to jurisdiction in the types of persons and entities that make up the sector; the definition and scope of services provided; as well as in the nature and effectiveness of regulation and supervision by the competent authorities. This variation in the industry on an international level poses difficulties for appropriately managing the AML/CFT risk that this sector faces, particularly since in many jurisdictions the services offered by TCSPs have an international component.

144. Although TCSPs may play marginally important roles in some larger jurisdictions, they do play a significant role in the economies of many smaller jurisdictions where the financial services industry is a key source of income. In these jurisdictions TCSPs are significant in that they introduce international business to the jurisdiction and facilitate a smoother journey into and through these business relationships.

145. The Questionnaire responses indicate that in jurisdictions that operate unregulated regimes for their TCSP sectors, there is inconsistent application of the FATF 40+9 requirements. Also, in the jurisdictions that do regulate, there are sometimes variations in the approach to regulation, as some jurisdictions fully regulate the entire sector while others do it on a partial basis.

146. For the most part, the information that TCSPs should be required to capture in accordance with the FATF Recommendations, appears to be adequate to assist in AML/CFT efforts. However, more guidance is necessary to clarify the meaning and scope of 'beneficial ownership'; and to specify the categories of persons on whom information is needed in relation to legal persons such as foundations or legal arrangements.

147. Although considerable work has already been done by the FATF to include TCSPs in the AML/CFT framework requirements, the current recommendations and guidance by the FATF need to more effectively address the risks associated with this sector and to comprehend the role of TCSPs in AML/CFT efforts. In this regard, the TCSP sector may benefit from the application of certain specific recommendations that already apply to the financial sector. For instance, the fit and proper requirements and the rules relating to branches and subsidiaries would be greatly beneficial to ensuring that jurisdictions are able to effectively combat money laundering and terrorist financing through this sector.

148. Given the disparity in the nature of the TCSP sectors and their supervision in various jurisdictions, many stakeholders in this industry support the development of sector-specific international standards for TCSPs, whether formulated through the FATF or through an international body established primarily to focus on this sector. Creating or implementing international standards for TCSPs will provide clarity to countries/jurisdictions and ultimately strengthen the application of the FATF Recommendations. The work of the OGBS in developing a Statement of Best Practices for this sector, although not having achieved the status of recognised international standard, is an important step in this direction. To promote consistency in the regulation of TCSPs internationally, most jurisdictions that operate fully licensed and regulated TCSP regimes recommend that such an international body should establish minimum standards for the regulation of TCSPs and should act as

a forum to encourage dialogue between regulators and to facilitate the establishment of new regulatory agencies in jurisdictions that currently do not regulate.

149. Supervision of TCSPs, whether on a prudential level or only for AML/CFT purposes, will be greatly enhanced with the implementation of supervisory requirements that oblige TCSPs, to establish separate legal identity from other companies within their corporate group; and require them to ensure that the mind and management of the TCSP is also separate and/or has appropriate degrees of autonomy and independence.

150. Additionally, supervision of TCSPs should of necessity include the implementation of ‘fit and proper’ requirements in relation to the mind and management of TCSPs. This will increase the likelihood of sound business management; adherence to regulatory requirements; and appropriate implementation of AML/CFT measures including more rigorous and discerning measures to vet clients. It should also decrease the likelihood of mindless conformity to improper policies/instructions laid down by parent companies or clients.

151. Although the responses to the questionnaire, the case studies and the literature review do not readily suggest that the TCSP sector lends itself to terrorist financing, it remains a serious risk given the fact that the methods used for money laundering and terrorist financing can be similar. In particular, there is a potential vulnerability in the use of opaque corporate structures and/or charities, combined with the transfer of value via TCSPs. In addition, the FATF Special Recommendations relating to terrorist financing are newer than those for money laundering, and thus further trends may become apparent as suspicious transaction reporting regimes mature.

CHAPTER 6: ISSUES FOR CONSIDERATION

152. This report has highlighted the vulnerabilities inherent in the TCSP sector and the policy considerations outlined below suggest that additional work may need to be done by the FATF and other stakeholders to address the issues raised there.

6.1 Policy Considerations

153. The findings show that TCSPs internationally play a central role in the formation and administration of trusts and corporations. When trust and corporate vehicles are misused for money laundering, there will almost always be a connection to a TCSP that was either knowingly or otherwise involved in the establishment or administration of the misused trust or corporate vehicle. Steps taken to require that those engaged in the provision of trust and corporate services meet appropriate fit and proper standards could reduce the money laundering risk. It may be useful therefore, to consider establishing minimum standards to restrict persons from operating as TCSPs unless they are properly qualified professionals; and having provisions that might permit monitoring of their activities and ensure their compliance with international standards. In the light of this, the project team has identified the following policy implications that flow from the analysis of the questionnaire responses and the case studies presented,

- i. The FATF may wish to consider whether any gaps exist in Recommendations 12, 16 and 24 as they apply to TCSPs,
- ii. The FATF may wish to consider whether the Recommendations relating to TCSPs should be applied according to the nature of the activities in which a TCSP is engaged.
- iii. Trust service providers hold and manage assets, and are engaged in financial transactions in respect of the trusts they form and/or administer. The FATF may wish to consider whether such providers should still be classified as DNFBPs.
- iv. While in some jurisdictions trust service providers are also corporate service providers, the research shows that several jurisdictions do distinguish between trust service providers and corporate service providers. Within the broad scope of the services that can be provided by corporate service providers, it may be beneficial to consider whether there should be a differentiation between:
 - a. Corporate Service Providers that provide management and administration services, particularly when they fulfil a fiduciary responsibility. It might be appropriate to consider making these CSPs subject to additional requirements above those specified in Recommendations 12 and 16; such as Recommendations 22 and 23. Recommendation 23 dealing with fitness and propriety may be especially important to safeguard this class of CSPs from being involved in, or misused for money laundering and other criminal purposes; and

- b. Corporate Service Providers that provide only basic incorporation services.⁷⁵ It might be appropriate to consider making this category of CSPs subject only to the minimum requirements currently in place for DNFBPs. However, it follows that jurisdictions might then need to have some means of determining whether this class of CSP goes outside this narrow scope of business; and of ensuring that, if they do begin to provide a wider range of services, the more rigorous controls are applied to them.
- v. Consideration could be given to imposing a requirement, specific to TCSPs, in respect of the establishment of policies and procedures relative to the segregation of clients' assets and liabilities from the assets and liabilities of the TCSP; as well as the safe custody of clients' assets. These policies and procedures may address at least a description of the control of and the full physical separation between the assets of every client, every third party and the TCSP.
- vi. Jurisdictions that elect to implement central registry systems should consider the inclusion of effective mechanisms to ensure that beneficial ownership information is kept up to date, and at the point of incorporation/registration, that appropriate CDD is carried out. It could also be important that the onus of these key and ongoing responsibilities be made clear to the responsible person(s); and that adequate and dissuasive sanctions be available and applied to persons who fail to carry out these requirements. However, if this enforcement function is carried out by the Registry itself rather than by another appropriate body, this would move the Registry's mandate more towards that of a supervisory authority, rather than the repository function of most central registries.
- vii. As part of the on-going FATF work to look at the AML/CFT standards, the FATF may wish to consider whether Intermediaries/TCSPs should be required to maintain within the jurisdiction current information on beneficial ownership/control pertaining to all legal persons and legal arrangements established or administered by them, except as allowed for under Recommendation 9. It follows that any requirement of this nature would need to be supported by compulsory or punitive measures available to competent authorities to ensure compliance.

6.2 Areas for Further Work

154. In addition to the policy considerations outlined above, the following describe other important areas for possible further research or deliberation.

- i. Assessing the national and international cooperation issues ensuring and/or enhancing access to and exchange of information on beneficial owners, was included as a key issue to be addressed within the scope of this report. However, there was insufficient information gathered to form the basis of any substantive analysis of this issue. Nevertheless, this is a matter on which the FATF is now focussing its attention.
- ii. A further definition of beneficial owner as it relates to legal entities, such as foundations, and legal arrangements such as trusts, may need to be contemplated. It is recognised that this is one of the issues that the FATF is currently examining through its work in reviewing Recommendations 5, 33 and 34.

⁷⁵ This is where no value-added services are provided over and above the incorporation service.

- iii. Consideration and appropriate research in determining the value of assets administered by and flowing through TCSPs (similar to the statistical data that is maintained for banks, mutual funds, and insurance brokers of the assets managed, premiums underwritten, etc.) may provide a basis upon which to review the level of risk and incentive for fraud, ML and TF being conducted through corporate vehicles.
- iv. It may be useful to evaluate the efficacy of extending FATF Recommendation 22, on branches and subsidiaries, to the TCSP sector.
- v. Consideration may be given to the development of further guidance in the FATF Methodology on legal professional privilege vis-à-vis the filing of SARs. A study by the FATF on the conflict between legal professional privilege in both common law and civil law jurisdictions may lend clarity to this area and facilitate the development of guidance in this area.
- vi. There is a need for a more detailed consideration on whether or not it may be useful to have an international body to provide oversight for the TCSP sector. If this is considered appropriate, then a determination of the scope of the remit of such a body would be necessary to bring uniformity to both the operation of the sector and the supervision of the sector for prudential and AML/CFT purposes.
- vii. Consideration could be given, under the anti-corruption framework, to the issue of the abuse of corporate vehicles and legal arrangements in concealing the proceeds of corruption. This is another area included within the current work agenda of the FATF.
- viii. The FATF has developed specific requirements regarding the administration of trust services and cooperation between competent authorities that are applicable to all jurisdictions including those countries that do not have any trust laws. It is therefore important that all jurisdictions, including those that do not have any trust laws, effectively implement these requirements. Consideration might be given to whether there is a need for the development of a mechanism to enable or require jurisdictions to determine whether trust services are in fact being provided by persons or entities within their jurisdiction.
- ix. Consideration should be given to what more needs to be done to enhance the effectiveness of company registers and other publicly available information sources such as the Stock Exchange. Consideration should be given to determining whether such bodies should be given additional responsibilities in relation to verification of the information provided to them. This is another area included in the current work of the FATF.
- x. Consideration should be given to determining whether there is any practical action that needs to be or can be taken to enhance the information that is publicly available in respect of legal arrangements. Again, this is an area included in the current work of the FATF.
- xi. Consideration should be given to determining whether guidance in other forms should be produced, for example, risk assessment checklists, to help the competent authorities focus their risk-based approaches in relation to the different types of misuse of legal persons and legal arrangements. In the interim, countries are encouraged to consider the guidance documents issued by the FATF in 2008

and 2009 on the risk-based approach for legal professionals;⁷⁶ accountants;⁷⁷ and TCSPs.⁷⁸ Additionally, it should be noted that the FATF is in the process of developing further guidance to assist jurisdictions in conducting national ML/TF assessments, which is expected to include additional guidance on national risk assessment of certain types of financial institutions or activities. It is also looking at this issue from the point of view of the risk-based approach.

⁷⁶ FATF (2008a)

⁷⁷ *FATF* (2008b)

⁷⁸ FATF (2008c)

REFERENCES

APG/FATF (2007), *Anti-Corruption/AML/CFT Research Paper*, September 2007 (prepared for the FATF/APG Project Group on Corruption and Money Laundering by Dr. David Chaikin and Dr. Jason Sharman (7 September 2007) presented to the FATF and APG plenaries in 2007 and 2008 respectively), www.apgml.org/issues/docs/17/APG-FATF_Report_on_Anti-Corruption_AML.pdf

BakerPlatt (2008), *Anti-Money Laundering/Countering the Financing of Terrorism: Typologies from a Jersey Perspective*, October 2008 (Report prepared on behalf of the Law Officers, Joint Financial Crimes Unit and the Jersey Financial Services Commission)
www.jerseyfsc.org/pdf/AMLCFT_Typologies_from_a_Jersey_Perspective_28_Oct_08.pdf

Basil Committee on Banking Supervision (2001), *Customer due diligence for banks*,
www.bis.org/publ/bcbs85.htm

FATF (2006), *The Misuse of Corporate Vehicles, including Trust and Company Service Providers*, FATF Paris, www.fatf-gafi.org/dataoecd/30/46/37627377.pdf

FATF (2008a), *RBA Guidance for Legal Professionals*, FATF, Paris,
www.fatf-gafi.org/dataoecd/5/58/41584211.pdf

FATF (2008b), *RBA Guidance for Accountants*, FATF, Paris,
www.fatf-gafi.org/dataoecd/19/40/41091859.pdf

FATF (2008c); FATF, *RBA Guidance for Trusts, Companies and Service Providers*, FATF, Paris
www.fatf-gafi.org/dataoecd/19/44/41092947.pdf

OECD (2001), *Behind the Corporate Veil – Using Corporate Entities for Illicit Purposes*, OECD, Paris, www.oecd.org/document/19/0,3343,en_2649_34795_43731027_1_1_1_1,00.html

OGBS (2002), *Trust and Company Service Providers – Statement of Best Practices*, 2002, Offshore Group on Banking Supervisors Trust and Company Service Providers Working Group,
www.ogbs.net/attachments/037_Trust%20and%20Company%20Service%20Providers%20-%20Statement%20of%20Best%20Practice%20.pdf

OGBS (2004), *Securing Effective Exchange of Information and Supervision in respect of Trust and Company Service Providers*, Offshore Group on Banking Supervisors Trust and Company Service Providers Working Group, www.ogbs.net/attachments/036_ogbstrustandcos.pdf

Permanent Subcommittee on Investigations of the Committee on Governmental Affairs – US Senate, “*Role of US Correspondent Banking in International Money Laundering*”, (Hearings March 1, 2, and 6) 2001 – [Containing: “*Correspondent Banking: A Gateway for Money Laundering – A Report by Minority Staff of the Permanent Subcommittee on Investigations*”, February 2001]
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_senate_hearings&docid=f:71166.pdf

Sharman, Dr. Jason C. (2008), *Shopping for Anonymous Shell Companies: An Audit Study of Anonymity and Crime in the International Financial System*, *Journal of Economic Perspectives*, 24(4): 127–40, www.aeaweb.org/articles.php?doi=10.1257/jep.24.4.127

The Egmont Group (2006), *FIU's in Action – 100 cases from the Egmont Group*,
www.egmontgroup.org/library/download/21

JURISDICTIONS THAT RESPONDED TO THE QUESTIONNAIRE

CFATF Members	FATF Members	Other Jurisdictions
<ul style="list-style-type: none"> • Anguilla • Bahamas • Bermuda • British Virgin Islands • Cayman Islands • Dominican Republic • Guatemala • Honduras • Netherlands Antilles** • St. Lucia • St. Vincent and the Grenadines • Turks and Caicos Islands • Venezuela 	<ul style="list-style-type: none"> • Austria • Australia • Belgium • Canada • China • Denmark • Hong Kong • Italy • Japan • Netherlands • Mexico • Switzerland • United Kingdom • United States of America 	<ul style="list-style-type: none"> • Bulgaria • Estonia • Guernsey • Jersey • Liechtenstein • Latvia • Macau • Nepal • Panama • Uruguay

ALPHABETICAL LISTING OF COUNTRY ABBREVIATIONS

AI	Anguilla	IM	Isle of Man
AN	Netherlands Antilles**	IT	Italy
AT	Austria	JE	Jersey
AU	Australia	JP	Japan
BE	Belgium	KY	Cayman Islands
BG	Bulgaria	LC	St. Lucia
BM	Bermuda	LI	Liechtenstein
BS	the Bahamas	LV	Latvia
CA	Canada	MO	Macau
CH	Switzerland	MX	Mexico
CN	China	NL	the Netherlands
DK	Denmark	NP	Nepal
DO	Dominican Republic	PA	Panama
EE	Estonia	TC	Turks and Caicos Islands
ES	Spain	US	United States of America
GB	United Kingdom	UY	Uruguay
GG	Guernsey	VE	Venezuela
GT	Guatemala	VC	St. Vincent and the Grenadines
HK	Hong Kong	VG	British Virgin Islands
HN	Honduras		

** As of October 10, 2010 the Netherlands Antilles (comprising of Curaçao, Bonaire, St. Martin, St. Eustatius and Saba) has been dismantled and has therefore ceased to exist. This entails that besides the Netherlands and Aruba, Curaçao and the Dutch part of St. Martin have now become autonomous countries within the Dutch Kingdom, while Bonaire, St Eustatius and Saba have been integrated into the Netherlands as special municipalities. All five islands remain non-sovereign by mutual consent.

ANNEX I - TABLES

Table 1 – Services Provided by TCSPs in Respondent Jurisdictions

Type	Yes	Estimated total based in jurisdiction		No Estimates Provided
Acting as a formation agent of legal persons;	15 Jurisdictions	64 Anguilla 221 Bahamas 56 Bermuda 127 British Virgin Islands 278 Cayman Islands	100 Guernsey 19 St. Lucia 41 Turks and Caicos 209 United Kingdom ^a 995 United Kingdom 5000 United States	Canada Jersey St. Vincent and Grenadines Switzerland
Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;	16 Jurisdictions	64 Anguilla 221 Bahamas 56 Bermuda 127 British Virgin Islands 160 Cayman Islands 140 Guernsey 170 Netherlands	146 Netherland Antilles 19 St. Lucia 41 Turks and Caicos 207 United Kingdom ^b 964 United Kingdom	Canada Jersey St. Vincent and Grenadines Switzerland United States
Providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangements;	16 Jurisdictions	64 Anguilla 221 Bahamas 56 Bermuda 127 British Virgin Islands 278 Cayman Islands 140 Guernsey 170 Netherlands	146 Netherland Antilles 19 St. Lucia 41 Turks and Caicos 483 United Kingdom ^c 1420 United Kingdom	Canada Jersey St. Vincent and Grenadines Switzerland United States
Acting as (or arranging for another person to act as) a trustee of an express trust;	16 Jurisdictions	16 Anguilla 31 Bermuda 212 British Virgin Islands 160 Cayman Islands 33 Guatemala 120 Guernsey	19 St. Lucia 17 Turks and Caicos 140 United Kingdom ^d 336 United Kingdom	Canada Honduras Jersey St. Vincent and Grenadines Switzerland

Type	Yes	Estimated total based in jurisdiction		No Estimates Provided
Acting as (or arranging for another person to act as) a nominee shareholder for another person.	16 Jurisdictions	35 Anguilla 221 Bahamas 127 British Virgin Islands 271 Cayman Islands 140 Guernsey 20 Netherlands	19 St. Lucia 17 Turks and Caicos 207 United Kingdom ^e 964 United Kingdom	Canada Jersey St. Vincent and Grenadines Switzerland United States Bermuda - unknown

Table notes:

- a. UK: 209 solely undertaking this (of acting as a formation agent of legal persons) activity as TCSP activity; 995 undertake this in addition to other activity
- b. UK: 207 solely undertaking this (of acting as (or arranging for another person to act as) a director or secretary of a *company*, a partner of a partnership, or a similar position in relation to other legal persons) as TCSP activity; 964 undertake this in addition to other activity
- c. UK: 483 solely undertaking this (of providing a registered office; business address or accommodation, correspondence or *administrative* address for a company, a partnership or any other legal person or arrangements) as TCSP activity; 1420 undertake this in addition to other activity
- d. UK: 140 solely undertaking this (of acting as (or arranging for another person to act as) a trustee of an express trust) as TCSP activity; 336 undertake this in addition to other activity
- e. UK: 207 solely undertaking this (of acting as (or arranging for another person to act as) a nominee shareholder for another person) as TCSP activity; 964 undertake this in addition to other activity

Table 2 – Jurisdictions requiring licensing for TCSPs

Questions 9 and 15 Table of Responses

Jurisdiction	TCSP required to be licensed	TCSP required to be registered	No. of TCSPs currently licensed	No. of TCSPs currently registered	Ongoing monitoring and supervision of TCSPs	Competent authority responsible for ongoing monitoring and supervision	Nature of ongoing monitoring and supervision
Anguilla	Yes	-	16	-	Yes	Anguilla Financial Services Commission	Prudential and AML/CFT <ul style="list-style-type: none"> • Onsite • Offsite • Review of annual submissions
Bahamas							
TSPs	Yes	-	283	-	Yes	Central Bank of the Bahamas	Prudential and AML/CFT
CSPs	Yes	-	211	-	Yes	Compliance Commission on behalf of the Inspector of Financial and Corporate Service Providers (FCSPs) (the Securities Commission)	AML/CFT <ul style="list-style-type: none"> • Onsite • Offsite • Training • Consultations
Bermuda							
TSPs	Yes	No	31	-	Yes	Bermuda Monetary Authority	Prudential and AML/CFT <ul style="list-style-type: none"> • Onsite • Offsite • Review of annual submissions
CSPs	No	No	N/a	N/a	No	N/a	N/a

Jurisdiction	TCSP required to be licensed	TCSP required to be registered	No. of TCSPs currently licensed	No. of TCSPs currently registered	Ongoing monitoring and supervision of TCSPs	Competent authority for ongoing monitoring and supervision	Nature of ongoing monitoring and supervision
British Virgin Islands	Yes	-	239	-	Yes	Financial Services Committee	Prudential and AML/CFT <ul style="list-style-type: none"> • Onsite • Offsite Review of half year prudential return and biennial risk based questionnaire
Canada							
TSPs	Yes (Trust Co's)	-	81	-	Yes	Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) ^a	Prudential and AML/CFT <ul style="list-style-type: none"> • Onsite • Offsite Review of compliance questionnaires
CSPs	No	N/a	N/a	N/a	Yes	Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) ^b	AML/CFT <ul style="list-style-type: none"> • Onsite • Offsite Review of compliance questionnaires
Cayman Islands	Yes	-	278	-	Yes	Cayman Islands Monetary Authority	Prudential and AML/CFT <ul style="list-style-type: none"> • Onsite • Offsite Review of audited financial statements

Jurisdiction	TCSP required to be licensed	TCSP required to be registered	No. of TCSPs currently licensed	No. of TCSPs currently registered	Ongoing monitoring and supervision of TCSPs	Competent authority for ongoing monitoring and supervision	Nature of ongoing monitoring and supervision
Guatemala*	Yes (financial institution – banks and financial companies - that serve as trustees)	-	33 (18 banks and 15 financial entities)	-	Yes	Superintendency of Banks (prudential supervision) Intendancy of Special Verification (AML/CFT supervision) Superintendency of Tax Administration (matters of tax control)	Prudential and AML/CFT
Guernsey	Yes	-	197	-	Yes	Guernsey Financial Services Commission	Prudential and AML/CFT <ul style="list-style-type: none"> • Onsite • Offsite Review of annual submissions
Honduras*	Yes (banks are the only entities able to act as 'trustees'. Banks require a license to operate)	-	17	-	Yes	National Banking and Insurance Commission	Prudential and AML/CFT <ul style="list-style-type: none"> • Onsite • Offsite
Jersey	Yes	-	182	-	Yes	Jersey Financial Services Commission	Prudential and AML/CFT <ul style="list-style-type: none"> • Onsite • Offsite Review of annual submissions

Jurisdiction	TCSP required to be licensed	TCSP required to be registered	No. of TCSPs currently licensed	No. of TCSPs currently registered	Ongoing monitoring and supervision of TCSPs	Competent authority for ongoing monitoring and supervision	Nature of ongoing monitoring and supervision
Netherlands	Yes (only TCSPs who carry on Corporate Service Business are recognised)	-	170	-	Yes	Dutch Central Bank (De Nederlandsche Bank)	AML/CFT <ul style="list-style-type: none"> • Onsite • Offsite
Netherlands Antilles	Yes	-	146	-	Yes	Central Bank of the Netherlands Antilles (Bank Van de Nederlandse Antillen)	Prudential and AML/CFT <ul style="list-style-type: none"> • Onsite • Offsite • Review of submissions
Panama*	Yes	-	-	-	Yes	Superintendency of Banks of Panama	Prudential and AML/CFT
St. Lucia	Yes	-	20	-	Yes	Financial Sector Supervision Unit	Prudential and AML/CFT <ul style="list-style-type: none"> • Onsite • Offsite Review of financial statements
St. Vincent and Grenadines	Yes	-	24	-	Yes	International Financial Services Authority	Prudential and AML/CFT <ul style="list-style-type: none"> • Onsite • Offsite Review of annual submissions

Jurisdiction	TCSP required to be licensed	TCSP required to be registered	No. of TCSPs currently licensed	No. of TCSPs currently registered	Ongoing monitoring and supervision of TCSPs	Competent authority for ongoing monitoring and supervision	Nature of ongoing monitoring and supervision
Switzerland	Yes	-	Not known	Not known	Yes	FINMA or a SRO (authorized and monitored by FINMA)	Prudential and AML/CFT <ul style="list-style-type: none"> • Onsite • Offsite • Audits
Turks and Caicos	Yes	-	58	-	Yes	Turks and Caicos Islands Financial Services Commission	Prudential and AML/CFT <ul style="list-style-type: none"> • Onsite • Offsite Review of statutorily required documents
United Kingdom	No	Yes	-	2197	Yes	HM Revenue and Customs (HMRC), Financial Services Authority or professional bodies (the relevant legal and accountancy bodies) named in Schedule 3 of Money Laundering Regulations 2007	AML/CFT only <ul style="list-style-type: none"> • Onsite • Offsite
United States TSPs ^c	Yes	-	-	-	-	National or Relevant competent authority for each State	Prudential and AML/CFT
CSPs	No	Yes-in two States ^d	-	1176 approx	Yes – in two States	Secretary of State for each State	Conduct of Business only <ul style="list-style-type: none"> • Onsite • Offsite Audits

Jurisdiction	TCSP required to be licensed	TCSP required to be registered	No. of TCSPs currently licensed	No. of TCSPs currently registered	Ongoing monitoring and supervision of TCSPs	Competent authority for ongoing monitoring and supervision	Nature of ongoing monitoring and supervision
Venezuela*	Yes	-	-	-	Yes	Inspection Management of Superintendency of Banks and Other Financial Institutions	Prudential and AML/CFT Submission of required documents

Table notes:

- * These jurisdictions indicate that only banks or financial institutions are permitted to provide trust services within the jurisdiction. Therefore these financial institutions are licensed under general banking laws and not specifically under separate trust legislation.
- a. Trust Companies are regulated at both the federal and provincial level. Market conduct is regulated by the provinces, and federally incorporated trust and loan companies are regulated by the Office of the Superintendent of Financial Institutions (OSFI). FINTRAC conducts onsite compliance inspections for TCSPs. OSFI also conducts onsite inspections, as the primary regulator for trust companies, and shares with FINTRAC information related to AML/CFT compliance.
- b. FINTRAC conducts AML/CFT ongoing monitoring and supervision for all reporting entities in Canada, including persons or business carrying out CSP functions.
- c. Due to the definition of TCSP used in this report and the fact that in the US, trust companies are defined as 'financial institutions' the responses provided by the US do not generally address trust companies. Trust companies, which are licensed to provide a range of fiduciary services, are chartered at either the national or State level, and are included in the definition of "bank" for AML/CFT purposes and are generally subject to the same regulations.
- d. Two States, Delaware and Wyoming, require company service providers having a minimum number of customers to register with the Secretary of State in their capacity as commercial registered agents. In addition, nine other states have adopted the Model Registered Agents Act, (MORAA) which provides incentives that encourage commercial agents to register with the State Filing Office / Secretary of State.

Table 3 – SARs filed by TCSPs

- Number of SARs filed for each year between 2006-2009
- Percentage of SARs filed by TCSPs for each year between 2006-2009 in relation to the total number of SARs filed for the said period.

Jurisdiction	Year									
	2009		2008		2007		2006		2006 - 2009	
	No. of SARs filed	% of total no. of 2009 SARs filed by TCSPs	No. of SARs filed	% of total no. of 2008 SARs filed by TCSPs	No. of SARs filed	% of total no. of 2007 SARs filed by TCSPs	No. of SARs filed	% of total no. of 2006 SARs filed by TCSPs	No. of SARs filed	% of total no. of SARs 2006-2009 filed by TCSPs
Anguilla	6	8%	5	17%	1	17%	1	14%	13	14%
Bermuda	651 (10 filed by TCSPs)	1.5%	256 (27 filed by TCSPs)	10.5%	246 (34 filed by TCSPs)	13.8%	314 (26 filed by TCSPs)	8.2%	1385 (97 filed by TCSPs)	7%
British Virgin Islands	185	71.4%	153	71.9%	104	82.7%	102	84.3%	544	75.7%
Cayman Islands	58	18.1%	49	19.8%	44	20.1%	45	20.4%	196	19.5%
Guernsey	151	24%	112	22%	109	14%	87	16%	459	19%
Jersey	1854 (368 filed by TCSPs)	20%	1404 (328 filed by TCSPs)	23%	1517 (362 filed by TCSPs)	24%	1034 (216 filed by TCSPs)	21%	5809 (1274 filed by TCSPs)	22%
Honduras	506	0%	192	0%	121	0%	94	0%	913	0%
Hong Kong ^a	19 filed by TCSPs		16 filed by TCSPs		9 filed by TCSPs		11 filed by TCSPs		55 filed by TCSPs	
Mexico	52,958	0.14%	36,934	0.2%	38,400	0.2%	56,659	0.2%	184,951	0.2%
Netherlands	N/a	N/a	0	<0.01%	4	<0.01%	1	<0.01%	5	<0.01%
No. of Unusual Suspicious Transaction	N/a	N/a	4		3		5		12	

Jurisdiction	Year									
	2009		2008		2007		2006		2006 - 2009	
	No. of SARs filed	% of total no. of 2009 SARs filed by TCSPs	No. of SARs filed	% of total no. of 2008 SARs filed by TCSPs	No. of SARs filed	% of total no. of 2007 SARs filed by TCSPs	No. of SARs filed	% of total no. of 2006 SARs filed by TCSPs	No. of SARs filed	% of total no. of SARs 2006-2009 filed by TCSPs
Reports ^c										
Netherlands Antilles	55	0.28%	166	0.74%	46	0.29%	5	0.04%	272	-
Switzerland ^d	47	5.2%	47	5.5%	30	3.8%	46	7.5%	170	5.5%
Turks and Caicos	46 (16 filed by TCSPs)	34.8%	37 (23 filed by TCSPs)	61.2%	34 (12 filed by TCSPs)	35.3%	22 (4 filed by TCSPs)	18.2%	139	-
Venezuela	1	0.2%	1	0.08%	1	0.08%	2	0.07%	5	0.1%

Table notes:

- No aggregate figures were provided by Hong Kong for SARs filed by all sectors for the relevant period.
- Unusual Suspicious Transactions Reports: STR's in the Netherlands are different from STR's in other countries. Unusual financial transactions are first investigated by the FIU and then upgraded to Suspicious Transactions Reports (STRs).
- No aggregated statistics exist for SAR covering all categories of financial intermediaries which provide TCS (legal professionals, fiduciaries and banks). In addition, it is not known what proportion of SAR attributed to lawyers/fiduciaries result exclusively from TCS activities as defined by the FATF. Having considered these limitations, the figures are the aggregated figures for the number of SARs attributed to the fiduciaries and legal professionals.

ANNEX II – ADDITIONAL CASES

Case A: Weak regulatory AML/CFT regime and bank secrecy laws

Banks A and B were offshore banks licensed and operating in a small island State. Bank A was part of a group of companies which also consisted of a trust company providing corporate management services. Bank B was owned by two International Business Corporations which in turn were owned by two individuals in the United States. Bank B was created on their behalf by the trust company for the sole purpose of facilitating the receipt of the proceeds from an 'advance fee-for-loan' fraud operated by the ultimate beneficial owners of Bank B. Bank B had a correspondent banking relationship with Bank A and relied on Bank A's correspondent banking relationships in the United States and elsewhere to facilitate the receipt of the fraud proceeds. Bank B was managed by a corporate service provider which was owned and operated by one of the senior officers in Bank A, and this service provider also managed Bank A's correspondent banking accounts, established IBCs and opened accounts for Bank A's clients as well as for the potential victims of the 'advance fee-for-loan' fraud. These victims were required to establish IBCs in that jurisdiction and to open bank accounts at Bank A to which the fraud proceeds would be sent. Bank A on the instructions of the victims' IBCs would then transfer those funds into Bank B's account. From there the funds were transferred into the IBC accounts of Bank B's owners. This entire scheme therefore took place within the Banking system of this Caribbean jurisdiction, which being subject to bank secrecy laws meant that the fraudster's activities were protected from disclosure to US or local authorities. In the approximately three years over which Bank B was in existence, the Bank was never subjected to any form of regulatory oversight by the competent authorities of the island State. Even though Bank A had a longer history of operation and was implicated in a vaster array of questionable activities and schemes, it too escaped scrutiny by banking regulators because during the entire period of its existence the jurisdiction in question had no policy of examinations for licensed offshore banks. During the relevant period only a nominal requirement was in place for the submission of audited financial statements, but the authorities were lax in policing even this minimal obligation. The fraudsters therefore targeted this jurisdiction as a likely receptacle for the funnelling of illicit proceeds and the pivotal point for commencing the laundering of those proceeds.

Source: Extrapolated from: Minority Staff of the Permanent Subcommittee on Investigations (US Senate)

Case B: Weak regulatory AML regime and unrestricted use of bearer shares

To launder the proceeds of a narcotics importing operation, a lawyer who worked on behalf of the organisation, established a web of offshore corporate entities. These entities were incorporated in Country C, where scrutiny of ownership, records, and finances was not strong and where bearer shares were permitted to be used indiscriminately. A local management company in Country D administered these companies, which were used to camouflage the movement of illicit funds, acquisition of assets, and financing criminal activities on behalf of the criminal organisation. The person at the helm of the narcotics importing organisation was the holder of 100% of the bearer share capital of these offshore entities.

*Source: extracted from website of Jersey Financial Services Commission**

* Found on the Jersey FSC website in "Anti-Money Laundering/Countering the Financing of Terrorism Typologies from a Jersey perspective" published on October 28, 2008 and produced by BakerPlatt on behalf of the Law Officers, Joint Financial Crimes Unit and the Jersey Financial Services Commission. The purpose of the publication was to raise awareness of typologies that are relevant to Jersey including the risks arising from the nature of the customer base and products associated with Jersey as an international finance centre. Both local and international cases were used. The cases included within this report with the annotation "Extracted from website of Jersey Financial Services Commission" are the international cases referenced in the October 2008 publication. The origins of the international cases within the publication are not noted therein.

Case C: Concealment of beneficial ownership through the use of shell companies

THE WHITE WHALE CASE – H, an employee of a lawyer's office, was the administrator for 300 companies established through the law office on behalf of its clients, many of whom were known to be involved in international criminal organisations. The majority of the companies were shell corporations established in an

American State, though some companies were incorporated in Spain for the purpose of being used in money laundering schemes based on the real estate market. The Spanish companies were usually owned by the shell corporations registered in the American State and these pre-constituted companies, would have been incorporated using the name of an agent, usually a lawyer. The documents of incorporation for such companies would remain inactive in the hands of the agent until the company was bought by a client, and at the moment of purchase the company would become effective. The board of these pre-constituted companies when first registered would comprise the agent and his associates, who would usually have no link with the real owners who subsequently purchased the shell company.

Source: extracted from 2006 FATF Typology Study – Submitted by Spain

Case D: CSP's role in trade based ML and the concealment of beneficial ownership through use of shell companies

In 2003, ICE received a foreign law enforcement request for information about two U.S. companies which were registered in Wyoming. The foreign law enforcement agency suspected that several shipments of canned seafood, allegedly shipped from the U.S. companies, had been imported into their country, and undervalued in order to evade their taxes and duties.

In response to this request, the ICE was asked to determine if the companies existed, and to obtain as much information as possible regarding their corporate officers, business locations, business activities, and corporate registrations documents.

Subsequent investigation by ICE revealed that both companies were "shell" companies, legally incorporated in the State of Wyoming. The addresses provided by both of the suspect companies on their import documents into the requesting foreign country provided only the address of the Wyoming incorporating agent. The Articles of Incorporation for the suspect U.S. companies were obtained and listed that it was managed by a foreign firm with an address on an island in the Far East. The Articles of Incorporation for the foreign firm had been signed by the Wyoming incorporation agent. The investigation located no records for any additional business addresses, phone listings, or officers located in the United States.

Because there is no requirement for the identification of beneficial ownership at the time of incorporation, the ICE investigation was unable to obtain the information that the foreign government had requested.

Source: submitted by the USA

Case E: Concealment of beneficial ownership through use of shell companies

ICE investigated a criminal organisation where the violators utilized shell corporations to defraud a foreign government out of more than \$100,000,000. The foreign and domestic shell companies enabled them to engage in a "bid-rigging" scheme and then launder the fraudulently obtained proceeds. In this bid-rigging fraud scheme, the co-conspirators bribed members of the foreign government's new airport bid committee, in order to win a competitive construction bid. The U.S. targets of the investigation operated a construction company and architectural firm, which submitted a competitive bid for work in the construction of the airport. A Government Assessor in the victim foreign country believed the bid was too high and requested that the bid committee obtain a second bid. As a result, the targets of the investigation utilized a shell company to submit a second, much higher valued bid for the work. As a result of this much higher second bid, the contract was awarded to the targets of the investigation.

Once they had been paid by the foreign government, the organisation laundered the proceeds of the fraud by layering them through a series of shell companies in several countries, including the United States. It was only through handwritten notes kept by foreign bankers that ICE investigators were able to identify the true beneficiaries of the funds. Six of eight indicted individuals were found guilty of violating money laundering, and wire fraud statutes. As part of the sentence, the court ordered the payment of approximately \$22 million in restitution.

Source: submitted by the USA

Case F: Criminal culpability of TCSPs as facilitator of ML

X was a chartered accountant and the sole principal of a financial services business trading as X & Co. He acquired companies, provided directors, formed trusts and acted as trustee. He was signatory to hundreds of bank accounts. X used these facilities as a tool kit to help foreign clients to cheat their fiscal authorities and

launder the proceeds of crime. The common theme was that he was willing deal with the assets of clients according to their instruction.

X laundered money in a variety of ways. He extracted money from foreign trading companies using false invoices drafted at the behest of clients, holding the sums received anonymously for his clients. He layered millions of pounds through his pooled accounts. He obtained and delivered cash from and to his clients. He lied about the beneficial ownership and purpose of his companies and the origin of property to the Jersey authorities and others.

A key aspect of his business was his trade in bank notes. He obtained cash from clients who wanted to get rid of it, crediting bank accounts held for them with equivalent sums sourced from different money in return. The actual cash was then delivered to other clients who wanted their income secretly returned to them in this fashion – bank notes which he personally delivered to them in the Country A. These dealings were hidden by the operation of a spider's web of bank accounts.

The result of these activities was that it was impossible to ascertain the origin and ownership of property without access to the records of X & Co. Even then the tracing exercise was extremely difficult, requiring years of analysis by investigative lawyers, police, and forensic accountants to unravel.

*Source: extracted from website of Jersey Financial Services Commission**

* See note * of Case B, above.

Case G: Concealment of beneficial ownership through use of shell companies

The White Whale Case

In the money laundering scheme involved in this case, ultimate beneficial ownership was obscured through the use of pre-constituted shell companies, which had been incorporated using the name of an agent, usually a lawyer. The documents of incorporation for such companies would remain inactive in the hands of the agent until the company was bought by a client, and at the moment of purchase the company would become effective. The board of these pre-constituted companies when first registered would comprise the agent and his associates, who would usually have no link with the real owners who subsequently purchased the shell company. The immediate benefit of this to the new owners of such companies was that their involvement in the companies remained hidden. (See Case No. 11 in the report for fuller details)

Case H: Use of professional intermediaries to facilitate money laundering

There are various examples in the UK of gatekeepers (for example Solicitors, Accountants and Notaries, among others) being involved in setting up Trusts for criminals to launder funds. In one example, a drug dealer deposited the proceeds of his crime into an offshore Trust for laundering purposes and then used funds from the Trust to buy property and also take a loan (one of the powers of a Trust is the facility for it to provide a loan). The use of a Trust in this manner demonstrates a way in which funds can be disassociated from criminality. Investigation of this case suggested that a Solicitor was involved in the laundering process and his expertise used to administer the Trust.

Source: submitted by the United Kingdom

Case I: Use of professional intermediary to facilitate money laundering

Mr. A was in control of a corporation's financial affairs and abused this position of trust by defrauding the company. He authorised and instructed staff to make electronic funds transfers from the company to his bookmakers' accounts. He then instructed the bookmakers to direct excess funds and winnings from the account to his personal account or that of third parties. He also instructed bank officers to transfer funds from his accounts internationally. In order to layer and disguise the fraud, Mr. A instructed his lawyer to contact the beneficiary of these international transfers to return the payments via wire transfers into the lawyer's trust account. Approximately \$340,000.00 was returned in one international transfer to the lawyer's trust account. The lawyer then transferred \$270,000.00 to a church fund in an attempt to further hide the assets and was preparing to transfer the funds to an overseas account. To access these funds, Mr. A undertook structured withdrawals of \$7,400.00 each within a nine day period.

Source: extracted from Egmont Case Studies

Case J: Professional intermediary marketing and providing services as ML facilitator

Mr. C was an accountant who started his own accounting and financial services business, company N, in Panama. He advertised his services primarily on the internet and through mass mailings. Company N provided a variety of services including the following:

- Formation of offshore entities to disguise ownership of assets;
- Passports and dual citizenship, mostly using new nominee names;
- Movement of cash and other assets offshore and back onshore using various methods;
- Issuance of debit cards for the purpose of anonymously repatriating and spending offshore funds;
- Use of correspondent bank accounts to skim profits off legitimate businesses and repatriate funds through the purchase of assets and use of debit cards;
- Anonymous trading of securities through accounts with two major brokerage houses;
- False invoicing/re-invoicing schemes to support fraudulent deductions on tax returns; and
- False investments losses, to disguise transfer of funds overseas.

Mr. C was identified pursuant to an Internal Revenue Service investigation of one of his clients for illegal importation and sale of goods. The targets of this investigation were using a re-invoicing scheme devised by Mr. C to illegally import these chemicals into the US for sale. Mr. C assisted the targets in the re-invoicing scheme by preparing the invoices, receiving the proceeds of the scheme and hiding the proceeds in a myriad of Panamanian corporations for later use by the targets.

Source: extracted from 2006 FATF Typology Study – Submitted by the USA

Case K: Use of professional intermediaries to facilitate money laundering

Bank Y-Trust reported that Mr. John Doe, Attorney-at-Law, contacted them requesting information to open a trust account for his client and was subsequently provided with the necessary information. Bank Y-Trust further reported that John Doe and his client, Mr. Z, visited the office of Bank Y-Trust and presented documents which aroused suspicion because the amount stated to commence the relationship was USD \$20 billion. Bank Y-Trust was told that this amount was to be placed into two company accounts, namely 'Night' and 'Day'. Also, the funds were purported to be lodged in cheques at a Bank in a foreign country. Mr. Z indicated that his business partner was Mr. AA. Mr. Z promised to complete and return the due diligence documentation to Bank Y-Trust, which never materialised. Research conducted by Bank Y-Trust, via the internet, revealed that the Central Bank in a foreign country had advised of the counterfeiting of government bonds for and in the name of Mr. AA. The matter was reported to the FIU for analysis, which subsequently forwarded the matter to law enforcement authorities for further investigation.

Source: submitted by the Bahamas

Case L: Detection by TCSP of international boiler room scam

This case is concerned with Subjects A and B who tried to incorporate several International Business Companies in Anguilla at a local TCSP, Company Z via a St. Maarten based TCSP, Company Y. During the KYC process for Company Z, they realized that subjects A and B may have submitted a fraudulent document, namely a reference letter. This was reported to the authorities and further analysis and investigation revealed that subject A and B were owners of several companies which were being used to facilitate an international Boiler Room scam. Most of the victims of this scam were foreign based nationals. Intelligence was supplied to various jurisdictions and investigations have commenced in several. Thus far one Mutual Legal Assistance Letter has been received and the process has already been completed. Thus there will be some form of prosecution as it relates to Company Y which is based in another island jurisdiction as it relates to the matter. A Memorandum of Understanding has also been signed between the cooperating FIUs and any forfeiture made will be shared on a fifty-fifty (50/50) basis.

Source: submitted by Anguilla

Case M: Detection of illegal activities through FIU reporting

Company A was managed by Mr. OXO while company B was managed by Mr. RYA. Company A sold a property to Company B for a significant amount of money, the deposit for which and a large portion of the remaining price was paid in cash and the rest by cheque. The Notary who executed the transaction noticed these unusual large cash payments and made a disclosure to the FIU based on Article 10bis of Belgium's anti-money laundering law. Analysis revealed that:

- The notary deed showed that money for the cheque that was paid to the Notary was put on the account of company A by a cash deposit two days prior to the issue of the cheque.
- Information from the bank showed that company A's account as well as Mr. OXO's personal account were credited by substantial cash deposits, which, among other things, were used for reimbursing a mortgage loan and for cash withdrawals.
- Police sources revealed that both Messrs. OXO and RYA were subjects of a judicial inquiry into money laundering with regard to trafficking in narcotics. They were suspected of having invested their money for purchasing several properties in Belgium through their companies.

These factors together showed that the cash used for purchasing the property probably originated from trafficking in narcotics for which they were on record.

Source: submitted by Belgium

Case N: Investigation of suspicious activities and reporting to FIU

'ABC' was a company established for the provision of accounting, fiduciary and bank signatory services to others. In a regular review of its customers, 'ABC' found the bank accounts of two of its customers, who were the beneficial owners of a number of connected companies, having frequent large-amount deposits and transfers. Open source research was conducted by the TCSP that unveiled that the clients might be related to money laundering activities in three overseas jurisdictions. A report was subsequently filed with the Joint Financial Intelligence Unit and the matter was pursued both in Hong Kong and the concerned overseas jurisdictions.

Source: submitted by Hong Kong

Case O: Reporting of suspicious activities to the FIU and international cooperation between FIUs

Two individuals, A and B, visited a country in Europe where they used a company formation agent to establish a registered company to receive profits from their ownership of 300 fairgrounds sites around the world. The Agent, who also provided a company and account management service, was suspicious of the underlying story and made a disclosure to the national FIU. Huge sums of money were received into the account in a brief period and A and B gave instructions to the Agent for a large sum to be invested in a Unit trust. The account continued to receive large US transfers over 2 years and a large amount was transferred into the account of a Mrs. X., who had earlier that year visited the formation agent with an introduction from A and B.

Mrs. X's story was that she would be receiving this money for a large amount of soya beans which she would be supplying to A and B's fairgrounds and as such needed the agent's help to set up an account to receive these funds. The agent assisted her and then made a further disclosure to the FIU detailing the full transaction. When the large transfer to Mrs. X's account was made, a further disclosure to the FIU was again submitted by the agent.

As a result, the FIU's enquiries to their home country revealed that A and B were convicted drug traffickers and that Mrs. X was the wife of another convicted drug trafficker. Mrs. X later requested the Agent to transfer a huge sum to her personal account in her home country. When notified of this development by the Agent, law enforcement agents in both countries agreed that the transaction should be done to gain further intelligence. However when the money arrived in her account, the Customs agency in Mrs. X's country restrained the funds. These funds were ultimately confiscated after a judicial determination was made that they were drug proceeds. Efforts by Mrs. X to liquidate her remaining funds held by the Agent was also notified to law enforcement and prevented from taking place.

Source: extracted from Egmont Case Studies

Case P: Detection of fraud scheme and international cooperation

Bermuda Police received two suspicious activity reports, one from a bank and the other from a Corporate Service Provider, both in relation to a Country A individual, who was attempting to urgently establish a local business and open bank accounts. Unhappy with the results of due diligence, both the bank and the service provider simultaneously made the reports, indicating that the individual was trying to wire in excess of \$1,000,000 into accounts in Bermuda the following day. Upon investigating, Bermuda Police discovered that fraudulent documents had been used to open the accounts and to start the business and therefore quickly arrested the individual. Search warrants conducted the following day in the individual's hotel room revealed evidence of serious fraud, which had been perpetrated in Country A and Country B; as well as documents that showed the route through Countries A, B and C of the laundered proceeds of that fraud. The end result was that the individual was charged and convicted in Bermuda for minor fraud offences and was repatriated to Country A to face criminal charges. The Bermuda Police provided significant evidence for the ensuing market manipulation trials in Country A that saw two persons convicted on numerous counts for a multi-million stock market dollar fraud scheme. They also provided significant evidence relating to the assets of the main perpetrators for later recovery.

Source: submitted by Bermuda

ANNEX III – QUESTIONNAIRE

LONG FORM QUESTIONNAIRE

FATF / CFATF TYPLOGIES PROJECT ON MONEY LAUNDERING AND FINANCING OF TERRORISM USING TRUST AND COMPANY SERVICE PROVIDERS (TCSP)

Dear Colleague

We are writing to seek your assistance in obtaining information for a typologies project on money laundering and financing of terrorism using trust and company service providers (TCSP; see note 1). As you are aware, this and related matters have been the subject of many discussions and debates at the highest levels in our countries and many jurisdictions are currently grappling with how best to address the challenges being faced in this regard.

This questionnaire has been compiled by a Working Group of FATF and CFATF members and the information will be used to create greater awareness and understanding of this important area and potentially assist in policy formulation regarding money laundering and terrorist financing issues that relate to TCSPs⁷⁹. It is intended that a report on Money Laundering and Financing of Terrorism using Trust and Company Service Providers will be completed by the end of 2010.

Please complete all of the following questions as comprehensively as possible. However with regard to information on legislation, a summary of the relevant provisions and/or copies of appropriate sections is acceptable. In order to assist us in meeting key external deadlines we would urgently request that the information be provided to us on or before January 15, 2010.

Industry Feedback on the questions posed in Part G may also be solicited but we would request that such feedback be specifically identified.

Confidentiality: Please be assured that your submissions will remain confidential as the following conditions will be strictly adhered to:

- a) The completed questionnaires will not be published; and
- b) Jurisdiction specific information will only be included in the report if the permission of the relevant person in the jurisdiction is first obtained.

We certainly appreciate your contribution to this important work.

⁷⁹ Please note that this is a typologies research project and not a standard setting project.

Part A: BACKGROUND INFORMATION

1. Jurisdiction

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2. Contact Name and title (please give two names, if the first contact is regularly away from the office for long periods of time)

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3. Contact details

E-mail address	
Telephone Number	
Fax Number	

Part B: DESCRIPTION OF TCSPs

4. Please provide the definition, if any, of TCSPs provided for under the legislation of your jurisdiction.

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5. What is the estimated total number of TCSPs in your jurisdiction?

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6. i) Of the total number of TCSPs in your jurisdiction, please indicate which of the following types of TCSPs are present. Please also rank each type of TCSP in terms of which is the most and least common type of TCSP present in your jurisdiction (with 1 being the most common and 6 being the least common).

	Type of TCSP	Present (Yes/No)	Rank (1 = most common 6 = least common)
1	TCSP which carries on Trust business only		
2	TCSP which carries on Corporate Services Business ⁸⁰ only		

⁸⁰ Company Management Business

3	TCSP which carries on both Trust and Corporate Services Business		
4	TCSP businesses which are licensed as a financial institution (other than as a TCSP) or are subsidiaries or branches of financial institutions licensed either locally or in another jurisdiction (E.g. TCSP owned or controlled by banks, attorneys, investment, fund manager or insurance companies)		
5	TCSP businesses which are banks, subsidiaries or branches of TCSP businesses based in another jurisdiction (E.g. Country X TCSP which is a subsidiary of Country Y fiduciary)		
6	Other (please specify)		

ii) Which of the following TCSP services are conducted in your jurisdiction? Where applicable, please state the corresponding legislation (if any) and the estimated number of such TCSP services in the jurisdiction.

Type	Yes/ No	Name of Applicable Legislation	Estimated total based in jurisdiction
Acting as a formation agent of legal persons;			
Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;			
Providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangements;			
Acting as (or arranging for another person to act as) a trustee of an express trust;			
Acting as (or arranging for another person to act as) a nominee shareholder for another person.			

- iii) What restrictions, if any, apply in your jurisdiction on persons carrying on TCSP business? Please provide further information.

Who can act in capacity of: (Yes/No)	Corporations	Accountants	Lawyers	Others (please specify)
TCSP: incorporating a company				
TCSP: providing company administration/corporate services business				
TCSP: acting as a Trustee				
TCSP: providing trust administration services/trust business				

7. i) Is it a requirement in your jurisdiction that a TCSP be used to incorporate a company or can a company be incorporated through direct central registration? Please provide information on the incorporation process.

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- ii) Please estimate the approximate proportion of legal persons (see note 2) formed in your jurisdiction by non-residents in relation to residents (the terms ‘resident’ and ‘non-resident’ as defined in your jurisdiction).

Is the answer to 7(i) above different for residents and non-residents?

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PART C: OVERSIGHT OF TCSPs

Legislation

8. i) Are TCSPs subject to any AML/CFT legislation, or any other related legislation, in your jurisdiction?

If TCSPs are subject to any such legislation, including AML/CFT legislation, please provide information on this legislation. For example, the title of the legislation, the year it came into force and the relevant provisions of the legislation.

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- ii) Please provide information on the procedure and requirements that TCSPs must comply with pursuant to the relevant provisions of the legislation, including the AML/CFT legislation, in your jurisdiction.

--

iii) In your view are the activities of TCSPs effectively controlled by the application of AML legislation alone or should they be subject to ongoing regulatory /supervisory measures?

--

iv) Is there a Self Regulatory Organization involved in the oversight of TCSPs for the purposes of a) AML/CFT compliance or b) Prudential Supervision. If Yes have there been any difficulties with respect to the SRO exercising adequate oversight, monitoring and enforcement?

--

9. i) Are TCSPs required to be licensed/authorized (as part of a prudential or regulatory regime) in your jurisdiction? If so, how many are currently registered and how many of those registered are active? Please note that this question does not refer to the license that individual lawyers obtain from their respective Bar or Regulatory agency in order to practice.

TCSP License/Registration required?	Total currently registered	Total registrants active

ii) If TCSPs are required to be licensed/authorized please provide information on the relevant legislation.

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iii) If TCSPs are required to be licensed/authorized please provide information on the licensing/authorization procedure and requirements.

--

10. What other risk mitigation measures are in place in your jurisdiction to limit the misuse of TCSPs?

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11. i) Are trusts required to be registered in your jurisdiction? If so, how many are currently registered and how many of those registered are active?

Trusts License/Registration required?	Total currently registered	Total registrants active

ii) If trusts are required to be registered please provide the year in which this registration requirement commenced.

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iii) If trusts are required to be registered in your jurisdiction, please provide details on the registration requirements.

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12. If TCSPs in your jurisdiction are subject to AML/CFT legislation and/or are required to be licensed/authorized what has been the impact, if any, on the operation of TCSPs since these requirements were brought into force.

For example:

- Did the number of TCSPs operating increase or decrease or was there a change in the types of TCSPs operating?
- Have there been any cost and/or efficiency implications for TCSPs?
- Has there been any impact on the efficiency of TCSPs in combating money laundering and terrorist financing? For example:
 - a. The number or significance of ML/FT investigations initiated as a result of unsolicited reports from TCSP.
 - b. Opinion of law enforcement/prosecution authorities on the information and cooperation received from TCSP during an investigation.
 - c. Evidence of criminals being discouraged from using TCSP
- Has there been any increase or decrease in the number of clients using TCSPs?

13. Are TCSPs subject to “fit and proper” requirements (see note 3) in your jurisdiction? If yes, please describe these requirements.

14. Are there any proposed amendments to the legislation affecting TCSPs in your jurisdiction? If yes, please provide further information on these proposed amendments and any ML/FT vulnerabilities that the amendments seek to reduce.

Ongoing Monitoring and Supervision

15. i) Are TCSPs subject to ongoing monitoring and supervision in your jurisdiction? If yes, please provide the name of the monitoring authority responsible for this monitoring and supervision.

- ii) Please provide further details on the nature and requirements of the ongoing monitoring and supervision.

16. i) Are onsite inspections carried out in relation to TCSPs in your jurisdiction? If yes, please provide the name of the authority responsible for conducting the inspections.

- ii) Please provide further details on the nature and requirements of the onsite inspections.

17. If the answer to question 16 (i) above is yes, how many onsite inspections have been carried out between 2006 - 2009?

Year	Number of onsite inspections	Percentage of providers inspected	Percentage of market-share inspected (in terms of number of companies/trusts covered or otherwise)
2009			
2008			
2007			
2006			

Penalties

18. i) Can any penalties and regulatory or other enforcement action be taken against TCPSs in your jurisdiction? If yes, please provide information on the circumstance that would result in any such penalties and regulatory or other enforcement action.

--

ii) If the answer to question 18 (i) above is yes, please indicate whether the following type of penalties are available:

Penalties	Yes or No	Any additional comments (including enforcement authority)
Criminal		
Civil		
Administrative (penalties and fines)		
Others (please specify)		

PART D: INFORMATION REQUIREMENTS FOR TCSPs

Beneficial Ownership

Company and Trust Formation

19. i) Is disclosure of beneficial ownership (see note 4) information required at the time of all company formations in your jurisdiction?

ii) Is disclosure of information on the settlors and beneficiaries (see note 5) of trusts required at the time of all trust formations in your jurisdiction?

iii) If yes, is ‘beneficial ownership’, ‘settlors’ and ‘beneficiaries’ defined in the relevant legislation? Please list the relevant legislation that a) defines beneficial ownership, settlors and beneficiaries, and b) requires the identification and collection of beneficial ownership information and information on settlors and beneficiaries.

--

iv) If disclosure of beneficial information and information on the settlors and beneficiaries is required at the time of company and trust formation, what (if any) are the requirements for providing the competent authorities with any changes to this information after formation?

--

General Requirements under AML Legislation

v) Are TCSPs required by AML legislation in your jurisdiction to request beneficial ownership information and information on the settlors and beneficiaries of trusts?

--

vi) If there is legislation requiring beneficial ownership information and information on the settlors and beneficiaries, has there been any impact on the investigations or prosecutions of the misuse of corporate entities in your jurisdiction since this legislation came into force?

--

vii) Are TCSPs required to obtain information on any of the following :

Information	Yes/No
Source of funds	
Nature of the business to be undertaken	
If yes to either of the above, are TCSPs required to keep the information up to date?	

viii) If disclosure of beneficial ownership information is required, please provide information on who has access to this information and the conditions of access. Where information is held by a TCSP and requested by a competent authority please indicate in your response:

- (a) whether there are established procedures for obtaining this information and whether these procedures are established in legislation or rules or guidance;
- (b) whether there are specific timeframes for the release of the information;
- (c) whether legal proceedings are required to obtain the information;
- (d) any limitations to access by the authority (confidentiality, consent of affected party etc); and
- (e) the extent to which TCSPs have been unable to or uncooperative in providing the information.

- ix) Are there any challenges or difficulties with access to this beneficial ownership? If yes please provide further details.

- x) If disclosure of beneficial ownership information is required, do you think there are any changes that need to be made to the way that beneficial ownership information is kept in your jurisdiction, and why?

Bearer Shares

- 20. i) Are bearer shares (see note 6) explicitly prohibited or permitted in your jurisdiction, or is the law silent on the issue? If yes, please provide further information on whether bearer shares are known to exist and how bearer shares are dealt with in your jurisdiction.

- ii) If bearer shares are permitted, what requirements are in place to address potential AML/CFT risks?

- iii) Are there any proposed amendments to the legislation affecting bearer shares in your jurisdiction? If yes, please provide further information on these proposed amendments.

Co-operation/Sharing of Information

- 21. i) Are there any measures in place in your jurisdiction that provides for domestic and international co-operation regarding the exchange of information on beneficial ownership and control? If yes, please provide details on the relevant legislation and measures in place, for example the procedure for obtaining this information and any restrictions on access to this information.

- ii) If the answer to question 21 (i) above is yes, have there been any challenges or difficulties experienced with the exchange of information on beneficial ownership?

PART E: MONEY LAUNDERING/TERRORIST FINANCING AND TCSPs

Suspicious Activity Reports (SARs)

22. i) Are TCSPs required to file SARs in your jurisdiction?

--

ii) If the answer to question 22 (i) above is yes, please indicate i) the number of SARs filed for each year between 2006-2009 and ii) the percentage of SARs filed by TCSPs for each year between 2006-2009 in relation to the total number of SARs filed for the said period.

Year	Number of SARs filed	As a percentage of the total number of SARs filed
2009		
2008		
2007		
2006		
Total SARs 2006 – 2009		

23. If SARs are required to be filed, what has been the typical subject area of the SARs filed?

--

24. (i) If a competent authority carries out investigations in relation to a SAR and/or requests information from a TCSP, what in your experience has been the average response time? If time requirements are specified in the legislation please provide these also.

--

(ii) If problems have been encountered with obtaining information from TCSPs relating to SARS or investigations please provide a general description of these problems.

--

Cases

25. Is there evidence in your jurisdiction, and beyond, of the misuse of TCSPs for money laundering and terrorist financing? If yes, please provide recent case studies.

If there are any other cases involving more generic abuses of TCSPs to carry out other types of offences please also include.

Threats

26. What, in your view are the greatest vulnerabilities, to money laundering and financing of terrorism faced by TCSPs?

PART F: GENERAL ASSESSMENT OF OTHER AML/CFT REQUIREMENTS AND TCSPs

27. i) Please provide an assessment of the adequacy and role that TCSPs play in the detection, prevention and prosecution of money laundering and terrorist financing. Please provide any evidence, including any recent case studies from your jurisdiction, to support your assessment.

ii) Please provide an assessment of the impact, if any, of AML/CFT legislation on the adequacy and role that TCSPs play in the detection, prevention and prosecution of money laundering and terrorist financing. Please provide any evidence, including any recent case studies from the jurisdiction, to support your assessment.

28. Please provide an assessment of the adequacy and role that the information (See note 7) required from TCSPs, in accordance with the FATF 40 Recommendations, plays in combating money laundering and terrorist financing?

29. i) Are there any difficulties experienced by TCSPs in obtaining the FATF required information from clients? If yes, please provide recent examples of such difficulties.

ii) If there are difficulties experienced by TCSPs, what action in your view needs to be taken to overcome these difficulties?

30. In your view, do the FATF recommendations and guidance need to more effectively address the role of TCSPs in the efforts to combat money laundering and terrorist financing? If yes, please explain.

International Standards

31. In your view, is there a need for the establishment of an international organization (such as IAIS, IOSCO, Basel etc.) dedicated solely to TCSPs? If yes, please explain.

32. In your view, is there a need for an international standard for TCSPs to address issues such as the “fit and proper” prerequisite and other minimum requirements (E.g. Systems and Controls, Corporate Governance, Authorization criteria, Maintaining and Sharing Information)? If yes, please explain.

33. In your view, what steps would need to be taken to ensure effective implementation of any international requirements (please see question 32 above for details of these requirements)?

TCSP Project

December 2009

NOTES

1. **Trust and company service provider (TCSP):** This has the same meaning as in the glossary attached to the FATF Methodology⁸¹ and refers to any person or business that provides any of the following services to third parties:
 - acting as a formation agent of legal persons;
 - acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangements;
 - acting as (or arranging for another person to act as) a trustee of an express trust;
 - acting as (or arranging for another person to act as) a nominee shareholder for another person.
2. **Legal persons:** This has the same meaning as in the glossary of the FATF 40 Recommendations: “Bodies corporate, foundations, anstalt, partnerships, or associations, or any similar bodies that can establish a permanent customer relationship with a financial institution or otherwise own property”.

⁸¹ FATF Methodology: www.fatf-gafi.org/dataoecd/16/54/40339628.pdf

3. As referred to in the interpretative note of Recommendation 23 of the FATF 40: http://www.fatf-gafi.org/document/28/0,3343,en_32250379_32236920_33988956_1_1_1_1,00.html#Interpretative_Note_to_r_23
4. **Beneficial Ownership:** This has the same meaning as in the glossary of the FATF 40 Recommendations: “the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.”
5. **Beneficiary:** This has the same meaning as in the glossary of the FATF 40 Recommendations: “All trusts (other than charitable or statutory permitted non-charitable trusts) must have beneficiaries, who may include the settlor, and a maximum time, known as the perpetuity period, normally of 100 years. While trusts must always have some ultimately ascertainable beneficiary, trusts may have no defined existing beneficiaries but only objects of a power until some person becomes entitled as beneficiary to income or capital on the expiry of a defined period, known as the accumulation period. This period is normally co-extensive with the trust perpetuity period which is usually referred to in the trust deed as the trust period.”
Settlers: This has the same meaning as in the glossary of the FATF 40 Recommendations: “Settlers are persons or companies who transfer ownership of their assets to trustees by means of a trust deed. Where the trustees have some discretion as to the investment and distribution of the trusts assets, the deed may be accompanied by a non-legally binding letter setting out what the settlor wishes to be done with the assets.”
6. **Bearer Shares:** This has the same meaning as in the glossary of the FATF 40 Recommendations: “Bearer shares refer to negotiable instruments that accord ownership in a corporation to the person who possesses the bearer share certificate.”
7. **The relevant provisions of the FATF 40 Recommendations:**

The relevant provisions of the FATF 40 Recommendations applicable to TCSPs are set out below.

Measures to be taken by Financial Institutions and Non-Financial Businesses and Professions (DNFBPs) (See note 8) to prevent Money Laundering and Terrorist Financing

Customer due diligence and record-keeping requirements

Recommendation 12

The customer due diligence and record-keeping requirements set out in Recommendations:

- 5 (CDD measures)
- 6 (Politically Exposed Persons)
- 8 (threats from new technologies and non face to face business)
- 9 (third party reliance)
- 10 (record-keeping)
- 11 (complex, unusual transactions)

apply to designated non-financial businesses and professions in the following situations:

...d) Lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning the following activities:

- buying and selling of real estate;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organization of contributions for the creation, operation or management of companies;
- creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

e) Trust and company service providers when they prepare for or carry out transactions for a client concerning the activities listed in the definition in the Glossary.

Reporting of suspicious transactions and compliance

Recommendation 16

The requirements set out in Recommendations:

- 13 (report suspicious transactions)
- 14 (protection from any liability for reporting suspicious transactions)
- 15 (develop programmes against money laundering)
- 21 (special measures to be taken with respect to countries that do not or insufficiently comply with the FATF Recommendations)

apply to all designated non-financial businesses and professions, subject to the following qualifications:

a) Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in Recommendation 12(d). Countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing.

...c) Trust and company service providers should be required to report suspicious transactions for a client when, on behalf of or for a client, they engage in a transaction in relation to the activities referred to Recommendation 12(e).

Lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.

Regulation and supervision

Recommendation 24

Designated non-financial businesses and professions should be subject to regulatory and supervisory measures as set out below.

...b) Countries should ensure that the other categories of designated non-financial businesses and professions are subject to effective systems for monitoring and ensuring their compliance with requirements to combat money laundering and terrorist financing. This should be performed on a risk-sensitive basis. This may be performed by a government authority or by an appropriate self-regulatory organization, provided that such an organization can ensure that its members comply with their obligations to combat money laundering and terrorist financing.

8. Designated Non-Financial Businesses and Professions:

- a. Casinos (which also includes internet casinos).
- b. Real estate agents.

c. Dealers in precious metals.

d. Dealers in precious stones.

e. Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to ‘internal’ professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering.

f. Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the following services to third parties:

- acting as a formation agent of legal persons;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as (or arranging for another person to act as) a trustee of an express trust;
- acting as (or arranging for another person to act as) a nominee shareholder for another person

SHORT FORM QUESTIONNAIRE

FATF / CFATF TYPLOGIES PROJECT ON MONEY LAUNDERING AND FINANCING OF TERRORISM USING TRUST AND COMPANY SERVICE PROVIDERS (TCSPS)

Dear Colleague

We are writing to seek your assistance in obtaining information for a typologies project on money laundering and financing of terrorism using trust and company service providers (TCSP; see note 1). As you are aware, this and related matters have been the subject of many discussions and debates at the highest levels in our countries and many jurisdictions are currently grappling with how best to address the challenges being faced in this regard.

This questionnaire has been compiled by a Working Group of FATF and CFATF members and the information will be used to create greater awareness and understanding of this important area and potentially assist in policy formulation regarding money laundering and terrorist financing issues that relate to TCSPs⁸². It is intended that a report on Money Laundering and Financing of Terrorism using Trust and Company Service Providers will be completed before the end of 2010.

Please complete all of the following questions as comprehensively as possible. In order to assist us in meeting key external deadlines we would urgently request that the information be provided to us on or before January 15, 2010.

Confidentiality: Please be assured that your submissions will remain confidential as the following conditions will be strictly adhered to:

- c) The completed questionnaires will not be published; and
- d) Specific information will only be included in the report if the permission of the relevant person from the participating organization is first obtained.

Part A: BACKGROUND INFORMATION

34. Jurisdiction/Organization

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35. Contact Name and title (please give two names, if the first contact is regularly away from the office for long periods of time)

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36. Contact details

E-mail address	
Telephone Number	
Fax Number	

⁸² Please note that this is a typologies research project and not a standard setting project.

Part B: DESCRIPTION OF TCSPs

37. Please provide the definition, if any, of TCSPs provided for by your jurisdiction/organization.

PART C: GENERAL ASSESSMENT OF OTHER AML/CFT REQUIREMENTS AND TCSPs

38. i) Please provide an assessment of the adequacy and role that TCSPs play in the detection, prevention and prosecution of money laundering and terrorist financing. Please provide any evidence, including any recent case studies from any jurisdiction, to support your assessment.

ii) Please provide an assessment of the impact, if any, of AML/CFT legislation on the adequacy and role that TCSPs play in the detection, prevention and prosecution of money laundering and terrorist financing. Please provide any evidence, including any recent case studies from any jurisdiction, to support your assessment.

39. Please provide an assessment of the adequacy and role that the information (See note 2) required from TCSPs, in accordance with the FATF 40 Recommendations, plays in combating money laundering and terrorist financing?

40. i) In your view, are there any difficulties experienced by TCSPs in obtaining the FATF required information from clients? If yes, please provide recent examples of such difficulties.

ii) If there are difficulties experienced by TCSPs, what action in your view needs to be taken to overcome these difficulties?

41. In your view, do the FATF recommendations and guidance need to more effectively address the role of TCSPs in the efforts to combat money laundering and terrorist financing? If yes, please explain.

International Standards

42. In your view, is there a need for the establishment of an international organization (such as IAIS, IOSCO, Basel etc.) dedicated solely to TCSPs? If yes, please explain.

43. In your view, is there a need for an international standard for TCSPs to address issues such as the “fit and proper” prerequisite and other minimum requirements (E.g. Systems and Controls, Corporate Governance, Authorization criteria, Maintaining and Sharing Information)? If yes, please explain.

44. In your view, what steps would need to be taken to ensure effective implementation of any international requirements (please see question 10 above for details of these requirements)?

TCSP Project

December 2009

NOTES

1. **Trust and company service provider (TCSP):** This has the same meaning as in the glossary attached to the FATF Methodology⁸³ and refers to any person or business that provides any of the following services to third parties:
 - acting as a formation agent of legal persons;
 - acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangements;
 - acting as (or arranging for another person to act as) a trustee of an express trust;
 - acting as (or arranging for another person to act as) a nominee shareholder for another person.

2. The relevant provisions of the FATF 40 Recommendations:

The relevant provisions of the FATF 40 Recommendations⁸⁴ applicable to TCSPs are set out below.

Measures to be taken by Financial Institutions and Non-Financial Businesses and Professions (DNFBPs) (See note 3) to prevent Money Laundering and Terrorist Financing

Customer due diligence and record-keeping requirements

Recommendation 12

The customer due diligence and record-keeping requirements set out in Recommendations:

- 5 (CDD measures)
- 6 (Politically Exposed Persons)
- 8 (threats from new technologies and non face to face business)
- 9 (third party reliance)

⁸³ FATF Methodology: www.fatf-gafi.org/dataoecd/16/54/40339628.pdf

⁸⁴ FATF 40 Recommendations www.fatf-gafi.org/document/28/0,3343,en_32250379_32236930_33658140_1_1_1_1,00.html

- 10 (record-keeping)
- 11 (complex, unusual transactions)

apply to designated non-financial businesses and professions in the following situations:

d) Lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning the following activities:

- buying and selling of real estate;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organization of contributions for the creation, operation or management of companies;
- creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

e) Trust and company service providers when they prepare for or carry out transactions for a client concerning the activities listed in the definition in the Glossary.

Reporting of suspicious transactions and compliance

Recommendation 16

The requirements set out in Recommendations:

- 13 (report suspicious transactions)
- 14 (protection from any liability for reporting suspicious transactions)
- 15 (develop programmes against money laundering)
- 21 (special measures to be taken with respect to countries that do not or insufficiently comply with the FATF Recommendations)

apply to all designated non-financial businesses and professions, subject to the following qualifications:

a) Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in Recommendation 12(d). Countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing.

...c) Trust and company service providers should be required to report suspicious transactions for a client when, on behalf of or for a client, they engage in a transaction in relation to the activities referred to Recommendation 12(e).

Lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.

Regulation and supervision

Recommendation 24

Designated non-financial businesses and professions should be subject to regulatory and supervisory measures as set out below.

...b) Countries should ensure that the other categories of designated non-financial businesses and professions are subject to effective systems for monitoring and ensuring their compliance with requirements to combat money laundering and terrorist financing. This should be performed on a risk-sensitive basis. This may be performed by a government authority or by an appropriate self-regulatory organization, provided that such an organization can ensure that its members comply with their obligations to combat money laundering and terrorist financing.

3. Designated Non-Financial Businesses and Professions⁸⁵:

- a. Casinos (which also includes internet casinos).
- b. Real estate agents.
- c. Dealers in precious metals.
- d. Dealers in precious stones.
- e. Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to ‘internal’ professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering.
- f. Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the following services to third parties:
 - acting as a formation agent of legal persons;
 - acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - acting as (or arranging for another person to act as) a trustee of an express trust;
 - acting as (or arranging for another person to act as) a nominee shareholder for another person

⁸⁵ FATF 40 Recommendations Glossary: www.fatf-gafi.org/glossary/0,3414,en_32250379_32236889_35433764_1_1_1_1,00.html

ANNEX IV – OGBS STATEMENT OF BEST PRACTICE

TRUST AND COMPANY SERVICE PROVIDERS STATEMENT OF BEST PRACTICE

Introduction

This statement of best practice has been prepared by a Trust and Company Service Providers Working Group set up by the Offshore Group of Banking Supervisors on which four G7 countries (France, Italy, Netherlands and United Kingdom) and three international organisations (FATF, IMF and OECD) were also represented. The terms of reference of the Working Group were –

“To produce a recommended statement of minimum standards/guidance for Trust and Company Service Providers; and to consider and make recommendations to the Offshore Group of Banking Supervisors for transmission to all relevant international organisations/authorities on how best to ensure that the recommended minimum standards/guidance are adopted as an international standard and implemented on a global basis”.

The Working Group decided that a statement of best practice should be prepared rather than a statement of minimum standards. At the present time many jurisdictions do not regulate trust and company service providers, and in some cases such providers are not presently embraced by anti-money laundering legislation. Accordingly it is considered that a statement of best practice is more appropriate.

This statement of best practice is intended for use by jurisdictions generally in reviewing the position of their trust and company service providers. It is also intended for use by international organisations such as the IMF when they are engaged in an assessment of individual jurisdictions in respect of their policy/procedures/practices from a financial regulatory/anti-money laundering standpoint.

Trust and company service providers are important for financial regulation, anti-money laundering and combating the financing of terrorism as intermediaries both as introducers of business to other institutions and as entities responsible for handling and/or managing funds/assets. Their importance is recognised in the Financial Stability Forum’s report on Offshore Financial Centres and the Financial Action Task Force consultation paper on the review of the forty recommendations.

This statement of best practice is intended to fill the gap that exists at the present time where trust and company service providers generally are not subject to standards set by bodies such as the Basel Committee on Banking Supervision and IOSCO. However, in those cases where such standards do apply nothing in this statement of best practice alters the existing obligations to comply with those standards.

There is a wide range of different types of business or professionals that act as professional service providers for the creation and administration of companies, trusts, foundations and other legal entities or arrangements, and offer related management and advisory services. What are known generically as trust and company service providers (“Service Providers” for the purpose of this statement) refer to those who carry on a business that involves the provision of company administration services or trustee or fiduciary services and in the course of doing so provide one or more of the following services:-

- acting as a company or partnership formation agent;
- acting as (or arranging for another person to act as) a director or secretary of a company or a partner of a partnership;
- providing a registered office; business address or accommodation, correspondence or administrative address for a company, partnership or for any other person;
- acting as (or arranging for another person to act as) a trustee of an express trust;
- acting as (or arranging for another person to act as) a nominee shareholder for another person.
- arranging the establishment of, or providing services in relation to, any legal entities not covered by the foregoing (e.g. a foundation or anstalt).

In the following statement, Section A addresses the requirements for Service Providers responsible for handling and managing client funds; Section B considers some broader structural issues; and Section C gives recognition to the possible need for a lighter touch where a Service Provider does not handle client funds.

A. All countries/jurisdictions should require that where a Service Provider is responsible for handling/managing funds/assets –

1. Those individuals holding key positions providing the service should be persons of integrity and should exhibit evidence of meeting the following requirements –

- i) having no relevant adverse business/professional/personal history:

relevant considerations would include –

- professional or administrative reprimands;
- regulatory directions/public statements;
- disciplinary findings;
- civil fines;
- criminal convictions;
- declaration of bankruptcy;
- adverse personal credit rating

and would extend to a person's involvement as a director or senior manager/officer within a company that has been the subject of such considerations.

- ii) having relevant and appropriate level of competence/capability:

relevant considerations would include –

- professional or other relevant qualifications;
- knowledge and/or experience relevant to the business concerned and appropriate to the employment status/role of the individuals concerned.

2. **Those providing the service should exhibit evidence that their business will be or is being conducted in accordance with the following requirements under the headings of corporate governance, customer due diligence, conduct of client business, financial soundness, and systems and controls –**

Corporate Governance

The Service Provider should be able to demonstrate that they are in –

- i) compliance with recognised general standards of corporate governance in respect of both the business itself and each company, partnership, trust and other legal entity (“the client(s)”);
- ii) compliance with national regulations with respect to money laundering and the financing of terrorism;
- iii) compliance with all relevant and applicable financial regulatory standards;
- iv) compliance with all relevant and applicable domestic statutory requirements/obligations (e.g. companies law);
- v) compliance with recognised standards in respect of directors/trustees responsibilities;

Customer Due Diligence

The Service Provider should be able to demonstrate that they are engaged in –

- vi) effective customer due diligence - to satisfy the standards set out in the Basel Committee’s Customer Due Diligence Paper, published in October, 2001, to the extent that the recommendations in that paper are relevant to non-banks.

This should include proper procedures for –

- customer identification;
- verification of identity of customer;
- risk profiling of customers (e.g. politically exposed persons);
- establishing the source of wealth;
- establishing the source of funds;
- ongoing monitoring of a customer’s activities.
- adequate documentation to meet KYC requirements.

Specific issues on which attention should focus relate to information on the ultimate beneficial owner and/or controller of companies, partnerships and other legal entities, and the settlor/protector/beneficiaries of trusts, which should be known to the Service Provider and be adequately documented.

Conduct of Client Business

The Service Provider should be able to demonstrate that client business is being properly conducted through the –

- vii) Identification and segregation of clients' assets and liabilities from the assets and liabilities of the Service Provider;
- viii) effective handling of clients' assets covering –
 - o safe custody of assets;
 - o proper management of assets;
- ix) maintaining adequate and orderly accounting records of clients affairs;
- x) maintaining adequate client documentation (e.g. trust deeds);
- xi) ensuring that all transactions/decisions entered into, taken by or on behalf of clients are appropriately authorised/handled by persons with an appropriate level of knowledge, experience and status properly to effect such transactions or make the proper decisions according to the nature and status of the transactions/decisions involved; for example –
 - o where discretion is exercised for or in relation to clients, all reasonable steps should be taken to obtain sufficient information in order to exercise that discretion or other powers in a proper manner and such discretion should only be exercised for a proper purpose;
 - o any actual or perceived conflict of interest should be avoided or appropriately disclosed; and where conflicts arise and cannot be resolved by disclosure and, internal rules of confidentiality, or rules on when or when not to act, the Service Provider should withdraw its services in an orderly manner;
 - o all business (including the establishing, transferring or closing of business relationships with its customers) should be transacted in an expeditious manner.
- xii) ensuring that, where appropriate, there is a full understanding of the duties arising under the laws relevant to the administration and affairs of clients for which they are acting in the jurisdictions in which they are carrying on business and in which the assets being handled/managed are held.

Financial Soundness

The Service Provider should be able to demonstrate that it is financially sound by –

- xiii) maintaining adequate and orderly accounting records of –
 - o the business of the Service Provider itself;
 - o the affairs of the clients.

xiv) maintaining adequate financial resources including –

- paid up capital; and/or
- liquid capital;

to enable the business to continue as a going concern and for the affairs of each client to be managed properly for an appropriate period in the event of a trading difficulty being experienced

xv) providing evidence of compliance with any relevant financial regulatory standards;

xvi) providing evidence of compliance with international accounting standards;

xvii) maintaining adequate professional indemnity insurance cover.

Systems and Procedures

The Service Provider should be able to demonstrate that the following systems, procedures and controls are adequately addressed –

xviii) effective compliance functions – where appropriate a skilled and experienced person should be designated as a compliance officer;

xix) effective reporting procedures and effective systems to submit timely and accurate information to the appropriate authorities – where appropriate a skilled and experienced person should be designated as a money laundering reporting officer;

xx) an effective complaints handling system including maintaining a record of complaints and the actions taken to resolve them;

xxi) maintaining at an appropriate location in the jurisdiction adequate, orderly and up to date records of all business transactions of the Service Provider and instructions received from clients,, including–

- the accounting records of the business;
- the accounting records of each client;
- records of the internal organisation and risk management systems;
- client documentation (e.g. client requirements, customer due diligence requirements);
- document retention policies appropriate to the business of the provider and in compliance with relevant legal obligations;

xxii) maintaining a manual of appropriate policies and procedures for the operation of the Service Provider's business and the provision of services to each client; including business acceptance procedures, and documented systems and procedures intended to safeguard the business and

the clients' and their assets and ensure that all authorised and proper transactions are undertaken;

xxiii) maintaining an adequate span of control with a sufficient number of appropriately skilled and experienced persons able to exercise independent judgement in relation to the running of the Service Provider's business;

xxiv) ensuring that those engaged in the business have appropriate relevant experience and qualifications;

[Note: exceptions to xxiii, xxiv may apply in respect of sole practitioners where, for example, an individual trustee function is controlled by the Court];

xxv) ensuring that continuous professional development requirements are satisfactorily met;

xxvi) maintaining effective procedures to ensure that no false or misleading information is provided (including advertisements).

3. There should be proper provision for holding, having access to and sharing of information, including ensuring that –

- i) information on the ultimate beneficial owner and/or controllers of companies, partnerships and other legal entities, and the trustees, settlor, protector/beneficiaries of trusts is known to the service provider and is properly recorded;
- ii) any change of client control/ownership is promptly monitored (e.g. in particular where a service provider is administering a corporate vehicle in the form of a "shelf" company or where bearer shares or nominee share holdings are involved);
- iii) there is an adequate, effective and appropriate mechanism in place for information to be made available to all the relevant authorities (i.e. law enforcement authorities, regulatory bodies, FIU's);
- iv) there should be no barrier to the appropriate flow of information to the authorities referred to in 3 (iii) above;
- v) KYC and transactions information regarding the clients of the Service Provider is maintained in the jurisdiction in which the Service Provider is located;
- vi) there should be no legal or administrative barrier to the flow of information/documentation necessary for the recipient of business from a Service Provider who is an acceptable introducer to satisfy itself that adequate customer due diligence has been undertaken in accordance with the arrangements set out in the Basel Customer Due Diligence paper;

B. All countries/jurisdictions should make proper provision to ensure that –

- the interests of customer/clients can be adequately safeguarded when the Service Provider is no longer able to carry on the business for any reason;

- external auditors with relevant experience and appropriate qualifications and track record are appointed to carry out a full audit of the Service Provider’s business in accordance with international standards;
- external auditors have the statutory authority/protection to report to the competent authorities any breaches of relevant legislation or other material concerns;
- adequate provisions are in place to ensure that regular independent reviews are conducted of all Service Providers who carry on business in or from the country/jurisdiction to assess compliance with the statement of best practice; and that action can be taken where there is evidence of non-compliance;
- for the purposes of compliance with A.2.(ii) above, Service Providers are embraced by national anti-money laundering legislation;

C. Conclusions–

Service Providers in all countries/jurisdictions should be expected to comply with the statement of best practice. However it is recognised that where the Service Provider is not responsible for handling/managing funds/assets and carries on business which might be perceived as lower risk, a lighter touch may be applied, according to the nature and scope of the business activity.

Examples of “lower risk” business might include business which consists solely of one of the following –

- formation of companies, partnerships, and other legal entities;
- providing a registered office or business address for a company or partnership;
- providing for the formation/administration of local trading companies only and where the provider does not act as –
 - · a director or secretary;
 - · a trustee;
 - · a nominee shareholder

In the case of such business the lighter touch could be in respect of –

- the span of control covering the number of persons engaged in the business;
- the level of qualifications/experience of the persons engaged in the business;
- the capital/professional indemnity insurance requirements;

- the audit requirements.

With the exception of the foregoing such service providers, and any other service provider not covered by the above provisions, would be expected to comply with all the requirements set out in Section A.

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