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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE EVALUATION
OF ANTI-MONEY LAUNDERING MEASURES
(MONEYVAL)

THIRD ROUND DETAILED ASSESSMENT REPORT
ON CYPRUS¹

ANTI-MONEY LAUNDERING
AND COMBATING THE FINANCING OF TERRORISM

SUMMARY

¹ Adopted by MONEYVAL at its 18th Plenary meeting (31 January – 3 February 2006).

EXECUTIVE SUMMARY

1. The Third Evaluation of Cyprus by MONEYVAL took place from 3 to 9 April 2005. The evaluation was based on the Forty Recommendations of the FATF and the 9 Special Recommendations of the FATF, together with the two Directives of the European Commission (91/308 EEC and 2001/ 97/EC).
2. The evaluation team comprised: Mr Lajos KORONA, Public Prosecutor, Budapest, Hungary (Legal Examiner), Dr Stephan OCHSNER, Chief Executive Officer, Financial Market Authority, Vaduz, Principality of Liechtenstein (Financial Examiner); Ms Daniela STOILOVA, Financial Intelligence Agency, Bulgaria (Law Enforcement Examiner); Mr Dennis EVANS, Section Head, Home Office, London (Legal Examiner); and Mr Richard WALKER, Deputy Director, Policy and International Affairs, Guernsey Financial Services Commission, Guernsey (Financial Examiner – representing the Offshore Group of Banking Supervisors [OGBS]); and the MONEYVAL Secretariat. The examiners reviewed the institutional framework, the relevant AML/CFT Laws, regulations and guidelines and other requirements, and the regulatory and other systems in place to deter money laundering and financing of terrorism through financial institutions and designated non-financial businesses and professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.
3. The Cyprus authorities have demonstrated resolve to reduce the vulnerability of financial institutions and DNFBP to money laundering. The Cyprus FIU (MOKAS) and the Central Bank of Cyprus (CBC) have been particularly active in this respect. Since the Second Round Evaluation, both authorities were reinforced and are now adequately staffed. The approach and attitude of MOKAS in building relationships with reporting institutions, together with the issuing of guidance and carrying out of on-site visits by the CBC to banks have been particularly important to the anti-money laundering framework. It was apparent to the evaluators that the supervisory authorities and financial institutions which they interviewed took their anti-money laundering activities seriously. There are a number of positive proposals in train which seek to satisfy those FATF Recommendations where enhancements to the Cyprus system have been identified by the authorities as necessary. This is especially true for the important abolition of the exception in relation to the identification duty of banks, when dealing with customers introduced by trustees or nominees, as identified in the second evaluation report. The evaluators also note that, in the areas of the Recommendations applying specifically to financial institutions (especially banks, which represent the large majority of the financial sector), the basic building blocks are in place, e.g. regarding the identification of the customer and the beneficial owner. The regime applying to banks is more sophisticated than the regimes which apply to the other financial institutions. For example the Guidance Notes which apply to banks contain provisions on ongoing due diligence and monitoring of complex and unusual transactions and PEPs. It appeared to the evaluators that these basic requirements (identification of the customer and the beneficial owner, ongoing due diligence and monitoring of complex and unusual transactions and PEPs) are implemented satisfactorily and efficiently by the financial institutions.
4. Nonetheless some of the basic preventive obligations, arising from FATF Recommendation 5, are currently referred to only in enforceable and sanctionable guidance, but not in primary or secondary legislation. These obligations include the general rule to identify the beneficial owner and some (but not all) of the occasions where CDD is required (including CDD regarding occasional wire transfers). The 2004 AML/CFT Methodology marks these obligations with an asterisk, denoting that they should be set out in Law or Regulation. On this basis, the evaluators' view, endorsed by the MONEYVAL Plenary, is that, in order for Cyprus to be fully in line with the Methodology, Criteria 5.2(c), (d) and (e), 5.3 and 5.4 (a), 5.5 and 5.5.2 (b) and 5.7 should be in law or secondary legislation and not just in supervisory guidance, even though these supervisory guidance notes are enforceable and sanctionable and that the present efficiency of the system in Cyprus is not hampered. It is the firm belief of the Cyprus authorities that circulars or guidance notes issued under

the AML-Law constitute secondary legislation, as provided in the Methodology, and their view is set out in detail in the body of the report.

5. The Second Round Report stated also that the high number of offshore companies, known as international business enterprises (IBEs), registered as “brass-plate” companies with no place of business in Cyprus, raised concerns due to the difficulties in monitoring their activities. However, following a major tax reform in July 2002, a uniform rate of cooperation tax was fixed for all companies registered in Cyprus. As a consequence, the “offshore regime” was abolished. The Cyprus authorities consider that this development reduces Cyprus’ vulnerability to money laundering activities. In 2003, the vulnerability of the company sector was further reduced by requiring lawyers creating, operating or managing companies or organising the contributions necessary for the creation, operation or management of companies to comply with the provisions of the AML-Law on establishing AML procedures. Legal firms comprise the majority of the firms engaged in such business. However, to ensure the efficiency of the supervisory system, the guidance notes for lawyers in draft form at the time of the onsite visit should be issued ² and the evaluators strongly advise that onsite inspections should be undertaken by the Cyprus Bar Association.

The situation of money laundering and the financing of terrorism

6. The money laundering situation has not changed in Cyprus in the last four years. Proceeds of crime continue to be derived from both domestic and foreign predicate offences. Recorded domestic criminal offences for the last four years show that Cyprus has a relatively low level of domestic crime. That said, domestic crimes which generate illegal proceeds are: fraud (including the offence of “obtaining money or goods by false pretences”); burglary; theft; and drug trafficking offences. In relation to the latter, the Cyprus authorities state that there is no tradition of narcotic production or trafficking and a relatively limited local use of narcotic drugs. Organised crime groups are reported currently not to exist in Cyprus, and there is no established link between Cyprus residents and organised crime groups in other countries.
7. The Cyprus authorities also indicated that the police investigate numerous money laundering offences based on foreign predicates, and that they fully recognise that proceeds from foreign predicates may be laundered through Cyprus. The examiners were advised that there were some investigations and prosecutions in respect of money laundering based on foreign predicate offences, but none were successfully concluded. All the convictions recorded for money laundering offences during the relevant period since the second evaluation visit related to domestic predicate offences. At the time of this on-site visit at least 14 money laundering cases were reported as currently being before the courts, but there were difficulties in establishing precise information about all these cases, as the police do not always apprise the FIU of all money laundering investigations where the FIU has no direct involvement in obtaining interim orders. Only three of these 14 cases were said to emanate from the suspicious transaction reporting system and involved money laundering in respect of fraud and drug offences. The others were investigated independently of the STR regime.
8. Cyprus ratified the 1999 United Nations Convention for the Suppression of the Financing of Terrorism in November 2001. It was explained to the examiners that financing of terrorism is criminalised in Cyprus under sections 4 and 8 of the Ratification Law 29 (III)/2001 in respect of the above-mentioned Convention. The practical consequences of this have not been tested in court, as yet.
9. The Council of Ministers Decision Number 54.374 of 4 October 2001 empowers the implementation of necessary measures to enforce United Nations Security Council Resolutions 1267, 1333, 1368, and 1373. Since 1 May 2004, Cyprus is also obliged to follow relevant European legislation on the freezing of terrorist assets. The Cyprus authorities have not frozen any accounts, as yet, in respect of any names, which appear on the United Nations lists issued under the above-

² These guidance notes have now been formally issued to the lawyers.

mentioned Resolutions, or on the European Union (or US) lists, as no named person has been located in Cyprus.

10. MOKAS has jurisdiction to deal with financing of terrorism by virtue of the Ratification Law 29 III / 2001. There have been no STRs filed with MOKAS in respect of financing of terrorism. The issue of financing of terrorism had yet to be addressed in guidance to the reporting enterprises and this should be rectified. The Cyprus authorities have conducted some enquiries into financing of terrorism on behalf of other countries. All such enquiries made in Cyprus were thus externally generated, based on general requests addressed to all FIUs which are members of the Egmont Group (two in 2001; five in 2002; six in 2003; and two in 2004). If there were to be a domestic enquiry in future, MOKAS advised that they would deal with it, possibly in collaboration with other units. It is important for the Guidance Notes to deal explicitly with terrorist financing, so that reporting enterprises have information on this important topic and are aware, for example, of the need for vigilance in connection with financial activity which may not be derived from the proceeds of crime.

Overview of the financial sector and DNFBP

11. Banks licensed to carry on business in Cyprus may be classified into two categories: Domestic banks and International Banking Units (IBUs³). There are 14 domestic banks, of which 11 are commercial banks and 3 are specialised financial institutions. Six of the 11 commercial banks are foreign owned – two operate in the form of branches. There are 26 IBUs, of which 5 are local subsidiaries of foreign incorporated banks and 21 are branches of foreign incorporated banks. Both domestic banks and IBUs are subject to the same supervisory regime by the Central Bank (CBC). Under the Central Bank of Cyprus Law of 2002, the Central Bank is also the competent licensing and supervision authority for all legal persons whose business activities consist of the acceptance of money exclusively for transfer from and to Cyprus. At present six money transfer companies have been licensed to operate in Cyprus. The Central Bank also supervises banks in their carrying out of securities and capital markets business. Moreover, the CBC supervises under the Capital Movement Law 40 international independent financial advisers, six international trustee services companies and 200 feeder funds. Additionally 47 investment firms and 2 UCITS management firms are supervised by the Securities and Exchange Commission (SEC). There are also 362 credit institutions which comprise the co-operative sector. This sector is supervised by the Cooperative Societies' Supervision and Development Authority.
12. There are 43 licensed insurance companies operating in or from within Cyprus supervised by the Insurance Companies Control Service (ICCS).
13. A significant majority of customers in the banking, investment and insurance sectors would appear to be Cypriots resident in Cyprus.
14. Cyprus also began operating in the late 1970s as an “offshore” financial centre and this business developed, mainly due to the existence of a wide network of treaties with around 40 countries for the avoidance of double taxation, and the low taxation rate (4.25 %) applicable to profits of international business enterprises. As such, Cyprus was an attractive destination for international business. In 2003, there were approximately 14,000 international business enterprises (IBEs) registered in Cyprus. The number of companies with a physical presence in 2003 was 2000. The evaluators were told that the majority of customers establishing companies and trusts would appear to be based outside Cyprus.
15. In 2002, legislation was passed abolishing the “offshore” regime, involving tax advantages for IBEs. From January 2003 new IBEs have the same tax status as domestic companies, as the 2002 legislation introduced a uniform rate of tax on companies (10 %), irrespective of their ownership and place of operation. Pre-existing IBEs which were in operation as at 31/12/2001, were given the

³ The distinction between domestic banks and IBUs came to an end on 1 January 2006 by amending the banking businesses licences granted by CBC to the IBUs.

option to maintain their existing tax status, only until the end of 2005. As from 1 January 2006, all IBEs can operate internally as well and the descriptive term IBEs no longer exists.

16. The Cyprus authorities advised that there are no *bureaux de change* and no casinos established in Cyprus. There are 238 real estate agents. There are estimated to be some 300 dealers in precious metals or precious stones.
17. There are 1,858 registered accountants in Cyprus. Accountants undertake audit, external accountancy and tax advisory activities. Accountants and auditors are supervised by the Institute of Certified Public Accountants of Cyprus.
18. The Cyprus Bar Association has advised that there are no notaries. Registered practising lawyers can deal with any legal subject. There are 1631 registered practising lawyers in Cyprus. All lawyers in practice are members of the Cyprus Bar Association, which is the supervisory authority for lawyers.
19. There are six trust and company service providers, which were licensed by the CBC as international trustee services companies. International trustee services companies (“ITCs”) were originally authorised under the Exchange Control Law and, on the repeal of the above law and its substitution by the Capital Movement Law of 2003, they continue to be regulated, as their original permits issued by the CBC remain valid until revoked. According to the Central Bank, the large majority of domestic trust and company service providers are lawyers. The register of approximately 136484 companies is maintained by the Department of Registrar of Companies and Official Receiver.
20. As noted above, the Cyprus authorities are firmly committed to legislation for the licensing and regulation of persons engaged in providing trust and company services in line with the Draft Third EU-Directive. It was envisaged that the CBC would be the supervisory authority.

Commercial laws and mechanisms governing legal persons

21. Cyprus has a strong tradition of company law. The process of improving and modernising company law is continuing as a result of Cyprus’s accession to the EU. The law provides for companies limited by shares and guarantee. Companies limited by shares are sub-divided into public and private companies. A Cyprus company is established by incorporation at the Department of the Registrar of Companies. The relevant forms for incorporation have to be submitted by an advocate practising in Cyprus. The advocate must also draft and sign the Memorandum and Articles of the Company. The register must contain *inter alia* the registered office address, the names of the current directors, shareholders and secretary and a report of the allocation of shares. This information is available to the public through an examination of the company’s file at the premises of the Registrar of companies. Information on shareholders is also kept at the company’s registered office and is available to any person. Overseas companies (companies incorporated outside Cyprus which establish a place of business in Cyprus) are entitled, if they wish, to file certain documents with the Registrar of Companies and to acquire registration in Cyprus. The services of an advocate in Cyprus are not necessary simply for registration.

Progress since the Second round

22. The Cyprus authorities responded positively to most of the Recommendations and comments in the second report, particularly with respect to the resources of the Cyprus FIU (MOKAS), which have improved significantly. MOKAS now has the lead responsibility for AML/CFT issues in Cyprus, and chairs the Advisory Authority, which is the strategic policy-making body. As such, MOKAS is at the centre of the national response on these issues. MOKAS works closely with the other lead agency in the Cyprus AML/CFT system, the Central Bank (CBC).
23. It was also recommended in the second report that MOKAS should be formally empowered to suspend financial transactions. This was partially achieved in that the AML Law was amended in 2003 to give the FIU the power to issue administrative instructions to financial institutions to suspend financial transactions. It was also recommended that more priority should be given to the transfer of the Companies Register to an electronic database. This was accomplished in 2002.

24. The examiners were advised that the highest priority of the Cyprus authorities continues to be strong monitoring and supervision of the financial sector and provision of training to persons involved in the prevention and detection of money laundering, particularly in respect of those who have only recently been subject to AML/CFT obligations.
25. The evaluators met with representatives of financial institutions from the banking, insurance and investment sectors (including the Stock Exchange), a firm of accountants and associations representing financial institutions and DNFBP. The evaluators echo the comments made in the second evaluation report, that there is a strong commitment in the private sector to the AML framework and to liaison with MOKAS.

Legal systems and related institutional measures

26. Drug money laundering was criminalised in Cyprus in 1992, upon the enactment of the Confiscation of Proceeds from Trafficking of Narcotic Drugs and Psychotropic Substances Law of 1992. That law was repealed upon the enactment of the Prevention and Suppression of Money Laundering Activities of 1996, which extended the list of predicate offences to all serious crimes. No material changes have occurred since the second round evaluation. The legal structure is comprehensive and, in some cases, exceeds the international standards (negligent money laundering is provided for – albeit that no cases were reported on this basis). Predicate offences cover all crimes which under Cyprus Law are subject to a maximum sentence of at least 12 months, including all offences designated under the FATF Recommendations. Legal enterprises can be held criminally liable for money laundering and criminal offences generally. “Own proceeds” laundering is clearly provided for. Indeed, all four convictions since the second evaluation related to “own proceeds” laundering and were prosecuted together with the relevant domestic predicate offences (theft and obtaining money by false pretences). The examiners, while welcoming the convictions, consider that these are comparatively easy money laundering cases for the prosecution to prove, compared with autonomous prosecutions of money laundering by third parties.
27. The Cyprus authorities informed the evaluation team that there is no need for a conviction for the predicate offence to prosecute a money laundering case. However this has not been tested, as there have not, as yet, been any prosecutions or convictions for money laundering by third parties as autonomous offences (“classic” money laundering). As a consequence representatives of the prosecuting authorities appeared uncertain as to whether and to what extent the prosecution would have to demonstrate that the laundered property constitutes proceeds that could be connected to a specific predicate offence.
28. Thus, as there is a broad and firm legal basis to enable successful prosecutions for money laundering, the examiners consider that the effectiveness of money laundering criminalisation could be enhanced by placing more emphasis on third party laundering in respect of both foreign and domestic predicate offences (particularly by professional launderers) and clarifying the evidence that may be required to establish the underlying predicate criminality in autonomous prosecutions. Further prosecutorial guidance is advised on these issues. It is understood that some pending cases involve third party money laundering.
29. Powers to trace, freeze and confiscate direct and indirect proceeds and the necessary associated investigative powers are provided for in a generally robust and operational confiscation regime which has produced a considerable number of freezing and confiscation orders, as detailed in the body of the report. The Law, helpfully, includes provisions requiring, in certain circumstances, that defendants should demonstrate the legal origin of their property in confiscation proceedings.
30. The criminalisation of financing of terrorism, as defined in the 1999 United Nations Convention for the Suppression of the Financing of Terrorism, was not completely achieved at the time of the on-site visit as, under the Ratification Law No. 29 (III) of 2001, offences committed by Cyprus citizens on Cyprus territory had, inadvertently, been excluded⁴. Reliance on S.58 of the Criminal Code is

⁴ On 22 July 2005, Parliament enacted a Law amending the Ratification Law deleting section 9 and this difficulty no longer applies.

insufficient for these purposes. Moreover countries are also obliged to criminalise collection of funds in the knowledge that they are to be used (for any purpose) by a terrorist organisation or an individual terrorist. Cyprus has not yet criminalised this type of activity. The best solution, in the evaluators' view, is the introduction of a clear separate criminal offence of financing of terrorism. The confiscation regime applies to financing of terrorism whether it is prosecuted as a "stand-alone" or autonomous offence (or together with a money laundering offence).

31. There is an administrative procedure for freezing accounts under the United Nations resolutions and the regulations of the European Union. There is no domestic legislation, apart from a decision issued by the Council of Ministers. A comprehensive and effective system for freezing without delay by all financial institutions of assets of designated persons, including publicly known procedures for de-listing, is not yet fully in place.
32. MOKAS is a multi-disciplinary Unit, currently with 14 staff, comprising two lawyers, three accountants, four police officers, two customs officers and three administrative staff. The examiners were advised after the on-site visit that 8 additional posts for investigators have been created and that the recruitment process is in the final stages. MOKAS has enhanced its information technology facilities since the second evaluation. It now also appears adequately resourced in personnel terms for the tasks it currently undertakes, though the number of open cases may imply a need for still further human resources. Indeed it would also need further personnel if it is to undertake any supervisory role for real estate and precious metal dealers. MOKAS is highly regarded by domestic financial institutions and has established a strong rapport with them. This is one of the particular strengths of the AML framework. MOKAS has put much effort into training, improving the quality of STRs and providing good feedback. It works efficiently with the reports it receives, though processing times should be kept under review. It also acts as a general centre of excellence for freezing and confiscating criminal proceeds. It is also responsible for obtaining restraint and confiscation orders for the police, particularly the Financial Crime Unit. MOKAS also advises other prosecutors in the Attorney General's Office and the Police on money laundering cases in which MOKAS is not directly involved.
33. MOKAS has been a member of the Egmont Group since June 1998 and participates in its activities very actively. It will host the Egmont Plenary in 2006. When exchanging information with its foreign counterparts, MOKAS follows the Egmont Principles for Information Exchange, and cooperates effectively with foreign FIUs.
34. The large majority of reports come from banks. The money remittance services had sent four STRs since 2002, accountants and lawyers four reports since 2002, and one report from the brokerage sector had been made since 2002. Given Cyprus's strength as a financial centre, the evaluators would have expected more reporting from sectors other than banks.
35. MOKAS's competence is not limited to investigating STRs. It is understood that all money laundering investigations are sent to MOKAS by law and it is decided on a case by case basis which investigative body works fully on an AML/CFT criminal investigation. The other major investigative units are the Drugs Law Enforcement Unit and the Financial Crime Unit. Some general guidance on the distribution of responsibilities is advised. The Police and the FIU appear generally adequately resourced, though, in the examiners' view, more focus needs to be placed on the financial aspects of major proceeds-generating crime as a routine part of the investigation and some re-orientation of law enforcement resources may be needed to achieve this. More trained financial investigators (outside of MOKAS) and more training for prosecutors on autonomous money laundering prosecution is required.

Preventive Measures – Financial Institutions

36. The Prevention and Suppression of Money Laundering Activities Law 1996 to 2004 (the AML Law) continues to be the major legislative instrument covering repressive, preventive and international co-operation issues. Since the last evaluation, it has been amended twice (in 2003 and 2004) primarily to extend the preventive regime beyond financial businesses to "relevant financial

and other businesses”. This formula now includes (under sections 58 and 61): the exercise of professional activities by auditors, external accountants and tax advisors; the exercise of professional activities on behalf of independent lawyers when they participate in a variety of professional activities (including the creation, operation or management of trusts, companies or similar structures); dealers in real estate transactions; and dealers in precious stones or metals. Beyond the problem outlined above regarding basic obligations not being in primary or secondary legislation, the tipping off provision in the AML-law seems unreasonably restricted and the safe harbour provisions in the AML-law should clearly cover all civil and criminal liability.

37. Five detailed sets of guidance have been issued to financial institutions by the supervisory authorities between 2001 and March 2005: AML Guidance Note to Banks (G-Banks, issued by the Central Bank); Guidance Note to Money Transfer Businesses (G-MTB, issued by the Central Bank); AML Guidance Notes to International Financial Services Companies, International Trustee Services Companies etc. (G-International Financial/Trustee Business, issued by the Central Bank); AML Guidance to brokers (G-Investment Brokers, issued by the Securities and Exchange Commission); and AML Guidance Notes to life and non-life insurers operating exclusively outside Cyprus (G-Insurers, issued by the Insurance Companies Control Service). The Cyprus authorities actively seek to continually improve their AML/CFT framework and it was noted by the examiners that Guidance Notes were being regularly updated. Of the Guidance Notes in force at the time of the on-site visit, the most recent guidance issued by the Central Bank (G-Banks) is closest to the FATF in terms of its approach to risk, requiring the employment of enhanced due diligence procedures for prescribed high risk accounts, including accounts in the names of companies whose shares are in the form of bearer, in the name of trusts or nominees and in respect of politically exposed persons.
38. Cyprus has extended AML/CFT obligations to persons or institutions other than those set out in the FATF Recommendations and the EU Directive, by including some general insurers and independent financial advisors.
39. The provisions in the AML Law and Guidance Notes on Third Parties and introduced business are fully in line with the Methodology.
40. There is no financial secrecy law in Cyprus which inhibits the implementation of the FATF Recommendations. MOKAS has access to financial, administrative and law enforcement information in order to properly undertake its functions to analyse the STRs, including direct access to the Registrar of Companies database.
41. The majority of FATF record keeping requirements are provided for by Cyprus. The dangers posed by wire transfers have been dealt with effectively. None-the-less the examiners consider that some amendments are required to the AML Law and Guidance Notes so that it is clear that records must be maintained for at least five years following the termination of the business relationship to be fully in line with Recommendation 10.
42. Banks and money transmitters are required explicitly to pay special attention to all complex, unusual or large transactions that have no apparent or visible economic purpose, but similar guidance needs to be given to the securities, insurance and international and financial/trustee business sectors. The financial institutions also need guidance that the results of these examinations need to be set out in writing, and also kept available for the competent authorities for at least five years.
43. There is a direct mandatory obligation in the law requiring all persons to report suspicious transaction reports relating to money laundering (without any financial threshold). The legal obligation to make STRs also applies to funds where there are reasonable grounds to suspect or which are suspected to be linked to terrorism or financing of terrorism. However no financing of terrorism reports have been received, and, as noted above, detailed guidance is required to be given to the financial institutions on this issue. All the AML Guidance Notes should also include training on countering terrorist financing. Training provided to the staff of the Banking Supervision and Regulation Division of the Central Bank of Cyprus (CBC) includes terrorist financing.

44. All applicant banks are required to establish a physical presence in Cyprus. Therefore no shell banks exist in Cyprus. However a specific provision should be created requiring financial institutions to satisfy themselves that respondent financial institutions do not permit their accounts to be used by shell banks.
45. The basic building blocks of the supervisory and oversight system are in place for financial institutions. The supervisory authorities have strong legislation to prevent criminals from controlling financial institutions and the legislation is enforced. The various supervisory authorities are dedicated to their roles and most of them have initiated a rolling programme of on-site visits. The CBC has conducted regular inspections of banks and has also conducted a small number of on-site visits to international trustee services companies (seven since 2001). The work of the CBC in supervision (and in the production of Guidance Notes) is especially appreciated by the evaluators. Some supervisory authorities need further resources for their work. In particular, the Superintendent of Insurance should recruit additional staff and conduct on-site visits. On-site visits need also to be commenced for money transfer businesses.
46. The examiners consider that all persons conducting financial business should be regulated to the same standard. To this end greater co-ordination is recommended between the supervisory bodies. Notwithstanding the fact that a workable Memorandum of Understanding exists among the supervisory authorities of the financial sector, consideration might be given to whether the number of supervisory bodies is appropriate. Coverage of investment supervision by the Central Bank of Cyprus for banks and the Securities and Exchange Commission for other enterprises highlights this issue.
47. The AML Law provides for administrative sanctions to be imposed on those persons subject to a supervisory regime for failure to comply with AML/CFT requirements by their supervisory authorities. No sanctions have been imposed. The CBC indicated that no serious weaknesses had been detected. The CBC can, where they consider it necessary, issue letters of recommendation for corrective action. Nonetheless the current administrative penalty in the AML Law (of up to CYP 3,000) is not considered sufficiently effective, proportionate and dissuasive by the examiners. They also consider the lack of imposition of administrative sanctions undermines the efficiency of the preventive regime and advise that the supervisory authorities' policy on the use of administrative sanctions should be reconsidered (in this connection, while the regulatory laws do contain sanctions, one consideration may be to draw a direct link between those sanctions and AML/CFT standards). The CBC is of the view that the historical and traditional policy of moral persuasion which it follows vis-à-vis banks constitutes an effective system. The examiners also consider that the general policy on sanctions could be reviewed, as non-supervised persons appear under the law to be liable to greater penalties (including criminal sanctions) for breaches of AML requirements than supervised persons are.
48. The Central Bank has issued the Directive for the Regulation of Money Transfer Services, which provides terms and conditions for the licensing and operating of money transfer services. Value transfer services are, however, not covered and should be.

Preventive measures – Designated non-financial businesses and professions (DNFBP)

49. The DNFBP covered by the AML Law, like financial institutions, are subject to CDD, record keeping, and internal reporting requirements. Guidance Notes have been issued by the Institute of Certified Public Accountants to accountants and auditors and draft Guidance Notes have been prepared by the Cyprus Bar Association for lawyers, but have not yet been formally issued. Guidance Notes have also been issued to international trust companies (notwithstanding that they are not covered in section 61 of the AML Law). Guidance Notes remain to be issued for most trust and company service providers, real estate agents, dealers in precious metals and dealers in precious stones. The Guidance Notes that have been issued include a number of positive, strong statements for the approaches of DNFBP in countering money laundering.

50. Some of the same issues in respect of the need for core preventive obligations to be in the law, discussed above in the context of financial institutions, arise also in the context of DNFBP. The AML Guidance Notes in some other areas need to be enhanced, including: understanding of ownership and control structures; undertaking enhanced due diligence for higher risk customers; in respect of politically exposed persons; and in respect of monitoring of complex, unusual transactions or patterns of transactions.
51. The evaluators consider that the Cyprus Bar Association will need more staff resources as its AML/CFT programme develops and, in particular, to monitor implementation of the Recommendations and Guidance. Although the Institute of Certified Public Accountants has outsourced AML/CFT monitoring of its membership, the outsourcing relationship itself will need to be monitored by the Institute. The evaluators welcome the plans to designate MOKAS as the supervisory authority for real estate agents and dealers in precious metals and stones. The same comments apply to the sanctioning regime, as are made above.

Legal persons and arrangements and non-profit organisations

52. Current and accurate information on directors and shareholders is required to be sent to the Registrar of Companies within a specified period. The Department of the Registrar of Companies shares all the information it holds with other competent authorities. Beneficial ownership and control information on customers is held by lawyers and financial institutions, because of the application of customer due diligence standards. The Central Bank itself can obtain and disclose beneficial owner and control information on customers of international trust companies that are legal persons. Lawyers, who are subject to the customer identification requirements of the AML-law represent the majority of the company service providers. Additionally, guidance indicates that accountants and auditors should obtain beneficial ownership and control information. Some DNFBP, including lawyers and other company service providers, are not yet covered by Guidance Notes.
53. Information held by a financial institution or a DNFBP can be obtained for investigative purposes by MOKAS. For Cyprus to be fully compliant with Recommendation 33 a framework for the supervision of company service providers, which requires them to obtain, verify and retain adequate, accurate and current records of the beneficial ownership and control of legal persons should be introduced, which allows the supervisor to have access to such records. The evaluators welcome the firm commitment and active steps by Cyprus to introduce company service provider regulation.
54. In connection with accounts to be opened in the name of clubs, societies and charities, a bank is expected to satisfy itself as to the legitimate purpose of the organisations and verify the identity of all authorised signatories. In the case of partnerships and other unincorporated businesses the identity of principal beneficiaries should be verified, in line with the requirements for natural persons.
55. In relation to trusts, the Cyprus authorities have stated that the vast majority of trusts in Cyprus are established by professionals such as lawyers and international trustee services companies. Lawyers are covered by the AML Law for the creation, operation or management of trusts, while guidance has yet to be issued to them. The law does not cover international trustee services companies, although guidance has been issued by the Central Bank of Cyprus. A statutory framework should be introduced for the supervision of trust service providers, which requires such providers to obtain, verify and retain records which are adequate, accurate and current on the beneficial ownership and control of such legal arrangements. The evaluators welcome the active steps by Cyprus to introduce trust regulation. In relation to trusts, there are provisions in most of the Guidance Notes (or, in respect of international trust companies licensed by the CBC, the wording attached to the licence) which state that the Institution should verify the trustees, the settlor and beneficiaries. It would be helpful to include specific reference to verifying the identity of settlors and beneficiaries in the G-Investment Brokers.

56. There was no evidence of a formal review of the adequacy of laws and regulations in the non-profit organisation sector having been undertaken since SR.VIII was introduced. Such a formal review should be undertaken and general guidance to financial institutions with regard to the specific risks of this sector should be considered. Consideration should also be given to effective and proportional oversight of this sector and to whether and how further measures need taking in the light of the Best Practice Paper for SR.VIII.

National and international co-operation

57. The Cyprus authorities have done commendable work in bringing together the competent authorities in the AML/CFT framework. The Advisory Authority, for example (now under MOKAS leadership) meets quarterly to discuss potential risks and coordinate enhancements to the system. However, there is still scope for the Advisory Authority to deepen its role – particularly in facilitating an even more coordinated response to these issues, in developing a more strategic analysis of the threats and vulnerabilities, and in reviewing the performance of the system as a whole. The Advisory Authority (or one of the supervisory authorities or groupings) could coordinate the AML/CFT Guidance Notes, and provide input on quality control. The Advisory Authority could usefully develop some key performance indicators for the system as a whole and review the system periodically against them. To do this it will need to ensure that it receives accurate statistical information (including a breakdown of the total number and types of investigations, prosecutions and convictions for financing of terrorism and money laundering). More work is needed on the provision of meaningful statistical data on the national AML/CFT response, and the Advisory Authority should review the information required for it to carry out its tasks.
58. The Vienna Convention, the Palermo Convention, and the 1999 United Nations Convention for the Suppression of the Financing of Terrorism and the Strasbourg Convention have all been ratified and implemented.
59. Judicial mutual legal assistance is being provided. Statistical information was provided in respect of the execution of requests under the Council of Europe Convention on Mutual Assistance in Criminal Matters of 1959 (ETS 30) and under the Strasbourg Convention (ETS 141). Requests made or received under Convention 141 were executed significantly more rapidly. No detailed breakdown of the offences to which requests under ETS 30 was available. While no one has been extradited to or surrendered by Cyprus for money laundering (or terrorist financing) offences, the extradition system is functioning properly.
60. A fund was created by Cyprus shortly after the on-site visit for the purpose of depositing confiscated assets, including those shared with foreign authorities (in line with Criterion 38.4).
61. MOKAS has a broad capacity to exchange information, and there appear to be no obstacles in the way of prompt and constructive information exchange. The examiners noted with satisfaction the increasing volume of exchange of information between MOKAS and foreign FIUs. MOKAS's own statistical data on non-judicial mutual legal assistance requests should include response times, and information as to whether the request was fulfilled (in whole or in part) or was incapable of being fulfilled.
62. The prudential supervisory authorities all have broad powers to exchange information with foreign counterparts. The keeping of statistical data on their information exchange (which should be available to the Advisory Authority) is also advised.

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