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**International cooperation to address money-laundering
based on relevant United Nations and other instruments**

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Working paper prepared by the Secretariat

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I. Introduction

1. As a result of the increasingly complex, transnational methods used to move proceeds and instrumentalities of crime, money-laundering cases frequently involve multiple jurisdictions. Increased cooperation among Member States is therefore crucial for the successful investigation and prosecution of many such cases and the effective seizure and confiscation of the proceeds of crime.

2. To ensure that such cooperation takes place in a timely and effective manner, international and regional legal instruments have set out detailed requirements for Member States in the areas of mutual legal assistance and the informal exchange of information and cooperation. Comprehensive mechanisms for the provision of international cooperation have increasingly been developed. However, they are not self-sufficient. The ability of Member States to effectively provide assistance is dependent on a comprehensive and effectively implemented domestic framework to combat money-laundering.

3. Several international legally binding instruments, such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,¹ the United Nations Convention against Transnational Organized Crime² and the United Nations Convention against Corruption³ contain specific requirements for Member States to adopt specific measures to combat money-laundering. These instruments have highlighted the links between money-laundering and transnational organized crime and corruption. The United Nations Office on Drugs and Crime (UNODC) has been mandated to promote adherence to these instruments and provide technical assistance to Member States to implement them.

4. The Forty Recommendations on Money-Laundering of the Financial Action Task Force (FATF) reinforce the relevant provisions of the Organized Crime Convention and the Convention against Corruption. FATF recommendation 1 states that countries should criminalize money-laundering on the basis of the 1988 Convention and the Organized Crime Convention. Unlike the provisions of the Organized Crime Convention and the Convention against Corruption, the FATF Forty Recommendations are not legally binding. Nevertheless, a large number of States have made a commitment to implement the Forty Recommendations, and members of FATF and the eight FATF-style regional bodies⁴ are required to participate in a multilateral peer review programme through which progress in effectively implementing the Forty Recommendations is assessed. In addition, pursuant to article 14 of the Convention against Corruption, Member States are called upon to use the relevant initiatives against money-laundering of regional,

¹ United Nations, *Treaty Series*, vol. 1582, No. 27627.

² United Nations, *Treaty Series*, vol. 2225, No. 39574.

³ United Nations, *Treaty Series*, vol. 2349, No. 42146.

⁴ Asia/Pacific Group on Money Laundering; Caribbean Financial Action Task Force; Eastern and Southern Africa Anti-Money Laundering Group; Eurasian Group on Combating Money Laundering and Financing of Terrorism; the Financial Action Task Force of South America against Money-Laundering (GAFISUD); the Intergovernmental Action Group against Money Laundering in West Africa (GIABA); Middle East and North Africa Financial Action Task Force (MENAFATF); the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

interregional and multilateral organizations as a guideline in establishing domestic frameworks to combat money-laundering.

5. Many Member States have put in place mechanisms for international assistance and cooperation in money-laundering cases and the confiscation of proceeds of crime. However, the ability of Member States to provide assistance in specific money-laundering cases is often limited by legal obstacles such as the dual criminality requirement, financial, professional and commercial secrecy laws, the lack of sufficiently broad powers to trace, identify, seize and confiscate property and unduly restrictive grounds for the provision of mutual assistance. In addition, operational difficulties such as differences in legal systems and insufficient financial and human resources restrict the ability of authorities to receive, process and respond to requests for assistance. Requests of low quality constitute another obstacle that can be difficult to overcome, often with the result that requests go unanswered or are rejected.

6. In addition to those legal and operational obstacles, Member States are faced with serious challenges in implementing domestic frameworks to counter money-laundering owing to new money-laundering techniques and schemes involving the misuse and exploitation of trade transactions, complex corporate structures, new payment methods and alternative remittance systems.

7. The Twelfth United Nations Congress on Crime Prevention and Criminal Justice provides an opportunity for in-depth discussion of the issue of international cooperation to address money-laundering. To facilitate the discussion, the Secretariat has prepared the present working paper, which aims to provide an overview of the requirements set out in the various international instruments for international cooperation, discuss legal and operational obstacles to implementing those requirements and outline how new money-laundering techniques and information technology developments impede the effectiveness of domestic frameworks to counter money-laundering and, thus, the ability of Member States to render mutual assistance. This working paper also provides information on UNODC technical assistance programmes to assist Member States in strengthening the capacity of relevant authorities and institutions in order to effectively detect, investigate and prosecute money-laundering cases and confiscate illicit proceeds.

II. International cooperation through mutual legal assistance

8. Given the crucial role played by international cooperation in the prevention, investigation and prosecution of transnational crimes such as money-laundering, the 1988 Convention, the Organized Crime Convention and the Convention against Corruption all contain detailed provisions on international cooperation in criminal matters, including mutual legal assistance.

9. Pursuant to article 18 of the Organized Crime Convention and article 46 of the Convention against Corruption, Member States shall afford one another the widest measures of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offenses covered by those conventions. The above-mentioned articles specify the types of assistance that countries should be able to provide, the grounds on which requests for assistance may be refused and the types

of information that requests should contain. FATF recommendations 36, 38 and 39 draw from and closely reflect those provisions of those two articles.

10. Assistance in money-laundering cases that countries should be able to provide pursuant to the Organized Crime Convention and the Convention against Corruption should include: (a) taking evidence or statements from persons; (b) effecting service of judicial documents; (c) executing searches, seizure and freezing measures; (d) examining objects and sites; (e) providing information, evidentiary items and expert evaluations; (f) providing originals or certified copies of relevant documents and records, including Government, bank, financial, corporate or business records; (g) identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes; (h) facilitating the voluntary appearance of persons in the requesting State party; (i) any other type of assistance that is not contrary to the domestic law of the requested State party; (j) in the case of the Convention against Corruption, identifying, freezing and tracing proceeds of crime; and (k) the confiscation of assets.

11. Member States have two main avenues for implementing their obligations under international law in general, and the articles cited above in particular.⁵ First, such implementation may be achieved through domestic legislation setting out requirements and processes for the provision of mutual legal assistance. Secondly, Member States may use the conventions as the legal basis for international cooperation.⁶ Regardless of the method applied, however, a number of legal and operational obstacles remain and frequently limit the ability of Member States to cooperate internationally.

A. Legal obstacles

12. Pursuant to the Organized Crime Convention and the Convention against Corruption, many Member States have put in place the legal basis for the provision of mutual legal assistance. However, the application of the dual criminality requirement and unduly restrictive conditions for the provision of mutual legal assistance as well as shortcomings in domestic frameworks to counter money-laundering, such as granting insufficient powers to competent authorities and overly restrictive secrecy laws, may still limit the ability of Member States to cooperate internationally.

1. Dual criminality

13. The principle of dual criminality makes rendering mutual legal assistance subject to whether or not the conduct in respect of which a request is made constitutes a criminal offence under the laws of both the requesting and requested States. Article 18 of the Organized Crime Convention and article 46 of the Convention against Corruption provide that Member States may decline to render

⁵ Alfred Verdross and Bruno Simma, *Universelles Völkerrecht: Theorie und Praxis* (Berlin, Duncker and Humblot, 1984), p. 54 and p. 539; Hans Kelsen, *Principles of International Law* (Clark, New Jersey, The Lawbook Exchange, 2003), p. 195.

⁶ According to the monist system in international law, the act of ratifying international treaties effectively incorporates the law into national law, thus making its provisions directly applicable by national judges.

mutual legal assistance on the grounds of absence of dual criminality. However, the requested State party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of that State (article 18, paragraph 9, of the Organized Crime Convention). In addition, a requested State party to the Convention against Corruption shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Each State party to the Convention against Corruption may also consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance in the absence of dual criminality (article 46, paragraph 9, of the Convention against Corruption).

14. The strict application of the principle of dual criminality may have the unintended consequence of limiting the ability of Member States to provide mutual legal assistance due to shortcomings in, or divergent national approaches to, the definition of the money-laundering offence. It should be recalled that article 3 of the 1988 Convention, article 6 of the Organized Crime Convention and article 23 of the Convention against Corruption set out the material and mental elements that should be covered by that criminal offence and require that the money-laundering provisions extend to a wide range of predicate and ancillary offences. The Organized Crime Convention and the Convention against Corruption, in particular, require States parties to adopt measures to criminalize the following acts, when committed intentionally: (a) the conversion or transfer of property for the purpose of concealing or disguising its illicit origin; (b) the concealment or disguise of, *inter alia*, the true nature, source, location and rights of ownership with respect to property of illicit origin; (c) subject to the basic concepts of their legal system; the acquisition, possession or use of property with knowledge at the time of receipt that such property is the proceeds of criminal activities; and (d) also subject to the basic concepts of their legal system, participation (aiding, abetting, facilitating or counselling) in any of the foregoing acts. The national replies received in the context of the information-gathering mechanisms established by the conferences of the States parties to both the Organized Crime Convention and the Convention against Corruption have shown a number of gaps in ensuring full compliance with the mandatory requirements of the conventions regarding the establishment of basic acts of money-laundering, as well as the coverage of predicate offences.⁷ That situation has an impact on the extent to which the double criminality requirement is fulfilled, thus resulting in certain situations where a request for assistance to counter money-laundering may be denied. For example, if country A makes a request to country B for assistance in a money-laundering case related to an environmental crime and country B has not defined money-laundering in a way that applies to that particular predicate offence (environmental crime in this example), country B will deny the request due to lack of dual criminality.

2. Insufficiently wide powers of domestic authorities

15. Article 7 of the 1988 Convention, article 18 of the Organized Crime Convention and article 46 of the Convention against Corruption require States parties to assist one another in executing search, seizure and freezing measures and

⁷ See, for example, CTOC/COP/2005/2/Rev.2 and CAC/COSP/2009/9.

in identifying or tracing proceeds or instrumentalities of crime and other evidentiary items. Article 31 of the Convention against Corruption also requires the implementation of a domestic system of freezing, seizure and confiscation as a prerequisite to international cooperation on asset recovery, as enshrined in chapter V of the Convention against Corruption. Further, States parties should be able to provide one another with information and documents that are relevant for the investigation and prosecution of and judicial proceedings relating to money-laundering cases. Bank secrecy cannot be invoked as grounds for refusal to render assistance.

16. In general, mutual legal assistance requests are executed in accordance with the domestic laws of the requested State. Thus, even where Member States are allowed to provide assistance in executing search, seizure and freezing measures and tracing and identifying evidence or proceeds of crime, limited powers granted to competent authorities under domestic legislation, such as procedural laws and those regulating financial, professional and commercial secrecy, may hamper the execution of such assistance. For example, while the legislation of a country may provide that authorities may assist authorities in other countries in tracing and seizing proceeds of crime, the fact that law enforcement authorities of that country are not authorized under domestic law to freeze bank accounts or to compel the production of evidence covered by financial secrecy, such as transaction records, may severely limit the ability of that country to assist another country in identifying and seizing proceeds of crime.

3. Unduly restrictive conditions

17. Article 7 of the 1988 Convention, article 18 of the Organized Crime Convention and article 46 of the Convention against Corruption set out the grounds on which mutual legal assistance requests may be refused.

18. In practice, Member States may choose to compile an exhaustive list of grounds on which mutual legal assistance requests may be denied or to give discretionary powers to competent authorities to either refuse or grant requests. In both cases, States have an obligation to ensure that the provision of mutual legal assistance is not subject to unduly restrictive conditions such as the requirement that criminal proceedings have been initiated, that a criminal conviction be obtained in the requesting State or that the offence with respect to which the request is made does not also involve fiscal matters.

19. In summary, to be in full compliance with the conventions and the FATF Forty Recommendations, States have to not only put in place a legal basis for the provision of all forms of mutual legal assistance listed in the conventions but also provide competent domestic authorities with sufficiently wide powers to implement these types of assistance effectively. Additionally, mutual legal assistance must not be subject to unduly restrictive conditions, and countries applying dual criminality should ensure that they criminalize money-laundering in compliance with the offence as stipulated in the conventions.

B. Operational obstacles

20. The capability of a Member State to provide mutual legal assistance is based on the combination of sound and comprehensive legal provisions regulating international cooperation as well as the ability of competent domestic authorities to implement those provisions in an effective, timely and comprehensive manner. Operational baselines are described in article 7 of the 1988 Convention, article 18 of the Organized Crime Convention and article 46 of the Convention against Corruption, which require that countries designate a central authority competent to receive and ensure speedy and proper execution of requests for mutual legal assistance.

21. In many countries, the Ministry of Justice or the Office of the Attorney General is the designated central authority under the conventions. However, due to scarce human and financial resources, particularly in developing countries, there are often considerable delays in the execution of requests. A lack of clear procedures and time frames for the execution of mutual legal assistance further complicates the enforcement of those requests. This is of particular concern in cases requiring prompt action, which is common for cases where assistance is sought with respect to the application of provisional measures to prevent any further dealing, transfer and/or disposal of evidence or criminal proceeds and illegally acquired property.

22. At the same time, insufficient resources and lack of expertise of competent domestic authorities in the highly specialized area of countering money-laundering often result in the submission of mutual legal assistance requests that cannot be implemented, or be fully implemented, by the receiving State owing to the low quality and/or insufficient detail of the request or a lack of understanding of the money-laundering offence. Common reasons for the rejection of mutual legal assistance requests include the lack of information crucial for processing the request. Additional obstacles to the provision of the appropriate assistance are the lack of compliance with requirements set out by the receiving State; lack of knowledge of the other State's legal system, in particular in asset forfeiture cases; and the poor quality of translations into the official language of the receiving State.

23. To avoid operational obstacles in international cooperation and to ensure the effective, timely and comprehensive execution of mutual legal assistance requests, it is imperative that designated central authorities responsible for receiving and executing mutual legal assistance requests, as well as domestic authorities competent to submit mutual legal assistance requests to other jurisdictions, possess the sufficient knowledge and the appropriate financial and human resources. It is highly recommended that relevant focal points dealing with money-laundering cases be identified and be known to the central authority in order to enhance the timely processing of requests.

III. Other forms of international cooperation

24. International cooperation may take place not only through the provision of mutual legal assistance but also through less formal channels between competent authorities of different jurisdictions. Authorities frequently utilizing such channels include the police, financial intelligence units and customs, tax and supervisory

authorities. Examples of such mechanisms include memorandums of understanding between national counterparts as well as within regional or international organizations such as the International Criminal Police Organization (INTERPOL) and the Egmont Group of Financial Intelligence Units.

25. These less formal cooperation channels are addressed in article 7 of the Organized Crime Convention and article 14 of the Convention against Corruption, which require Member States to ensure that administrative, regulatory, law enforcement and other authorities competent to fight money-laundering have the ability to cooperate and exchange information internationally. Article 9 of the 1988 Convention, article 27 of the Organized Crime Convention and article 48 of the Convention against Corruption further provide that national law enforcement authorities shall cooperate closely with one another to enhance the effectiveness of law enforcement action to combat money-laundering and predicate offences. The mechanisms through which Member States are required to cooperate include (a) communication channels between competent authorities to facilitate the secure and rapid exchange of information; (b) cooperation in conducting inquiries regarding persons suspected of being involved in money-laundering or predicate offences; (c) cooperation in conducting inquiries regarding the movement of proceeds or instrumentalities of crime; and (d) coordination of administrative and other measures for the purpose of early identification of such offences.

26. In practice, many countries permit domestic authorities to cooperate with foreign counterparts based on relevant domestic legislation. In other cases, such cooperation may take place only when based on an applicable memorandum of understanding with the competent counterpart in the requesting jurisdiction. Organizations such as INTERPOL and the Egmont Group or informal networks such as the Camden Asset Recovery Inter-Agency Network established to enhance the effectiveness of efforts in depriving criminals of their illicit profits, further facilitate the direct exchange of information and less formal types of cooperation between national law enforcement authorities, prosecutors and financial intelligence units by providing communication channels — in the case of the Egmont Group, through its Principles for Information Exchange between Financial Intelligence Units for money-laundering and terrorism financing cases,⁸ which Member States may choose to apply.

27. Even where clear channels for information exchange exist, Member States should ensure that overly strict secrecy laws do not hamper the ability of authorities to access and obtain information covered by financial, professional or commercial secrecy laws or to share such information with foreign counterparts. Furthermore, international assistance through less formal channels should not be limited to cooperation upon request but should allow for a spontaneous exchange of information when such exchange is believed to be useful for the authorities in another jurisdiction. Member States should consider several ways to facilitate international cooperation, such as the development of networks of contacts or the placement of liaison officers.

⁸ Available from <http://www.egmontgroup.org/library/egmont-documents>.

IV. Challenges in the fight against money-laundering

28. In addition to the legal and operational obstacles discussed in section II of the present working paper, money-laundering schemes and techniques involving the misuse of trade transactions, complex corporate structures, new payment methods and alternative remittance systems pose a serious challenge for Member States in implementing domestic frameworks to combat money-laundering and may further limit the ability of Member States to provide formal and operational forms of assistance.

A. Trade-based money-laundering

29. The term “trade-based money-laundering” is defined as the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to hide their illegal origins or finance their activities.⁹ A FATF report published in June 2006 concluded that “trade-based money-laundering represents an important channel of criminal activity” that is expected to become even more attractive for criminals as national measures to combat money-laundering increasingly ensure a high degree of transparency, effective supervision and strict scrutiny in both the formal financial sector and alternative remittance systems.¹⁰

30. The most common form of laundering money through utilization of the international trade system is by way of underinvoicing or overinvoicing. In such schemes, goods are exported either below or above their fair market price, thus allowing the importer to receive value from or transfer value to the exporter. Related but slightly different money-laundering methods involve overstating or understating either the quantity or the quality of the traded goods. Multiple invoicing of goods appears to be another commonly used technique. In contrast with underinvoicing and overinvoicing, in multiple invoicing, the price, quantity or quality of goods is not misrepresented. Rather, value is transferred between the importer and exporter by means of multiple invoices for the same shipment of goods. In many cases, the various trade-based money-laundering techniques are combined with other financial and business transactions and involve utilization of the financial sector, alternative remittance systems and/or the physical movement of cash and bearer negotiable instruments across borders, making it very difficult for law enforcement authorities to detect and investigate such schemes.¹¹

31. In all cases, trade-based money-laundering techniques involve an exchange of goods between exporter and importer and a corresponding financial transaction. Thus, depending on the technique applied in a specific case, trade-based money-laundering is most likely to be detected through close examination of the

⁹ Financial Action Task Force on Money Laundering, *Trade-Based Money Laundering* (Paris, June 2006).

¹⁰ *Ibid.*, executive summary. See also United States of America, Department of State, Bureau of International Narcotics and Law Enforcement Affairs, *International Narcotics Control Strategy Report: 2003* (March 2004).

¹¹ For further information on the various types of trade-based money-laundering techniques, see *Trade-Based Money Laundering*.

relevant financial transactions or through detection of inconsistencies in trade data, most notably export and import data obtained by national customs authorities.

32. With respect to financial transactions, article 7 of the Organized Crime Convention and article 14 of the Convention against Corruption require Member States to institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, including requirements for customer identification, record-keeping and the reporting of suspicious transactions.

33. FATF recommendations 5 and 12 and special recommendation VI further elaborate on these principles and provide that financial institutions, including alternative money remittance businesses and designated non-financial businesses and professions should obtain information on the purpose and intended nature of the business relationships with the customer and conduct ongoing scrutiny of the customer's transactions to ensure consistency with the institution's or person's knowledge of the customer, the customer's business and risk profile and the source of funds. Recommendations 11 and 12 and special recommendation VI further provide that special attention should be paid to all complex or unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. While these recommendations imply that financial institutions and designated non-financial businesses and professions should obtain information on a customer's business activities and in the case of complex, large or unusual patterns of transactions ensure that such transactions have an underlying economic purpose, neither recommendation 5 nor recommendation 11 provides that financial institutions and designated non-financial businesses and professions should obtain and analyse documents underlying trade-based transactions, such as the bill of lading or invoices, and ensure consistency of the transaction with such documents in all cases. However, in cases where a financial institution or a designated non-financial business or profession suspects that a specific trade transaction involves criminal proceeds, the obligation to report the suspicion to the financial intelligence unit pursuant to recommendations 13 and 16 and special recommendation VI applies.

34. With respect to the exchange of goods, neither the provisions of the above-mentioned conventions nor the FATF recommendations contain an express obligation to collect, compare, analyse and disseminate trade data with a view to identifying trade-based money-laundering schemes and facilitating investigations and prosecutions of the persons involved therein. However, the Organized Crime Convention, the Convention against Corruption and the FATF recommendations set out a general obligation for Member States to properly investigate money-laundering offences, and to do that, the money-laundering offence needs to be defined broadly to include trade-based money-laundering schemes. Pursuant to those general provisions, Member States should therefore ensure that any money-laundering activities conducted through the international trade system are investigated properly.

35. The ability to exchange and compare trade data both domestically and internationally is crucial for the detection and proper investigation of trade-based

money-laundering schemes.¹² Accordingly, article 14 of the Convention against Corruption and article 7 of the Organized Crime Convention provide that administrative, regulatory and law enforcement authorities, as well as other authorities competent to fight money-laundering, should be able to cooperate and exchange information both domestically and internationally. Moreover, commercial secrecy should not be used to hamper the sharing of trade-related information with foreign counterparts.

36. In summary, while the Organized Crime Convention, the Convention against Corruption and the FATF recommendations require countries to identify, investigate and prosecute trade-based money-laundering schemes, through both the monitoring of financial transactions and the examination and sharing of relevant trade data, the provisions of the two conventions and the FATF recommendations are rather general and give Member States little guidance on how to best implement their obligations.¹³

37. In practice, all countries collect trade data, even though differences exist in the quality of data collected and the methods applied to obtain and maintain such data.¹⁴ However, the ability of countries to utilize such trade data for the purpose of detecting money-laundering through the trade system is limited. That is partially due to a lack of understanding among domestic authorities of how such trade-based money-laundering schemes operate and to the limited guidance offered by regional and international organizations on how Member States may best prevent and suppress this evolving money-laundering technique.

38. The situation is further aggravated by the ever-increasing volume of goods traded on the global market, the number of currencies involved in trade transactions and the comparatively limited resources available to domestic authorities to monitor exports and imports of goods. In addition, trade data are not yet commonly shared domestically or internationally, making it difficult for law enforcement authorities to detect inconsistencies that may be indicative of trade-based money-laundering schemes such as described above.

39. To prevent abuse of the international trade system in order to launder money, Member States are encouraged to provide customs, tax, investigative, prosecutorial and other authorities competent to fight money-laundering with training on how to use trade data for the purpose of identifying, investigating and prosecuting trade-based money-laundering schemes. Mechanisms should be put in place to allow for the sharing of relevant trade data both on the domestic and international level, whereby domestic data protection and privacy laws should not inhibit the effective implementation of those mechanisms. The setting-up of multidisciplinary teams should also be considered. International organizations such as UNODC ought to continue researching trade-based money-laundering techniques and assist Member States in developing adequate measures to prevent abuse of the international trade system.

¹² Financial Action Task Force on Money Laundering, *Best Practices Paper on Trade-Based Money Laundering* (Paris, 2008).

¹³ The Financial Action Task Force on Money Laundering has issued guidance in its *Best Practices Paper on Trade-Based Money Laundering*.

¹⁴ United States Department of State, Bureau for International Narcotics and Law Enforcement Affairs, *International Narcotics Control Strategy Report: 2005* (March 2005).

B. Complex corporate structures

40. It has long been recognized that corporate entities and legal arrangements are particularly susceptible to misuse in the commission of a long list of financial or fiscal offences, including money-laundering, tax evasion, bribery, creditor fraud and many other forms of fraud.

41. The attractiveness of corporate entities and legal arrangements for criminal purposes results from a number of specific characteristics, all of which can contribute to a high degree of anonymity for the real owners and individuals controlling the corporation or legal arrangement. Most notably, the ease with which corporations and legal arrangements can be established and dissolved, the availability of shell companies and bearer shares in certain jurisdictions, the option of utilizing nominee shareholders and corporate directors and the possibility of setting up chains of legal entities, each incorporated in a different jurisdiction, allow for corporate entities and legal arrangements to be set up as highly complex multi-jurisdictional structures.¹⁵ In such cases, it is often very difficult if not impossible to pierce through the corporate veil and identify the actual natural person behind such a structure, particularly if one or more companies in the chain is incorporated in a jurisdiction that applies strict secrecy laws or is not committed, when requested, to rendering the widest range of mutual legal assistance to provide information on legal structures formed pursuant to their legislation.

42. A number of international instruments and recommendations reflect the fact that transparency with respect to corporate vehicles and legal arrangements is crucial for an effective framework to combat money-laundering. Most notably, article 12 of the Convention against Corruption requires Members States to promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities. Even though the measure in article 12 is intended to prevent corruption in the private sector, information obtained pursuant to that provision is equally crucial if utilized by law enforcement authorities to combat money-laundering.

43. Under article 14 of the Convention against Corruption, States parties shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions that emphasizes requirements for beneficial owner identification. In contrast with the Convention against Corruption, the Organized Crime Convention and the 1988 Convention contain no references to the identification of the beneficial owner. However, all three conventions require States to afford each other mutual legal assistance in obtaining originals and certified copies of corporate and business documents, thus implying that Member States are expected to have avenues to access and obtain such records and documents.

44. A range of FATF recommendations elaborate on the aspects addressed under articles 12 and 14 of the Convention against Corruption. Most notably,

¹⁵ For detailed information on the use of corporate structures and legal arrangements in money-laundering schemes, see Financial Action Task Force on Money Laundering, *The Misuse of Corporate Vehicles, Including Trust and Company Service Providers* (Paris, October 2006); and Organization for Economic Cooperation and Development, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes* (2001).

recommendations 33 and 34 require Member States to put in place measures to ensure that adequate, accurate and timely information on the beneficial ownership and control of legal persons and arrangements is obtained and can be accessed in a timely fashion and shared with domestic or foreign competent authorities. The term “beneficial owner” is defined to include any natural person who owns or controls a legal person or arrangement. For States that allow the issuance of bearer shares, there is a requirement to put in place adequate and effective measures to ensure that such bearer shares may not be abused for money-laundering purposes.

45. Pursuant to FATF recommendations 5 and 12, financial institutions, including alternative remittance service providers and designated non-financial businesses and professions are required to understand the ownership and control structure of the customer and to determine and identify the natural persons ultimately owning or controlling a customer. Furthermore, with respect to customers that are legal persons or legal arrangements, there is a requirement to verify the legal status of the legal person or legal arrangement, for example, by obtaining proof of incorporation or similar evidence of establishment or existence, and to obtain information on the customer’s name, the names of any trustees, legal form, address, directors and provisions regulating the power to bind the legal person or arrangement. Thus, regardless of whether a State has put in place measures in accordance with FATF recommendations 33 and 34, financial institutions and designated non-financial businesses and professions are supposed to know at all times the identity of the beneficial owners of legal entity or legal arrangement clients.

46. In practice, many countries implement their obligations under the Convention against Corruption and the FATF recommendations by requiring corporate vehicles and/or a centralized company registry to obtain and update information on shareholders, directors, beneficiaries and other persons controlling a legal entity or arrangement. In financial centres, particularly so-called “offshore” jurisdictions, a commonly used measure involves the obtaining and maintaining of such information by professional trust and company service providers, whereby supervisors and law enforcement authorities are granted access to such information under specific conditions.

47. Even in jurisdictions where some or all of the measures cited above are applied, the transnational nature of many corporate structures poses a great challenge for law enforcement authorities in investigating money-laundering cases. Long chains of legal entities incorporated in different jurisdictions that hold all or some shares of one another, coupled with the use of nominee shareholder or non-resident corporate directors, make it very difficult, if not impossible, to obtain information on the beneficial ownership of a given corporation or legal arrangement. This is even further compounded in cases where one or more of the corporations or legal arrangements involved in a specific scheme is set up in a jurisdiction that does not require such information to be obtained and maintained and be accessible to law enforcement authorities or refuses to share such information with other jurisdictions, or both. The ability of financial institutions and designated non-financial businesses and professions to obtain beneficial ownership information from such jurisdictions is even more limited.

48. Thus, to limit the risk of abuse of corporate entities and legal arrangements for money-laundering purposes, it is crucial that all Member States put in place comprehensive measures to ensure that accurate, complete and updated beneficial

ownership information is obtained and maintained and is accessible in a timely fashion, that such measures are implemented effectively and that beneficial ownership information may be shared both domestically and with foreign authorities in an effective, timely and comprehensive manner.

C. Alternative remittance systems

49. Higher commission rates and increasingly tight regulations and supervision in the formal financial sector, coupled with the substantial growth of migrant labour forces (which are associated with remittance flows) and the limited availability of banking services in some geographical regions, including those regions where cash transactions are heavily relied on, make alternative remittance systems a convenient and more affordable alternative to the formal banking sector when transferring money across borders.¹⁶ Alternative remittance service providers receive cash, cheques and other monetary instruments or stores of value from the customer in one location and make payments, in either the same or another form of monetary value, to one or more third parties in another location through the use of communications, messages, transfer systems or a network of individuals.¹⁷ While some alternative remittance systems may have a link with the formal financial sector, for example, by maintaining and utilizing a bank account, others operate informally through non-bank financial institutions and businesses whose primary activity is not necessarily the transmission of money.¹⁸

50. For end-users, including those with a criminal intent, alternative remittance systems are attractive due to the speed with which money can be transferred, the low costs of such transfers and the comparatively high level of anonymity. In some regions, alternative remittance systems have been used to allow early trade relations between countries, which explains why such systems are deeply entrenched and heavily utilized in some societies.^{18,19}

51. Over the past decade, the international community has turned its attention to the role played by alternative remittance systems in money-laundering schemes and strengthened its effort to bring such systems within the regulated financial sector and under the scope of domestic frameworks to combat money-laundering. The main goal of those actions was to prohibit anonymous transfers of funds through

¹⁶ International Monetary Fund, Monetary and Financial Systems Department, *Regulatory Frameworks for Hawala and Other Remittance Systems* (Washington, D.C., 2005); United States Department of State, *International Narcotics Control Strategy Report: 2005*; United States Department of the Treasury and the International Criminal Police Organization (Interpol), *The Hawala Alternative Remittance System and Its Role in Money Laundering* (2000).

¹⁷ See Financial Action Task Force on Money Laundering, "Glossary of definitions used in the methodology", in *Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations* (Paris, 2009).

¹⁸ Asia/Pacific Group on Money Laundering, *Alternative Remittance Regulation Implementation Package* (2003).

¹⁹ Mohammed El Qorchi, Samuel Munzele Maimbo and John F. Wilson, *Informal Funds Transfer Systems: An Analysis of the Informal Hawala System*, Occasional Paper Series, No. 222 (Washington, D.C., International Monetary Fund, 2003); and Financial Action Task Force on Money Laundering, paper entitled "Combating the abuse of alternative remittance systems: international best practices" (2003).

such systems, ensure availability of accurate and complete remittance records for investigative purposes and oblige remittance service providers to identify and report suspicious transactions.

52. While the Organized Crime Convention makes no reference to alternative remittance systems, article 14 of the Convention against Corruption specifically refers to the obligation of Member States to apply the domestic regulatory and supervisory framework not only to banks and non-bank financial institutions but also to natural and legal persons providing formal or informal services for the transmission of money or value. Paragraph 3 of article 14 of the Convention advises Member States to consider implementing measures to require financial institutions and money-remitters to include accurate and meaningful originator information on electronic transfer forms, maintain such information throughout the payment chain and to scrutinize any transfers that do not contain complete originator information.

53. Furthermore, FATF special recommendation VI, adopted in 2001, brought alternative remittance systems under the scope of domestic frameworks to combat money-laundering. Pursuant to that special recommendation and in line with the Convention against Corruption, countries should require natural and legal persons providing services for the transmission of money or value through an informal transfer system or network to be licensed or registered and subject to the same obligations under the FATF recommendations as banks and other financial institutions. Persons carrying out such activities without a licence or registration should be subject to sanctions. Thus, alternative remittance service providers should be required to comply with the same requirements for customer due diligence, record-keeping, control and reporting and be subject to the same level of supervision, monitoring of compliance and the sanctioning of non-compliance with the above-mentioned requirements as are banks and other financial institutions.

54. While the Convention against Corruption and the FATF recommendations are quite detailed and clear on the obligation of Member States to regulate and supervise alternative remittance systems, the practical implementation of the requirements remains a challenge. For example, alternative remittance systems are difficult to detect due to the fact that they are often being operated by businesses, such as grocery stores, whose primary activity is not the transmission of money. Efforts to regulate and supervise such informal transfer systems may have the detrimental effect of driving those who participate in and operate such systems further underground, making it even more difficult to detect, identify and prosecute persons misusing such systems for criminal purposes.²⁰

55. Further, while alternative remittance systems are a convenient tool for criminals to move and launder proceeds of crime, they are also crucial for migrant workers to send money to their families, thus providing an important source of revenue for certain regions and countries in the developing world. Regulating and supervising such businesses may have the effect of increasing transaction costs for the client, which in turn may reduce the amount of legitimate money being sent to the developing world. This has a potential negative impact on national economies,

²⁰ See also International Monetary Fund, *Regulatory Frameworks for Hawala and Other Remittance Systems*.

especially in countries where the availability of financial institutions such as banks is limited.²¹

56. In designing measures to implement the relevant provisions of the Convention against Corruption and the FATF recommendations as outlined above, States should thus take a risk-based and functional approach tailored to the specific needs of their economies and social structures to ensure that tighter controls do not negatively affect the availability and transaction costs of alternative remittance systems or the ability of competent domestic authorities to identify such systems, better understand how those systems operate and develop closer cooperation with informal remitters in order to avoid misuse for criminal purposes.

D. New technological developments

57. Over the past decade, groundbreaking technological innovations such as the Internet and wireless telecommunications have paved the way for the development of new payment methods. In 2006 and 2008, FATF issued reports that closely examined tools such as Internet payment systems, prepaid cards and mobile payments, concluding that all these methods share features that make them particularly vulnerable to abuse by money-launderers.²²

58. Most notably, the varying and sometimes high degree of anonymity with which customers can utilize such services and transfer funds to third parties both domestically and across borders is of concern. In addition, the methods used by the customer to fund such transfers are often anonymous, making it very difficult, if not impossible, for law enforcement authorities to trace the source of funds. Long-distance telephone cards, merchant gift cards and cash cards issued by companies such as Visa and MasterCard may be purchased with cash. A number of Internet payment systems accept funds not only through bank accounts and credit and debit cards but also through the use of cash, money orders, bank cheques, prepaid cash cards, vouchers and similar anonymous methods. Concerns regarding anonymity are further aggravated by the fact that some of the above-mentioned payment methods are restricted neither in terms of value nor in terms of the purpose for which they can be used.²² For example, prepaid cash cards issued by companies such as Visa and MasterCard may be used to purchase goods, including high-value items, or to withdraw cash from automated teller machines (ATM) worldwide. Customers can purchase a large quantity of such cards in order to overcome any limit on the monetary value of a single card.

59. The 1988 Convention, the Organized Crime Convention and the Convention against Corruption do not contain specific references to new payment systems and information technology developments that may work to undermine efforts to curb money-laundering. However, as mentioned above, article 7 of the Organized Crime Convention and article 14 of the Convention against Corruption require Member States to institute a comprehensive domestic regulatory and supervisory regime for banks, non-bank financial institutions and other bodies particularly susceptible to

²¹ United States Department of State, *International Narcotics Control Strategy Report: 2005*.

²² Financial Action Task Force on Money Laundering, *Report on New Payment Methods* (Paris, 2006); Financial Action Task Force on Money Laundering, *Money Laundering and Terrorist Financing Vulnerabilities of Commercial Websites and Internet Payment Systems* (Paris, 2008).

money-laundering. Thus, whether or not such new payment systems qualify as financial institutions is irrelevant under the provisions of the conventions. The fact that such payment systems pose a severe money-laundering risk suffices to trigger the obligation of Member States to include them within the scope of domestic frameworks to combat money-laundering.

60. In comparison with the Organized Crime Convention and the Convention against Corruption, the FATF Forty Recommendations provide a stricter definition of financial institutions and designated non-financial businesses and professions: the term “financial institutions” is defined broadly, through a functional rather than a legalistic approach. The Forty Recommendations define “financial institutions” as including “any person or entity who conducts as a business [...] the transfer of money or value” or “the issuing or managing of means of payments (e.g. credit and debit cards, cheques, traveller’s cheques, money orders and bankers’ drafts, electronic money)” for or on behalf of a customer. The development of new digital payment systems makes it progressively more complex to differentiate between non-bank financial institutions that provide services to end-users and companies that provide support services to the banking industry. The question of whether a particular company qualifies as a financial institution thus becomes increasingly difficult to answer.

61. Under the FATF Forty Recommendations, companies that fall within the definition of non-bank financial institutions are obligated to perform general customer due diligence, record-keeping and reporting requirements. Furthermore, Member States are required to supervise, monitor and sanction such non-bank financial institutions.

62. A number of recommendations are particularly relevant with respect to new payments systems. For example, recommendation 5 provides that the establishment of anonymous and numbered accounts should be prohibited and that comprehensive identification and verification measures be applied to all customer accounts. Thus, even in cases where client accounts are funded using anonymous methods such as cash or money orders, law enforcement authorities can use the information collected upon the establishment of a business relationship to trace the origin of funds. Recommendation 8 advises financial institutions to pay special attention to new or developing technologies that may favour anonymity and to take measures to prevent the use of such technologies in money-laundering schemes. Risks associated with non-face-to-face transactions should be addressed as well.

63. While provisions of the two conventions and the FATF recommendations apply to new payment methods, effective implementation of those obligations remains a major challenge. The transnational character of many of these systems makes it difficult and ineffective for single Member States to regulate, supervise and, where appropriate, sanction companies operating such systems. Further, the awareness of the existence and operational capabilities of such new payment systems varies from country to country. Countries with low awareness of the issue run the risk of having ineffective regulations for such systems.

64. All Member States are therefore called upon to impose harmonized regulations to ensure that criminals may not abuse new payment methods for money-laundering purposes. Efforts to raise awareness among law enforcement authorities, supervisory authorities and other relevant authorities of the risks involved with such

new payment systems should be strengthened. It is recommended that international organizations such as UNODC continue to carry out research on the vulnerability of new payment methods to money-laundering and to assist Member States in developing adequate measures to prevent their abuse.

V. Technical assistance provided by the United Nations Office on Drugs and Crime

65. UNODC, in particular through its Global Programme against Money-Laundering, Proceeds of Crime and the Financing of Terrorism, has been mandated to strengthen the ability of Member States to implement measures against money-laundering and to assist them in detecting, seizing and confiscating illicit proceeds, as required pursuant to United Nations instruments and other globally accepted standards, by providing relevant and appropriate technical assistance.

66. UNODC provides technical assistance on a voluntary and cooperative basis. However, country ownership is imperative for the effective implementation of each programme. Assistance is thus provided upon request by and with the full participation and involvement of the competent authorities of countries.

67. The types of assistance that UNODC may provide include but are not limited to the following: (a) research and policy papers; (b) needs analysis; (b) advisory services through the long-term deployment of field experts to a State or a group of States; (c) awareness-raising seminars; (d) development of model laws and regulations; (e) assistance for the drafting of legislation and regulations; (f) local, national or regional training and capacity-building courses, including computer-based training; and (g) provision of information technology solutions for financial intelligence units and case management tools for law enforcement officials.

68. One of the fundamental challenges in developing effective and practical technical assistance programmes is the ability to accurately determine and prioritize a country's specific technical assistance needs. It is therefore crucial that national and competent local authorities and the private sector identify strategic priorities. Information and data relevant to that task may further be identified through bilateral and multilateral needs assessment missions, assessments of compliance with relevant global standards, self-assessments and country statements in the context of regional and international forums. Adequate coordination among the mechanisms assessing the implementation of the standards should be sought in order to enhance the data collection and ensure consistency.

69. In determining the technical assistance needs of each country, UNODC seeks to coordinate with other technical assistance providers and donors to avoid a duplication of efforts and to ensure effective utilization of human and financial resources. In certain situations, UNODC may provide technical assistance jointly with other organizations such as the World Bank and the International Monetary Fund.

70. UNODC recognizes the need to build sustainable capacity through longer-term commitments rather than short-term engagements. In-country training, deployment of field experts and training of trainers are useful tools in achieving this goal.

71. Through the planning of regional and subregional events, UNODC should continue to promote the exchange of good or new innovative national practices that would benefit a larger group of countries, including with respect to the possible use of the reversal of the burden of proof to demonstrate the licit origin of the assets, the feasibility of confiscating proceeds through civil action and the development of operational national task forces to deal with money-laundering cases, as well as practices related to other key issues described in the present working paper.

72. Member States are encouraged to ensure that UNODC has adequate resources to continue its mandate for combating money-laundering and to assist Member States in the development of measures to combat newly emerging money-laundering trends.

VI. Conclusions and recommendations

73. Considerable progress has been made by Member States in implementing instruments and standards relating to international cooperation in money-laundering cases. However, legal and operational obstacles still hamper the ability of Member States to effectively apply the relevant measures. In particular, the effective implementation of the provisions of the conventions is undermined by the application of the dual criminality requirement, unduly restrictive conditions for the provision of mutual legal assistance, conflicts of legal systems, overly strict secrecy laws and insufficient powers of domestic authorities to execute mutual legal assistance requests. Member States should give priority to eliminating such barriers to enhance domestic international cooperation.

74. Additionally, newly emerging money-laundering techniques involving the use of the international trade system, alternative remittance systems and complex corporate structures as well as the development of new payment systems, may further limit the ability of Member States to effectively implement domestic frameworks for combating money-laundering and thus provide formal and informal types of assistance to other States. To successfully combat such new money-laundering schemes, it will be imperative to enforce comprehensive and globally harmonized regulations, enhance the ability of States to share information relevant for the successful identification of such schemes with other jurisdictions and strengthen international, regional and national efforts to raise awareness of domestic authorities with respect to how such schemes are operated and may be detected.

75. In view of those conclusions and taking into account the recommendations of the regional preparatory meetings, Member States participating in the Twelfth United Nations Congress on Crime Prevention and Criminal Justice may wish to consider the recommendations set out below.

76. It is recommended that Member States should:

(a) Ratify or accede to the 1988 Convention, the Organized Crime Convention and the Convention against Corruption and should review national legislation with a view to implementing those instruments in practice;

(b) Ensure that the money-laundering offence is defined fully in line with the offence as contained in the conventions and that it extends to the widest range of predicate offences;

(c) Enhance the coordination of all mechanisms assessing the implementation of money-laundering standards in order to facilitate data collection and analysis at the global level;

(d) Provide competent domestic authorities with sufficiently wide powers to fully execute all forms of mutual legal assistance and ensure that secrecy laws do not hamper international cooperation;

(e) Ensure that the provision of mutual legal assistance is not subject to unduly restrictive conditions;

(f) Ensure that all authorities involved in requesting and providing international cooperation are provided with the necessary skills, knowledge and financial and human resources to permit effective, timely and comprehensive implementation of mutual legal assistance requests;

(g) Establish clear channels for direct and spontaneous exchange of information and cooperation between competent national authorities such as the police, prosecutors, financial intelligence units and customs, tax and supervisory authorities;

(h) Consider the development of networks of contacts or the placement of liaison officers to facilitate international cooperation;

(i) Promote the establishment of multidisciplinary teams or task forces to work on the investigation and prosecution of money-laundering cases;

(j) Provide customs, tax, investigative, prosecutorial and other authorities competent to fight money-laundering with training on how to use trade data for the purpose of identifying, investigating and prosecuting trade-based money-laundering schemes;

(k) Set up mechanisms to allow for the sharing of relevant trade data at both the domestic and international levels and ensure that domestic data protection and privacy laws do not inhibit the effective implementation of those mechanisms;

(l) Put in place comprehensive measures to ensure that accurate, complete and updated beneficial ownership information is obtained and maintained and is accessible in a timely fashion and that such information may be shared with foreign authorities in an effective, timely and comprehensive manner;

(m) Regulate and supervise alternative remittance systems by taking a risk-based and functional approach, thus ensuring that tighter controls do not negatively affect the availability and transaction costs of such systems or the ability of competent domestic authorities to identify them;

(n) Develop closer cooperation with informal remitters in order to understand how they operate and prevent any misuse for criminal purposes;

(o) Discuss ways to address the proper detection of criminal proceeds in cash-based economies in which informal remittance is used and cash and commodities are moved across borders;

(p) Impose internationally harmonized regulations to ensure that criminals may not abuse new payment methods for money-laundering purposes and raise

awareness among law enforcement authorities, supervisory authorities and other relevant authorities of the risks posed by such new payment systems;

(q) Take measures to ensure that the technical assistance capacity of the United Nations to combat money-laundering and predicate offences have adequate resources to meet the emerging challenges faced by the international community.

77. It is recommended that UNODC should:

(a) Continue to provide technical assistance to Member States, upon request, on the basis of long-term commitments and with the full participation and involvement of domestic authorities;

(b) Cooperate with other international and regional organizations in researching new money-laundering techniques, such as trade-based money-laundering or new payment systems and assist Member States in developing appropriate countermeasures.
