

## MUTUAL EVALUATION OF CHINA

- I. Order of the discussion of the Mutual Evaluation Report of China on the Working Group on Mutual Evaluations and Legal Issues (WGEL)
- II. Order of the discussion of the Mutual Evaluation Report of China at the EAG Plenary meeting
- III. Issues for discussion at the WGEL

### **I. Order of the discussion at the Working group**

(the order is set by the EAG Mutual Evaluation Procedures, p. 25-29, EAG-II/PLEN/34, new ref. number EAG/PLEN(2007)4)

#### **1. The three principal tasks of this WGEL meeting are the following:**

- a) Identify 5-8 key issues for discussion at the EAG Plenary meeting;
- b) Note any “horizontal issues”, as well as consistency with other MERs of the FATF and FSRBs, in order to ensure the quality and consistency of the report.
- c) Identify any issues that require the interpretation/clarification of FATF standards, Methodology and EAG Procedures.

#### **2. The WGEL meeting can not:**

- Make decisions on the text of the report (before the Plenary the decision on amending the text of the Report can only be made by the assessors). At the Plenary meeting changes to the text of the report can only be introduced by the Plenary meeting).
- The WGEL cannot change the ratings.
- The WGEL cannot act as a broker between the assessment team and the evaluated country.

#### **3. The procedure for the discussion at the WGEL is the following:** *the meeting is chaired by one of the WGEL Co-chairs*

- The Secretariat briefly presents the issue for discussion (in the order of the Agenda)
- The representatives of China present their view.
- The assessment team presents its view.
- Interventions by the representatives of EAG member-states and observers. These interventions must take into account the 3 principal tasks of the WGEL, mentioned in p.1.
- The WGEL Co-chair sums up the discussion on the issue based on interventions of member-states and refers/does not refer the issue to the Plenary.
- After all of the issues have been discussed the delegations of member-states and observers may raise any other issues.

**II. Order of the discussion of the Mutual Evaluation Report of China at the EAG Plenary meeting:**

(the order is set by the EAG Mutual Evaluation Procedures, p. 30-34, EAG-II/PLEN/34, new ref. number EAG/PLEN(2007)4)

*The Plenary meeting will discuss 5-8 issues, which have been forwarded from the WGEL. The discussion of the MER at the Plenary meeting is chaired by the EAG Chairman and the Executive Secretary. The Plenary meeting has the right to make any changes to the text of the MER. The Plenary meeting must make the relevant decisions on the 5-8 issues referred by the WGEL. The Plenary meeting must decide on the ratings for the Recommendations accordingly.*

**1. Introduction:**

- The EAG Chairman opens the discussion on the Mutual Evaluation Report.
- Introduction by the Head of the assessment team and the assessors.
- Introduction by the Head of delegation of China.

**2. Procedure for discussion at the Plenary meeting:**

- The EAG Secretariat briefly presents the issue.
- The representatives of China present their view.
- The assessment team presents its view.
- Interventions by the representatives of EAG member-states and observers, including on the issue of upgrading/downgrading the rating or leaving the current rating.
- If necessary, further interventions by China and the assessment team for clarifications;
- The Chairman makes the final decision, including on the issue of ratings.
- *After all of the issues that were referred by the WGEL have been discussed the delegations of member-states and observers may raise any other issues*

**3. Conclusion**

- After the discussion on all issues and ratings has been concluded the EAG Chairman asks China if it agrees to adopt the Mutual Evaluation Report and its Executive Summary.
- Response of China.
- The EAG Chairman sets the timeframe for China to report back to the Plenary on the progress of implementing the recommendations of the assessment (1 year).

### III. Issues for discussion at the WGEL

1. The main issues for discussion at the WGEL are highlighted below. These are the issues highlighted by EAG delegations to the China report.
2. *The de facto objective of the WGEL* – is to identify those issues from the list, which will be discussed at the Plenary meeting. The WGEL has the right to change the text of the Comments.

| No.      | Key issues  | Comments   |
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| <b>1</b> | Recommendation 1:<br>extension of China<br>jurisdiction to foreigners | Para. 89 states that “China would be unable to take jurisdiction over a foreigner who is located outside of China and who committed a predicate offence outside of China, but laundered his proceeds <i>himself</i> within China”. This shortcoming could be addressed in the ratings box (section 2.1.3).   |
| <b>2</b> | Recommendation 26:<br>recommendations for the<br>FIU                  | <p><b>By Ukraine:</b></p> <p><b>Subsection 2.5.2</b></p> <p>Detailed recommendations are needed on how to enhance the FIU's capacity to have access to information of other law enforcement authorities on all levels.</p>   |
| <b>3</b> | Special Recommendation IX:<br>FIU-customs exchange of<br>information  | <p><b>By Ukraine:</b></p> <p>Subsection 2.7.2</p> <p>A recommendation may be needed addressing not only the capability of the customs authority to store information on bearer negotiable instruments, on the to transfer this information to the Chinese FIU.</p>   |
| <b>4</b> | Recommendation 5:<br>recommended actions for IDs                      | <p><b>By Kazakhstan:</b></p> <p><b>Section 3.2.2</b></p> <p><b>Para. 361. Wording of recommendation:</b> “the Chinese authorities should ensure that financial institutions cannot rely on first generation ID cards to identify persons”. It seems that a government cannot ignore the use of IDs that it has issued. It should rather be recommended to guarantee a quick transition to 2<sup>nd</sup> generation IDs.</p> |

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| <b>5</b> | Recommendation 5: breaches of AML regulations                  | <p><b>By Ukraine:</b></p> <p>Taking into account the assessment of effectiveness of Rec.5, as well as the supervisory activities of the PBC, which have revealed breaches of AML/CFT rules, perhaps it may be necessary to recommend to create procedures (established by relevant legislation), which will quickly allow to correct these technical breaches as soon as possible. This should be done with the participation of the FIU as the main coordinator in the AML/CFT system, in order to ensure that this is done not only in the banking sphere, but across all financial sectors.</p> |
| <b>6</b> | Recommendation 7: criterion 7.3 is not addressed in the report | <p><b>By Kazakhstan:</b></p> <p>Criterion 7.3 has not been addressed neither in the description &amp; analysis/recommendations &amp; comments sections, nor in the ratings box for Recommendation 7.</p>   |
| <b>7</b> | Recommendation 15: information access of compliance official   | <p><b>By Kazakhstan and Ukraine</b></p> <p><b>By Ukraine:</b></p> <p>Subsection 3.8.1</p> <p>It is noted that the legislation on one hand does not foresee but, on the other does not forbid the timely access of the compliance official to all of the relevant information. Taking into account the fact that this relates to an essential criteria, it may be necessary to recommend that Chinese legislation introduce these measures explicitly.</p>  |
| <b>8</b> | Special Recommendation VI: Application of SR.VI to the post    | <p><b>By Kazakhstan:</b></p> <p><b>Para. 382 (for SR.VII)</b> notes that telegraphic transfers may be handled by banks and postal institutions. At the same time Para. 521 states that only banks are authorized to provide money or value transfer (MVT) services in China. The same is noted in para. 305. If but the Post can provide MVT services as well, what is its level of compliance with SR.VI?</p>   |
| <b>9</b> | DNFBP coverage: accountants                                    | <p><b>By Kazakhstan:</b></p> <p>Para. 34 and 532 indicate that accountants do not perform any of the financial activities listed in the FATF Recommendations. However it is noted that they do perform auditing activities. This is confirmed by para. 596, which</p>  |

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|           |   | <p>states that accounting firms perform a full audit of NPOs. This leads to a suggestion that their activities may be wider than described.</p> <p>In addition Recommendation 16 states that “countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing”. Has China made any steps to do so, or considered this issue?</p> <p>Taking into account the scope of accounting activity it may be worthwhile to recommend to China to extend the AML requirements to accountants.</p> |
| <b>10</b> | Recommendation 25: rating for R.25. Coverage of guidance for DNFBPs.  | <p><b><i>Current rating – LC. Kazakhstan suggests a downgrade may be justified</i></b></p> <p>Subsection 4.3.3</p> <p>The ratings box reflects the fact that guidance has not been issued for the single DNFBP category (TCSPs) that is covered by AML rules. This suggests that R.25 is not applicable to the other categories of DNFBPs that are not covered. This approach, as it seems is not justified. Or it seems that it should at least be explained in the text of the report.</p>   |
| <b>11</b> | Recommendation 33: misuse of bearer shares                            | <p><b>By Ukraine:</b></p> <p>In relation to R.33 it may be necessary to recommend that relevant provisions should be introduced into Chinese legislation to ensure that bearer shares are not used for ML (as this is an essential criteria).</p>  |
| <b>12</b> | Special Recommendation VIII: training programs                        | <p><b>By Ukraine:</b></p> <p>In relation to SRVIII - taking into consideration the importance of the issue - it may be necessary to recommend to establish CFT training programs for the NPO sector as well as the supervisors for NPOs.</p>   |
| <b>13</b> | Recommendation 1 vs. Recommendation 37: dual criminality requirements | <p><b>By Kazakhstan:</b></p> <p>Para. 89 states that dual criminality is a prerequisite in respect of predicate behavior, however a “compliant rating” is given for Recommendation 37, where it states that dual criminality is not a severe obstacle to MLA provision.</p>  |
| <b>14</b> | Recommendation 30: scope of training for judges                       | <p><b>By Kazakhstan:</b></p>   |

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|  | Para. 265 is not entirely clear on the scope of AML/CFT training for judges. |
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