



The Revised FATF Standards

1. Overview

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The FATF - Mandate



- Created in 1989
- The inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering, the financing of terrorism and of proliferation.
- The FATF mandate (2008-2012):
 - Set standards to combat ML, TF & FoP;
 - Assess compliance with the FATF standards;
 - Identify & respond to threats to the integrity of the international financial system: high-risk jurisdictions and typologies studies.

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The FATF – a Global Network



- 34 jurisdictions + 2 regional bodies
- 22 observers
- 8 FATF-style regional bodies
- Over 180 jurisdictions have endorsed the FATF Standards



The FATF Standards



- The FATF Recommendations set out minimum requirements for measures that countries should implement in the fight against ML & FT
- Effective implementation of the FATF Recommendations provides an effective framework to combat ML & FT
- As terrorists & other criminals will always exploit the weakest link, consistent implementation by all countries is needed.
- Countries are best placed to judge the risks of ML & FT that affect them, and should ensure that their implementation of AML/CFT measures adequately addresses those risks.



The Review Process



- Some criticisms of the 2003 Recommendations:
 - Insufficiently flexible “one-size fits all” approach;
 - Lack of clarity about how to achieve some of the Recommendations.
- Review started in 2009.
- Objective: started as a limited, focused exercise to clarify and update the Standards and address new threats, and respond to implementation problems.
- Inclusive and transparent process; full involvement of the global network of FSRBs, private sector and other interested parties.
- Revised Standards published in February 2012.



Main Changes



- High-level policy principles largely unchanged; a number of new requirements introduced.
- Most of the changes are technical in nature.
- Considerable expansion of the text of the Standards in order to clarify concepts and obligations.
- A new structure:
 - From 40+9 Recommendations and Special Recommendations to 40 Recommendations (9 SRs on terrorist financing merged into revised 40 general Recommendations);
 - More “logical” order with 7 new sections.



A. AML/CFT Policies and Coordination



A new approach to the RBA (R.1)

- A new over-arching Recommendation on the RBA clearly sets out the principles and the underlying requirements.
- RBA applies across all relevant FATF Recommendations.
- Specific risk-based requirements in some Recommendations.
- Clearer and more specific requirements for countries, financial institutions/designated non financial professions and businesses and supervisory authorities.



A. AML/CFT Policies and Coordination



Risk assessment

- Countries are required to identify, assess and understand their ML/TF risks.
- Financial institutions and designated non financial professions are required to identify, assess and understand their ML/TF risks.
- Risk assessment is the basis of any AML/CFT regime – in particular for allocating resources or applying additional safeguards to the higher-risk areas.
- FATF is developing guidance on national risk assessment.



A. AML/CFT Policies and Coordination



- Risk-based approach / rules-based approach
- Basic principles of the RBA
 - Higher-risk → required enhanced measures.
 - Lower-risk → possible simplified measures.
 - The scope of FATF standards is risk-sensitive (possible exemptions for low-risk activities; possible extension to additional high-risk activities).
- Objectives of a risk-based approach:
 - focus on higher risk for more effective implementation
 - more efficient allocation of resources.



A. AML/CFT Policies and Coordination



National cooperation & coordination (R.2)

- National AML/CFT policies, based on risks;
- Cooperation and coordination mechanisms required at policy & operational levels;
- Specific requirement to include authorities relevant to the financing of proliferation;
- Best Practices paper published on cooperation regarding proliferation.



B. Money Laundering & Confiscation (R.3 & R.4)



- The scope of predicate offences to money laundering is expanded to include a range a serious tax crimes:
 - An additional *designated category of offences*: tax crimes (related to direct taxes and indirect taxes);
 - It is left to each country to define serious tax crimes;
 - Key consequences: suspicious transaction reports; international cooperation; competent authorities.



C. Terrorism & Proliferation



Targeted financial sanctions on terrorism (R.6)

- Clarification of the requirement to implement targeted financial sanctions (TFS) pursuant to relevant UN Security Council Resolutions (UNSCRs).
- TFS = Freezing action + prohibitions on making funds available to designated persons & entities.
- Persons & entities may be designated by:
 - the UN Security Council (Al-Qaida, Taliban) pursuant to UNSCR 1267 and its successor resolutions;
 - by countries pursuant to UNSCR 1373.
- The standard has been updated to take into account relevant UNSCRs which were issued after 2003.

The financing of proliferation

- **Targeted financial sanctions (R.7)**
 - New requirement to implement TFS (freezing action + prohibitions) pursuant to relevant UNSCRs on proliferation (similar requirements in the context of terrorism & terrorist financing)
 - Persons & entities may be designated by the UN Security Council pursuant to:
 - UNSCR 1718 & its successor resolutions (DPRK) and
 - UNSCR 1737 & its successor resolutions (Iran)
 - For private sector purposes – no substantial differences with R.6
- **National cooperation and coordination (R.2):** requires counter-proliferation agencies to be included.

Customer Due Diligence (CDD) (R.10)

- Core CDD requirements have not changed.
- Greater specificity on the measures to be taken in order to identify the beneficial ownership of customers that are legal persons or arrangements, and vis-à-vis the beneficiaries of life insurance policies.
- Additional examples on risk-based CDD:
 - Examples of lower & higher ML/TF risk factors.
 - Examples of simplified & enhanced measures.
 - It is clarified that these examples are not to be seen as prescriptive.

Politically Exposed Persons (PEPs) (R.12)

- Existing measures for *foreign PEPs* remain unchanged.
- The scope of the Recommendation is extended to *domestic PEPs* and *PEPs from international organisations*.
- Measures for domestic & international organisation PEPs apply on a risk-sensitive basis – in higher-risk situations.
- Clarification that family members and close associates of PEPs are to be applied the same measures as PEPs.

Money or value transfer services (MVTs) (R.14)

- Old SRVI aimed at ensuring that informal MVTs were subject to the FATF Recommendations.
- Though it duplicates some requirements on all financial institutions, a specific recommendation is maintained.
- Introduction of a clearer requirement for countries to take action to identify and sanction unlicensed or unregistered MVTs operators.

Wire transfers (R.16)

- Additional requirements have been added to enhance the transparency of cross-border wire transfers:
 - Financial institutions should include **beneficiary information** on all cross-border wire transfers;
 - **Intermediary financial institutions** should take reasonable measures to identify cross-border wire transfers lacking required originator & beneficiary information, and take appropriate action in such cases;
 - Clarification of the requirement for MVTs service providers & their **agents** to comply with R.16.
 - Link with R.6 (targeted financial sanctions on terrorism) has been clarified.

Third party reliance (R.17):

- i. clear delineation between third party reliance and outsourcing or agency;
- ii. more flexible approach to intra-group reliance.

Internal controls and financial groups (R.18):

- i. financial groups should have group-wide AML/CFT programmes that include policies on information sharing within the group;
- ii. strengthened requirements in cases where the host country does not permit the proper implementation of the group-wide programme.

D. Preventive Measures

Higher risk countries and countermeasures (R.19)

- Special attention → enhanced due diligence.
- Clearer requirement for countries to be able to apply countermeasures.
- Based on calls from the FATF (e.g. ICRG); or on risk.
- Expanded examples of possible countermeasures:
 - specific EDD measures;
 - reporting mechanisms;
 - limiting transactions.
- Countries to provide information to financial institutions.

E. Beneficial Ownership

Objectives of the revision

- In the 3rd round of evaluations, inconsistent evaluation and low levels of compliance.
- Caused by lack of clarity about the requirements & how to implement them.
- Principles are unchanged: authorities should have adequate, accurate and timely access to beneficial ownership information.
- New, detailed interpretive notes aim at providing clarity and specificity as well as flexibility about the practical steps to be taken by countries.

Legal persons (e.g. companies) (R.24)

- **Basic information** - Companies should be registered and should obtain and record basic information; companies registries should record part of the basic information.
- **Beneficial ownership information** -
 - Beneficial ownership information should be proactively held in company registries or by companies; and/or
 - Countries should use existing information to determine who the beneficial owner is when needed.
- Specific requirements for **international cooperation**.

Legal arrangements (e.g. trusts) (R.25)

- The recommendation is now applicable to all countries.
- Trust law countries should require trustees of any express trusts governed under their law to obtain and hold beneficial ownership information.
- All countries should ensure that trustees disclose their status to financial institutions and designated non financial professions when they act as trustees.
- Specific requirements for international cooperation.

Financial intelligence units (FIUs) (R.29)

- Highlight the specificity of the FIU and its key contribution to the operational value chain: analysis.
- Provide for potential broadening of demand for FIU analytical products but allow safeguards for FIU information to remain.
- Are forward looking but flexible as far as clarifying the functions that an FIU should have.
- Remain neutral as far as FIU models; apply regardless of whether administrative, law enforcement, judicial or hybrid.

Law enforcement responsibilities (R.30)

- Law enforcement authorities to investigate ML, predicate offences and TF, within the framework of a national strategy.
- Authorities should develop parallel financial investigations for ML, TF and predicate offences.
- Authorities should also have mechanisms for “identifying, tracing and initiating freezing and seizing of property that is or may become subject to confiscation or suspected of being proceeds of crime”.
- Should also apply to other non-law enforcement authorities responsible for financial investigations of predicate offences.
- Full range of law enforcement agencies should be taken into account when using multi-disciplined groups.

F. Competent Authorities

Law enforcement powers (R.31)

- Main requirements are unchanged: law enforcement authorities should
 - i. have access to all necessary information to carry out investigations; and
 - ii. be able to use a wide range of investigative techniques.
- There should be mechanisms for identifying whether natural or legal persons hold or control assets, as well as lawful processes for identifying assets without prior notification of owner.
- When conducting investigations of ML, TF and predicate offences, competent authorities should be able to ask for all relevant information held by the FIU.

G. International Cooperation

International instruments (R.36)

- The UNCAC is part of the conventions countries should implement.
- The list of conventions countries are encouraged to sign is updated and expanded.

Mutual legal assistance and extradition (R.37-9)

- Clarification of the obligations for countries to have clear and efficient processes to facilitate the execution of MLA requests in a timely manner.
- Strengthened requirements for countries to have arrangements for sharing confiscated assets; and to assist with requests based on foreign non conviction based confiscation orders in certain circumstances.
- Countries are required to render MLA notwithstanding the absence of dual criminality when assistance does not involve coercive actions.

Other forms of international cooperation (R.40)

- Clarification of the scope – applies to all competent authorities.
- Specific requirements for each main type of competent authority (FIUs, Supervisors, Law Enforcement).
- Strengthened scope for cooperation by expanding the list of unduly restrictive measures.
- Facilitation of diagonal cooperation between non-counterpart competent authorities.

FATF 4th Round of mutual evaluations

- Scheduled to start in the 4th quarter of 2013.
- Further work by FATF required by that time:
 - Preparing to assess countries compliance with the revised standards:
 - Review the assessment methodology.
 - Revise the procedures for evaluations
 - Prepare countries and assessors.

Effectiveness

- 4th round of FATF Assessments will place much stronger emphasis *effective implementation* of revised FATF Standards (in the 3rd round effectiveness was assessed in an inconsistent manner).
- Developing an approach to assess effectiveness:
 - Based on objectives linked to protecting the integrity and security of financial systems from ML/TF risks;
 - Countries assessed on how effectively they have mitigated the risks;
 - Effective implementation separate and complementary to technical compliance.

Risk Assessment Guidance

- Understanding the risks and threats is the starting point for countries when implementing the revised Recommendations.
- National Risk & Threat Assessments required by the new Recommendation 1.
- FATF working to prepare guidance for countries on conducting national risk and threat assessments – to be published in the 2nd half of 2012.



FINANCIAL ACTION TASK FORCE
GROUPE D'ACTION FINANCIÈRE



For more information:

FATF public website

www.fatf-gafi.org

APG public website

www.apgml.org