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# The Revised FATF Standards

## 2. Nature of the FATF Standards - Law and Enforceable Means


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# Overview

- Nature of the FATF Standards
- Law and enforceable means


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## Nature of the FATF Standards

- The FATF Standards = the 40 Recommendations + Interpretive Notes + Note on the Legal Basis of Requirements for FIs & DNFBPs + Glossary
  - Should/should be required/should consider
  - *Examples* are *non mandatory* elements of the Standards
- Assessment material: including Methodology, Processes and Procedures, possibly a Handbook
- Guidance and Best practices papers

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## Law and Enforceable Means

### Background

- In the 3<sup>rd</sup> Round, a number of requirements had to be set out in “law or regulation” – the fundamental obligations
  - Distinction between “regulation” and “other enforceable means” raised interpretation issues
  - Note to Assessors in Methodology in 2008 to clarify “OEM”
- All requirements should be transposed into mandatory rules with sanctions for non compliance
- Key rationale: political commitment and stability of the rules
- These basic principles are unchanged but the requirements have been clarified and strengthened


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## Law and Enforceable Means

- Criteria set out in new “general interpretive note”: Legal Basis of Requirements on Financial Institutions and DNFBPs
- A clearer distinction: “law” vs “enforceable means”
- Only the principles of the fundamental requirements of CDD (R.10), record-keeping (R.11) and the reporting of suspicious transactions (R.20) to be set out in law

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## Law and Enforceable Means

### Law

- Law refers to:
  - i. any legislation issued or approved through a Parliamentary process, *or*
  - ii. other equivalent means provided for under the country’s constitutional framework, *and* which imposes mandatory requirements with sanctions for non-compliance.
- The sanctions for non-compliance should be effective, proportionate and dissuasive (see R.35)
- The notion of law also encompasses judicial decisions that impose relevant requirements, and which are binding and authoritative *in all parts* of the country

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## Law and Enforceable Means

### Enforceable means

- Enforceable means are:
  - regulations, guidelines, instructions or other documents or mechanisms;
  - that set out enforceable AML/CFT requirements in mandatory language with sanctions for non-compliance;
  - and which are issued or approved by a competent authority
- The sanctions for non-compliance should be effective, proportionate and dissuasive (see R. 35)

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## Law and Enforceable Means

- “Enforceable means” should:
  - i. Create (mandatory) obligations addressing the FATF requirements;
  - ii. Be clearly stated through a document or mechanisms; and
  - iii. Be understood by the relevant financial institutions and DNBFPs as such.
- There must also be clear requirements for sanctions for non-compliance, although it need not be in the same document as long as there are clear links
- Note that only competent authority (as defined) can issue or approve “enforceable means”

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