The Revised FATF Standards

11. Regulation and Supervision

Overview

- Regulation, Supervision & Monitoring (and Sanctions)
  - Definitions (Glossary)
  - Risk Based Approach
  - Financial institutions (R.26 & 27)
  - DNFBPs (R.28)
  - MVTS (R.14)
Regulation and Supervision

Definitions

- Competent authorities, Supervisors (including Financial Supervisors) and Self-Regulatory Bodies (SRBs) may be involved in regulation and/or supervision

- Competent authorities:
  - Public authorities with designated responsibilities for combating money laundering and/or terrorist financing
  - More examples: Authorities with function of investigating and/or prosecuting ML, associate predicate offences and TF, authorities receiving reporting on cross-border transportation of currency & BNI etc.

- Supervisors / Financial Supervisors:
  - Designated competent authorities or non-public bodies ensuring compliance by financial institutions (“financial supervisors”) and/or DNFBPs with AML/CFT requirements
  - Non-public bodies should have AML/CFT supervision and sanction powers. They should also be empowered by law and supervised by a competent authority

- Self-Regulatory Bodies (previously SROs):
  - Represents a profession, is made up of members from the profession, has a role in regulating the members, and performs certain supervisory or monitoring type functions
  - Such bodies should enforce rules to ensure that high ethical and moral standards are maintained by those practising the profession
Regulation and Supervision

Risk-Based Approach (RBA)

- RBA to supervision / monitoring for financial institutions and DNFBPs – INR.26 / INR.28
  - Take into account national ML/TF risks (see R.1)
  - Understand the sectoral ML/TF risks
  - Understand specific ML/TF risks of entities supervised / monitored
  - Resources allocated according to risks - focus on higher risk areas
  - Not static – periodic reviews

- Supervisors / SRBs should have:
  - Adequate powers, including access to information
  - Adequate resources and professional staff
  - Sufficient operational independence for Supervisors

Regulation and Supervision

Risk-based supervision – Financial institutions (R.26)

- Onsite / Offsite access on domestic & international risks
  - E.g. customers, products, services, size, quality of compliance
- Degree of discretion for financial institution, and its risk assessment
- Take into account internal controls and mitigating measures - financial group controls and consolidated supervision is relevant
- Frequency & intensity of supervision dependent on risks
- Triggers for periodic reviews: e.g. major events, changes in management or operations of financial institution
Regulation and Supervision

Risk-based supervision/monitoring - DNFBPs (R.28)

- Consider its risk profile
- Assess the adequacy of the DNFBP’s AML/CFT internal controls
- Degree of discretion allowed to DNFBP under the RBA
- Frequency & intensity of supervision / monitoring dependent on risks

Regulation and Supervision

Supervision of Financial Institutions (R.26)

- No real change
- Countries / Supervisors – not approve / continue operation of shell banks
- Core Principles Financial Institutions – regulated and supervised
  - Consolidated Group Supervision for AML/CFT purposes
- Other Financial Institutions – adequately regulated, and subject to supervision or monitoring for AML/CFT purposes
Regulation and Supervision

Powers & Sanctions (R.27)

- Powers of sanctions in line with R.35 – i.e. range of effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative
  - R.35 applies to R.6, and R.8 to R.23
  - Specifically, supervisors should have range of disciplinary and financial sanctions, including (i) power to withdraw, and (ii) restrict or suspend the financial institution’s license
- Clarification that supervisors should have powers to supervise or monitor compliance

Regulation and Supervision / Monitoring

DNFBPs (R.28)

- Casinos – licensed, regulated and supervised by a competent authority
- Other DNFBPs – supervised or monitored by supervisor or SRBs
- Fit and proper test applicable for both casinos and other DNFBPs
- Adequate powers to monitor and sanction – consistent with R.35; effective, proportionate and dissuasive, whether criminal, civil or administrative
  - R.35 also applies to R.22 and R.23
Regulation, Supervision or Monitoring

Money or Value Transfer Services (R.14)

- R.14 also calls for MVTS to be licensed or registered and subject to FATF Recommendations
  - Some overlap with R.26
- Clearer requirement for countries to take action to identify and sanction unlicensed or unregistered MVTS operators

MVTS (R.14)

- Agents of MVTS providers should:
  - be licensed or registered by competent authority; or
  - MVTS provider should maintain a list of agents in relevant countries of operation, accessible by competent authorities
- Agents of MVTS providers should be included and monitored in the MVTS providers’ AML/CFT programmes