




FINANCIAL ACTION TASK FORCE
GROUPE D'ACTION FINANCIÈRE

The Revised FATF Standards

1. Overview

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The FATF - Mandate

- Task Force 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 (2012- 2020):
 - 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

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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

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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 adopted in February 2012.

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Main Changes

- High-level policy principles largely unchanged; a number of new requirements introduced.
- Most of the changes are clarificatory in nature.
- Considerable expansion of the text of the Standards 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 Recommendations);
 - More “logical” order with 7 new sections.

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A. AML/CFT Policies and Coordination

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 (incl. supervisory authorities), financial institutions and designated non financial businesses and professions (DNFBPs)

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A. AML/CFT Policies and Coordination

Risk assessment

- Countries are required to identify, assess and understand their ML/TF risks
- Financial institutions and DNFBPs are required to identify, assess and understand their ML/TF risks
- Risk assessment is the basis of any AML/CFT regime – in particular for risk mitigation, applying additional safeguards to the higher-risk areas and resource allocation
- FATF is developing Guidance to countries on Risk Assessments

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A. AML/CFT Policies and Coordination

- Risk-based approach / rules-based approach
- Basic principles of the RBA
 - Higher-risk → require 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

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A. AML/CFT Policies and Coordination

National cooperation & coordination (R.2)

- Regular review of national AML/CFT policies (based on risks identified)
- Cooperation and coordination mechanisms required at policy & operational levels
- In the specific context for combating the financing of proliferation, requirement to include other relevant authorities for cooperation
 - Best Practices Paper published on cooperation regarding combating the financing of proliferation

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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)
 - Left to each country to define serious tax crimes
 - Key consequences: Definition of competent authorities; International cooperation; Suspicious transaction reporting.

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C. Terrorism & Proliferation

Targeted Financial Sanctions on Terrorism (R.6)

- The standard has been clarified and updated to take into account relevant UNSCRs which were issued after 2003.
- Clarification of the requirement to implement targeted financial sanctions (TFS) pursuant to relevant UN Security Council Resolutions (UNSCRs).
- TFS = Freezing action (without delay) + prohibitions on making funds available to designated persons and entities
- As before, 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.

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C. Terrorism & Proliferation

The Financing of Proliferation

- Targeted financial sanctions (R.7)
 - Countries to implement TFS (freezing action (without delay) + 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)
- National cooperation and coordination (R.2)
Requires agencies relevant to counter-proliferation financing to be included

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D. Preventive Measures

Customer Due Diligence (CDD) (R.10)

- Core CDD requirements have not changed.
- In particular, greater specificity on:
 - the measures to be taken in order to identify the beneficial ownership of customers that are legal persons or arrangements (i.e. 3 stage process for legal persons)
 - 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.
 - Clarified that these examples are not prescriptive.

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D. Preventive Measures

Politically Exposed Persons (PEPs) (R.12)

- Existing measures for *foreign PEPs* remain unchanged.
- 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 subjected to the same measures as PEPs.

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D. Preventive Measures

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

- Old SR.VI aimed at ensuring that informal MVTs were subject to the FATF Recommendations.
- Though it duplicates some requirements for financial institutions, a specific Recommendation has been maintained.
- Clearer requirement for countries to take action to identify and sanction unlicensed or unregistered MVTs operators.
- Clarification of the requirements relating to agents of MVTs.

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D. Preventive Measures

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
 - Below the USD/EUR 1,000 threshold, (non verified) information needs to be included
 - Clarification of the requirement for MVTs service providers & their **agents** to comply with R.16
 - Link with R.6 (targeted financial sanctions on terrorism) clarified

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D. Preventive Measures

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 AML/CFT programme.

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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 (by financial institutions)
 - Enhanced Reporting mechanisms
 - Limit / Restrict / Prohibit transactions etc.
- Countries to provide information to financial institutions on concerns about weakness in the AML/CFT systems of other countries

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E. Beneficial Ownership

Objectives of the Revision

- In the FATF 3rd round of evaluations, inconsistent evaluation and low levels of compliance.
- Caused by lack of clarity about the requirements and how to implement them.
- Principles are unchanged: Competent 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.

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E. Beneficial Ownership

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

- **Basic information**
 - All 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**.

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E. Beneficial Ownership

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 DNFBPs when they act as trustees.
- Specific requirements for international cooperation.

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F. Competent Authorities

Financial Intelligence Units (FIUs) (R.29)

- Remain neutral on FIU models; apply regardless of whether administrative, law enforcement, judicial or hybrid.
- 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.
- Forward looking but flexible as far as clarifying the functions that an FIU should have - including ability to obtain additional information from reporting entities.

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F. Competent Authorities

Law enforcement responsibilities (R.30)

- Law enforcement authorities to investigate ML, associated predicate offences and TF, within the framework of a national AML/CFT policies.
- Authorities should conduct parallel financial investigations for ML, associated predicate offences and TF.
- 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.

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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 suitable investigative techniques.
- The list of investigative techniques they should be able to use has been expanded
- There should be mechanisms for identifying whether natural or legal persons hold or control assets
- Competent authorities should be able to ask for all relevant information held by the FIU

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G. International Cooperation

International Instruments (R.36)

- The UNCAC is included as a convention which countries should implement
- The list of conventions countries are encouraged to sign is updated and expanded

Mutual legal assistance and extradition (R.37-39)

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

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G. International Cooperation

Other forms of international cooperation (R.40)

- Clarification of the scope – applies to all competent authorities
- General requirements + additional specific requirements some types of competent authorities (FIUs, financial supervisors, law enforcement)
- Facilitation of indirect “diagonal” cooperation between non-counterpart competent authorities (and encouraging direct diagonal cooperation)
- Requirements for requesting competent authorities

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Next Steps

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
 - Develop and update guidance
 - Prepare countries and assessors

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Next Steps

Effectiveness

- 4th round of FATF Assessments will place much stronger emphasis on *effective implementation* of the revised FATF Standards (in the 3rd round effectiveness was assessed in a limited and inconsistent manner)
- WIP: developing an approach to assess effectiveness:
 - Based on hierarchy of objectives linked to protecting the integrity and security of financial systems from ML/TF risks
 - Countries assessed on how effectively they have achieved the outcomes (as determined by the FATF) – move away from assessing effectiveness of single Recommendation
 - Effective implementation separate and complementary to technical compliance

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Next Steps (WIP)

Risk assessment guidance

- Understanding the risks, threats and vulnerabilities is the starting point for countries when implementing the revised Recommendations.
- Risk assessments at the national-level required by the new R.1: *“Countries should identify, assess and understand the ML and TF risks for the country...”*.
- FATF working to prepare Guidance for countries on conducting Risk Assessments – to be published in the 2nd half of 2012.

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For more information:

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