



Consultation on Proposed Changes to the FATF Standards

*Compilation of Responses from NGO's and
individuals*

Table of Contents

<i>eStandardsForum – Financial Standards Foundation</i>	3
<i>Gibbons Group Regulatory and Compliance Committee</i>	4
<i>Liberty Victoria(Liberty) – Victorian Council for Civil Liberties Inc.</i>	11
<i>Luis Eduardo Daza (former member of Colombia FIU)</i>	14
<i>Robert Typa (AML Expert, Poland)</i>	15
<i>Task Force on Financial Integrity and Economic Development</i>	17
<i>Think About Crime</i>	30

Dear Sir/Madame:

Our organization, eStandardsForum, Financial Standards Foundation, is a not for profit specializing in the 12 Key Standards for Sound Financial Systems propounded by the Financial Stability Forum (replaced by the Financial Stability Board). Since 2000, we have been monitoring the adoption and compliance of the FATF's standards across 93 countries. As a supported, user, and promoter of the FATF's 40+9 recommendations, we have some comments and suggestions to the 2010 Review process.

Comments on “The Review of the Standards – Preparation for the 4th Round of Mutual Evaluations”

- We agree with and support the new focus to emphasize effective implementation, not just enactment, of the FATF Standards by countries.
- We support the FATF's commitment to involve the private sector and all interested parties in the Review of the Standards and to have the full involvement of all FATF and FSRB members and all FATF observers.
- The single comprehensive risk-based approach (RBA), applicable to R. 5, 6, 8-11, 12, 15, 16, 21 & 22, would be beneficial.
- We agree with enhancing the “Executive Summary” so that it **clearly sets out the overall level of compliance**.
- Timeliness would be important to work on given the fact that the Mutual Evaluation process takes a long time and therefore the publication of the results takes place long after the information and data was gathered. The situations in a lot of countries could change between the time the Mutual Evaluation was conducted and the date of the publication of the results.
- The structure of the Mutual Evaluation reports could be improved upon to make it readily accessible and easier to navigate.
- As a corollary to the above point we would appreciate more clarity and brevity in the Summary Tables found at the end of the mutual evaluation report. Just to clarify, the table itself is a very useful tool as it enumerates the compliance levels for each recommendation in a very user friendly manner. The clarification is necessary, in some instances, for the reasons for the rating. This was not specifically mentioned/identified in the review but sometimes the explanations for the reasons for the particular rating are too lengthy and the language unclear.

Thanks,

eStandardsForum
Financial Standards Foundation
250 Park Avenue, Suite 2000
New York, NY 10017
Direct +1 (646) 502-7761
Fax +1 (212) 750-0190
www.estandardsforum.org

Dear Sirs,

Please find attached the comments of a financial services Group operating in Bermuda and the northern Caribbean. We believe that the views of small jurisdictions dependent on financial services in the absence of natural resources, should be given serious consideration.

Thank you for the opportunity to make this submission.

Gibbons Group
Regulatory and Compliance Committee

REVIEW OF FATF STANDARDS

1. General Comments

- 1.1. Those jurisdictions that are not compliant with existing standards need to be addressed.

The latest list of countries giving “high level political commitments” to work with the FATF and their appropriate regional FATF associate membership group (CFATF, GAFISUD; APG etc) shows that the basic AML/CTF requirements have not yet taken hold in all jurisdictions.

Foundational deficiencies are still being identified.

This places pressure on compliant countries to take more stringent steps (eg. enhanced due diligence) when dealing with customers from those non-compliant jurisdictions. It also provides opportunities for financial terrorists to undermine the efforts of the compliant jurisdictions by turning to non-compliant ones.

- 1.2. Those persons wishing to evade standards are always looking for ways to do so. It is important for those trying to prevent AML/CTF activity to be vigilant to spot those new ways, and accordingly to be holding the 40+9 recommendations up for a review of their adequacy on a regular basis. The relevancy of the existing Recommendations requires regular examination.

However those who are compliant should not be placed at a disadvantage because of having to incur costs or follow procedural obligations not being shouldered by non-compliant jurisdictions. Launderers are constantly looking for new ways to effect their business and it is expected that those jurisdictions who are still to implement the original standards will be required to meet any new ones at the same time.

2. Risk-Based Approach

- 2.1. Given the emphasis being placed on the Risk-Based Approach (RBA) it is considered entirely appropriate to draw together all references to it and produce a single Interpretive Note. At present there exist formal RBA notes for Legal Professionals; Dealers in Precious Metal and Stones; Casinos etc.

- 2.2. The Interpretive Note itself will not assist adequately unless it contains scenarios to support and understanding of terms used such as 7(b) iii – “Simplified measures”, and 7(b) iv – “strictly limited and justified circumstances”, and again 7(c) iv – “simplified measures”.
- 2.3. A risk-based approach requires the application of risk assessment procedures and due diligence that is reflective of the level of risk assessed. This calls for a greater degree of judgment, and will require additional resources to be applied. This approach is therefore likely to involve more senior management and additional resources, with consequential additional cost.
- 2.4. To put the risk based process fully into practice will require not only enhanced skills in the business entity, it will also require the supervisors to have the ability to make judgments to a greater degree than formerly. A forward-looking analysis on the basis of a balance of risks becomes essential to the process, and this will in turn require further senior management resource. “Tick the box” regulation will have to disappear. Regulation will become more intrusive to business in order to identify risks and problems early, as well as becoming more judgmental, resulting in push-back by firms to the process.
- 2.5. The rapid rate of technological evolution and change, and the implementation of new systems and technology in all forms of business, requires an equally rapid development in supervisory skills and understanding of the ways in which technology can be used in ML/TF. This rate of technological change and evolution is an issue of itself for supervisors and regulators. It impacts on risk and thus all aspects of the risk-based approach. It is quite possible that technology experts in business may be better equipped to develop and manage technological change than representatives of countries and competent authorities themselves.

The issue of non-face-to-face business (globalisation) has advanced and been facilitated by technological change. It has been dramatic in the past two decades.

It appears to us that the development of technology and communications and its impact on financial systems has become so significant that it merits the attention of the FATF as an issue of itself. The use of advanced technology not only enhances the risk that ML/TF can take place, but it also creates operational risks in legitimate business as a result of the use of the systems themselves.

2.6. Clarification of the identification of “beneficial owners” of customers that are legal persons or arrangements, is regarded as a “small change” by the FATF. It is suggested that natural persons with a controlling interest be identified on a risk-related basis, or “mind and management” in the case of a dispersed “control”, equally on a risk-related basis. This can be made difficult by a customer with a multi-layered “ownership” where mind and management can become discretionary. While this creates high-risk customers and hence requires enhanced CDD on them, it can make it difficult for small business to grow by engaging large businesses as clients.

Inevitably the performance of further due diligence will become costly. Detailed examination in order to establish “mind and management” will be more expensive.

2.7. The proposals suggested for life insurance are in principle very appropriate. It is considered necessary for any insurer making a disbursement based on a claim, to identify that the payee is the true beneficiary, and to confirm who that beneficiary is. This however should not mean that CDD is not done at the onset of the relationship. It should be.

We do not believe that any special steps should be taken because of the relationship between an insurance company and a PEP. The standard procedures should apply when a business relationship exists with a PEP, as such a person would be treated as a high risk client.

3. Politically Exposed Persons

The proposals for amendment state that money laundering risks differ, depending on whether the customer is a foreign or a domestic PEP. Current Regulations do not include domestic PEPs in the category of persons requiring enhanced due diligence. These proposals will now require the identification of domestic PEPs and the application of enhanced CDD, but only if there is a higher risk. The requirement for a domestic PEP to be assessed on a risk profile basis is a step in the right direction in our view. The fact that a PEP is domestic should make no difference – all high risk PEPs should be subject to enhanced due diligence. The business relationships of PEPs with a financial institution should be a matter of record once the CDD is performed and the ownership of any funds presented by them is revealed.

The fact that a PEP may be the beneficiary of a life insurance policy should emerge through the CDD being completed by the relevant life insurance company.

4. Third Party Reliance

4.1. Who can rely?

We endorse this position.

Who can be relied upon?

We endorse the position that information from a fully compliant supervised entity can be relied upon.

4.2. 3rd Party reliance, or outsourcing / agency.

The FATF suggests that a set of common criteria should be determined applicable to outsourcing / agency forms of information gathering, and a separate set applicable to reliance.

4.3. Intra-Group Reliance

This flexibility as proposed makes a great deal of sense to us, as a financial Group. We believe that reliance on information obtained by another member of the Group is logical, given the common Compliance Standards implemented across the Group. We currently meet the requirements set in Para. 37. However this provision should only apply where there is a common Group Supervisor who can be satisfied as to those common Standards.

5. Tax Crimes and Predicate Offences

5.1. The issue of “tax crimes” being introduced as a predicate offences category, coupled with the addition of “indirect taxes” appears to be targeting jurisdictions that have had no need to implement income taxes. These proposals appear also to be framed specifically to include jurisdictions that have depended on customs duties as a principal source of revenue.

There is no reference to what might be considered tax crimes. In our jurisdiction of indirect taxes, the level of predicate offence is fraud; it is not for example the basic failure to submit a tax return, or the failure to register for taxes. The offence is committed in respect of payroll tax or hotel occupancy tax or customs duties. Clearly, definitions are critical to the inclusion of “tax crimes”.

While it is noted that the key change required here would be in relation to the obligation to report suspicious transactions under Recommendation 13, it should be remembered that to be meaningful the change will apply equally to all international jurisdictions, large and small, and whether or not direct taxation is in place alongside indirect taxes. Tax Treaties will impact on this proposed change, as they may contain definitions of tax offences that may be considered reportable offences. The definition of “tax crimes” thus becomes critical as an issue for FATF as well as the parties to individual tax treaties. How will this be determined?

6. Cross-Border Wire Transfers

- 6.1. The FATF is proposing that further information on the beneficiaries of wire transfers be obtained by the financial institutions involved and discusses what that information might be.
- 6.2. The FATF is also proposing to require information to be obtained so that all wire-transfers may be screened for compliance with United Nations Security Council Resolutions, thus effectively making any UNSCRs into additions to the 40 + 9 FATF Recommendations. Where does that process stop?
- 6.3. There is also the suggestion that this Special Recommendation 7 be applied to new payment methods. Does this mean “other payment methods” that are not included in the wire transfer category? If so, should they be formally recognized?

7. Requests for Information

Proposals related to international co-operation would apparently attempt to introduce requirements over and above the principles agreed to by countries in MLATs, extradition treaties; information exchange agreements etc. in regard to their execution.

This does not appear to be appropriate or reasonable as the terms of the treaties should be sufficient to cover these matters. It is believed that countries / jurisdictions negotiate issues to the extent that they are able to agree them, and include them in treaties or agreements that are applicable to them. However the sweeping range of proposals offered as amendments to Recommendations 27 and 28 covering AML/CTF enforcement and prosecution powers and mechanisms create the basis for treaties in themselves. Recommendation 28 proposals would offend individual rights to privacy in some

jurisdictions, and a “wide range of investigative techniques “as proposed are unlikely to find universal agreement as they would equally be found offensive.

8. Use of Mutual Evaluation Reports

The evaluation process generates reports that provide information about the Compliance Standards in any evaluated jurisdiction. Knowing these standards assists other jurisdictions to evaluate information being made available to them and permits risks of doing business also to be evaluated. However a weakness may be identified that could be used by the launderer as a result of publicizing it in the report. Naming and shaming jurisdictions with low standards is certainly an incentive to ensure the standards are raised, but identifying the detailed weakness could give valuable information to a launderer.

Also, as part of the process, the jurisdiction’s response to the evaluation would have to be included with the evaluation document. This would give the home jurisdiction the launderer opportunity to comment on that evaluation, and to address negatives contained in it.

In general however the proposal has merits. It could show both positives and the risk levels of conducting business in that jurisdiction, or with financial institutions based in that jurisdiction. The level of detail contained in the report becomes the critical factor.



www.libertyvictoria.org.au

Financial Action Task Force (FATF)
Email: Fatf.consultation@fatf-gafi.org

Submission: Financial Action Task Force (FATF) Consultation

Liberty Victoria

Liberty Victoria (Liberty) is one of Australia's peak civil liberties non-profit organisations. Since 1936 we have worked to defend and extend human rights and freedoms in Victoria and across Australia.

Liberty Victoria believes in a society based on the democratic participation of all its members and the principles of justice, openness, the right to dissent and respect for diversity. We aim to secure the equal rights of everyone provided they don't infringe the rights and freedoms of others, and oppose any abuse or excessive power by the state against its people. Further information on Liberty's activities can be found at www.libertyvictoria.org.au.

Liberty welcomes the FATF's public consultation into its review of standards in preparation for the 4th round of mutual evaluations. We hope the comments below are of benefit to FATF and look forward to FATF finding a proportionate balance between protecting society and the civil liberties of those within it.

The FATF's current consultation is ostensibly a 'public' one, but a careful reading of the consultation document suggests the consultation is aimed at 'private stakeholders' rather than all stakeholders. Specifically, there is no mention of consumer rights, civil liberties, or indeed any human rights except for 'privacy' (which is mentioned only once on page 3, paragraph 3). Liberty understands that FATF is concerned with developing and promoting anti-money laundering (AML) and counter terrorist finance (CTF) standards, but urges the FATF, its members and observers to remember that it is consumers whose civil liberties are affected by its policies. Indeed, FATF's recommendations are an important element of government regulatory policy and are therefore subject to the principles of good government and the protection of civil liberties.

Principle 1: Focused exercise – *the FATF has identified a limited number of issues and is dealing with them on a prioritised basis. There should be a balance between the desirability of maintaining stability in the standards and the need to address new or emerging threats, or obvious deficiencies or loopholes in the standards.*

Liberty broadly agrees with the FATF's principle of maintaining a balance between stability in the current standards whilst addressing the need for change due to new and emerging threats. It is important that when considering new and emerging threats that a proportionate response is taken. There is a tendency by regulators, when untempered by civil liberties and consumer rights, to take a more prescriptive approach to regulation and data collection. As a civil liberties organisation, we recognise that regulation is desirable, but only where done for clearly defined purposes in a transparent and accountable manner.

Principle 2: Inclusiveness, openness and transparency – *the review process should allow for the full involvement of all FATF and FSRB members and also all FATF observers. In addition there is the current public consultation exercise, including close engagement, in particular, with private sector partners.*

Liberty is pleased to see inclusiveness, openness and transparency recognised as important factors. Unfortunately these are often given little more than lip service by those charged with their implementation (whether as regulators or regulated organisations) in various jurisdictions. It would be pleasing to see these cornerstone principles of good government incorporated more thoroughly throughout FATF's recommendations.

Principle 3: Increased focus on effectiveness – *the 4th Round of Mutual Evaluations should give a higher emphasis to effective implementation of the AML/CFT requirements by countries, which could in the future lead to restructuring the evaluation process, with a greater focus on risks and vulnerabilities faced by particular jurisdictions.*

Liberty agrees that the FATF must focus on the implementation of its recommendation by its members, observers and other relevant parties. A failure to adequately implement regulatory policies risks undermining the whole.

Risk Based Approach (RBA) – Liberty has no particular view on the proposal to develop a single comprehensive statement on the RBA by way of a new Interpretative Note (applicable to Recommendations 5, 6, 8-11, 12, 15, 16, 21 & 22). However, it is noted that specific Recommendations may require a different approach (see paragraph 6, page 4). To avoid confusion, the FATF may wish to consider a tailored Interpretative Note for each of its Recommendations and Special Recommendations.

Further, the broadening of Recommendation 20 to all types of financial activities is logical, although it should be balanced against a realistic money laundering and terrorist financing risk assessment.

Conclusion – Given the short consultation period and lack of direct engagement with consumers or civil liberties groups (to Liberty's knowledge), Liberty would welcome the opportunity to comment in more depth on the FATF's current consultation. Should you wish to discuss any aspect of this submission further, please contact our office on +61 3 9670 6422.

Yours sincerely,

Liberty Victoria

Dear members of FATF-Style Regional Bodies or FATF's technical group,

For several years I've been following the Consultation Papers issued by GAFI regarding some main issues related with the 40+9 Recommendations, and definitely I think it's an important discussion scenario for AML/CFT experts around the world. One of the issues that strongly get my attention in the paper of "The Review of the Standards - Preparation for the 4th round Mutual Evaluations", are those related with PEP or legal immunity persons reports.

According with those considerations, I would like to let you know some of my impressions about Recommendation 6 (Politically Exposed Persons), as follows:

The FATF standards should explicitly mention their applicability to people with legal responsibility or immunity to prevent money laundering or terrorism financing, especially in cases related with corruption of public servers should not be legal any kind of exceptions in the submission of reports related with people being part of the system to prevent money laundering or terrorism financing.

Additionally, FATF standards should considered this matter in Recommendations 13, 14, 15 and the Recommendation 16 related with Compliance and the processes for submitting Suspicious Transactions Reports (STR's).

As final consideration, the topic about people (public servers or not) with legal immunity (local or foreign) should be considered on the standards included in Recommendation 26. Methodologies and analysis procedures implemented by FIUs (Financial Intelligence Units), should not consider any exceptions regarding people with local or foreign legal immunity. The reports and analysis outcomes produced as result of cases related with those persons should be considered as intelligence analysis instead of criminal investigations.

I worked at UIAF, Colombian FIU, for 9 years as deputy director and operational advisor and I participated in some technical working groups AML/CFT and GAFISUD's mutual evaluations (FATF Regional Body for South America). Actually I am an international consultant AML/CFT.

I look forward to have any comments or feedback about my consideration, so any response would be greatly appreciated.

Best Regards,

Luis Daza

Dear Colleagues,

Please find my comments to the Review of Standards - Preparation for the 4th Round of Mutual Evaluation:

1)paragraph 9 (point 1.2.1. Recommendation 5 and its Interpretative Note)

I fully support this proposal but in my opinion we have to provide only some general examples.

This is the role, important role, of institutions (reporting) to prepare the list of examples representing the own (national or institutional) specific in this issue. The standard has to help but not to relieve of institutions works.

2)paragraph 12

It could be good idea that it will be an obligation for Country to inform about new, identified risk or area of risks.

3)paragraphs 20-22

I fully support those issues because this is very difficult aspect for many countries. Thanks to that changes the fight

with money laundering criminals could be more effective.

4)paragraph 30 (PEPs)

In my opinion, and opinion of some experts, this is very bad that we have division on domestic and foreign PEPs.

The FATF is the only organization which can help with finishing with this division. It will be very positive step

and information for sector of reporting/obliged institution that authorities are changing the approach to this issue.

Now a lot of institutions has no idea why this division exist. In some countries this is also very good way for politicians to make some strange businesses. So I would like to stress that this is very important issue and we need to make decision very quickly.

5)paragraph 39

I am against the proposal mentioned in this paragraph. In my opinion the current standard in respect of that is very good

and there is no reason to change it.

6)paragraph 54

In the opinion of my colleagues from private sector the only minus of reports is the length of them.

They are too long (or even "loooooong") and the role of FATF secretariat is to make them as short as possible (ofcourse during the works together with particular assessors and with putting all necessary information inside).

7)paragraph 55

a)Yes, the most important for me is the information about the system in the particular country - if I need some

information I can use it and report has a lot of information that are needed.

b)The least useful is introduction (general information), national and international cooperation (this is only information for particular experts but not for public opinion)

c)The best will be the increasing of effectiveness in particular countries - more cases in courts and more money

taken from criminals. The best factor will be also that it will be not necessary to prepare the evaluation in future

because we have appropriate statistics from this and this country (this is ofcourse ideal situation).

Best regards,

Robert Typa

AML Expert

Poland

**Response to FATF consultation paper:
Review of the Standards – Preparation for the 4th Round of Mutual Evaluations**

January 2011

Introduction

The Task Force on Financial Integrity and Economic Development is an international coalition of civil society organizations, national governments and international organizations dedicated to curtailing illicit capital flight as a means of supporting and sustaining economic development in low-income countries.

This submission is in response to the Financial Action Task Force's (FATF) consultation, "The Review of Standards – Preparation for the 4th Round of Mutual Evaluations". It follows on from the private sector meeting held in November 2010, which three civil society organizations attended: Global Financial Integrity, Global Witness and Transparency International.

We are pleased that this consultation is being conducted in a public forum and appreciate FATF's inclusion of civil society representatives in the consultation meeting held in November. We will be happy to respond to any questions you may have about the comments set forth herein.

The Risk Based Approach (RBA)

We welcome the emphasis both in this section and throughout the consultation document on the RBA and the plan to create a unified guide. Countries and financial institutions need to have a "common sense" and targeted approach to Anti Money Laundering/Combating the Financing of Terrorism (AML/CFT). Regulated institutions should be encouraged to focus on the higher risk customers and to conduct more stringent due diligence on them. We hope that this intelligent, evidence-based approach to risk will engender a move away from the "tick the box" approach to risk assessment and would like to see this emphasized.

However, as with all risk-based approaches, to be successful risk has to be assessed carefully based on relevant facts and circumstances that will be unique to each transaction. It would be dangerous for governments and financial institutions to assume that a risk-based approach is a way to save money or cut corners, or that any list of higher or lower risks is exhaustive.

We are concerned by the proposal to permit exemptions from AML/CFT customer due diligence in the case of low risk. It is not clear what will prevent bad actors targeting those jurisdictions/institutions/financial products because of their more lenient regulation. A system is only as strong as its weakest link and dirty money will always head towards the weakest links in the chain. We suggest that simplified measures are preferable to exemptions, and there should be random "spot checks" by supervisors as well as regular full reviews.

In addition to requiring its supervised institutions to do so, each country should conduct a national risk assessment and set its own list of high and low risk categories and the factors

relevant to, and evidence supporting, those assignments. We would encourage FATF to explore ways of reviewing these national determinations of high and low risk on a more frequent basis than that allowed by the mutual evaluation process. Each jurisdiction's list should serve as a guide for supervision of its regulated institutions, without being exhaustive (i.e. it should offer guidance to financial institutions in setting their own high and low risk parameters).

As part of its list of suggested high money laundering (ML) risk factors, FATF should include natural resource-related transactions occurring in jurisdictions identified as high risk for corruption or conflict.

We support the proposal in paras 13 and 14 of the consultation document to expand the scope of Recommendation 20 to include other types of financial institutions that are at risk, as well as other types of non-financial businesses and professions. However, FATF should focus on promoting implementation and enforcement of the existing Recommendation 12, which requires designated non-financial businesses and professions to be covered by the AML requirements, including real estate agents, lawyers, notaries and trust and company service providers. Global adoption of this portion of the existing Recommendation is poor and the potential impact significant. An excellent analysis of the risks presented by the activities of some of these actors will be set out in the World Bank Stolen Asset Recovery Initiative's forthcoming assessment on the risks presented by corporate and legal arrangements; another can be seen in *Keeping Foreign Corruption Out of the United States: Four Case Histories*, a report of the U.S. Senate Permanent Subcommittee on Investigations published February 4, 2010.

In summary, because of the risk that money launderers will be able to exploit low-risk based exemptions, the revised RBA should not be a basis for reducing investment in AML, failing to carry out fact-based analysis, or ignoring AML risks or suspicious activity. The new RBA document needs to be very clear about the basis on which jurisdictions will be able to make a determination that they, or specific transactions or clients, pose a lower risk. Ultimately, it should be absolutely explicit that the risk based approach is a way of knowing what risks exist so that an institution's resources and controls can be aimed directly at them in order to reduce threats. Supervisors, in assessing institutions' systems, should be required to determine whether controls are targeted and are aimed at the areas of highest risk.

Recommendation 5

We welcome the attempt to provide more clarity and guidance to regulated institutions as to how they must go about customer due diligence and the identification of beneficial owners. Broadly, the proposed approach makes sense. However, some more clarity is required if FATF wishes to see the desired outcome.

There is a risk that use of the term "reasonable measures" in the first of the proposed three-stage process allows an easy escape from the duty to identify. It is an open invitation to those who set up corporate structures to create complexity to baffle banks and require them to go beyond measures considered "reasonable" in order to identify a natural person(s). In this case, the remaining two steps would permit a bank that did not go past "reasonable measures" to focus on the "mind and management" which might well end up being nominee directors and shareholders at a lower point in the real chain of influence. The term "mind and management" does not characterize the beneficiary, but rather its service provider.

There is a key inquiry missing from this three stage evaluation which FATF must make absolutely explicit: **financial institutions should consider whether the ownership structure is “reasonable” in light of the commercial activities and/or profile of the account holder.** If an institution is faced with a structure that is sufficiently complex that a natural person(s) cannot be identified as beneficial owner, and if it is not clear why such a complex structure is in place, it should file a SAR and should not be permitted to open an account for the entity. Those clients with legitimate complex structures (and/or a large, shifting class of beneficiaries) should be able to explain them. This is consistent with the statement in the current wording of Rec 5, which says that where a financial institution is unable “to comply with paragraphs (a) to (c) above” (i.e. to identify the customer and beneficial owner and purpose/nature of the business relationship) “it should not open the account, commence business relations or perform the transaction; or should terminate the business relationship; and should consider making a suspicious transaction report in relation to the customer.”

To this end we disagree with the statement made by FATF at the consultation meeting in Paris that “it is always possible to meet this requirement”. There will inevitably be situations in which employees of financial institutions face due diligence situations in which they are stymied. FATF should recognize this reality and retain the existing guidance in Rec 5 with respect to the inability to identify a beneficial owner.

Paragraph 22 of the consultation document proposes that with all accounts, not just trusts, regulated institutions must establish that a person acting on behalf of the customer has the authority to do so. It should also be made explicit that a bank must establish *whether* somebody opening an account is acting on behalf of someone else, before tackling the question of whether they have the authority to do so. It should also be made explicit that a beneficial owner cannot be a lawyer or other representative acting on behalf of someone else, whether through a formal agency arrangement or otherwise, a trust company agent, or a nominee director or shareholder. Nobody gives funds to one of these agents for the agent’s own benefit. It should be made explicit that when dealing with a customer that is a trust, regulated institutions must review the letter of wishes (or equivalent instrument in a given jurisdiction) from the settlor as part of the customer due diligence (CDD) in order to conduct appropriate due diligence with respect to any named trust beneficiary.

We appreciate that using a risk-based approach when establishing CDD guidelines and requirements is necessary given that there are different types of legal entities that may own or control accounts. For example, information is publicly available for a publicly traded or regulated entity that is not publicly accessible for a privately owned entity; companies with a physical presence pose different risks and require different levels of diligence than may be required when presented with a shell company; and the type of review for a small family trust run by a local bank for generations should naturally differ from the review given an offshore trust.

There should be no move to focus the CDD requirements exclusively on beneficial owners as opposed to the current comprehensive approach including the beneficiaries of trusts, foundations and similar structures. FATF must clearly take account of both common law instruments and civil law instruments, since they address beneficial ownership differently. For example the term “controlling ownership” is not applicable to a trust relationship, where it would apply to the trustee.

We note that our call for governments to collect and verify beneficial ownership information upon entity incorporation/organization, for such information to be updated or certified on a regular basis, and for such information to be made available to financial institutions to inform their CDD process, was strongly supported by industry representatives at the consultative meetings in Paris in November 2010. We reiterate our position here and will contribute more on this point at the further consultation on Recommendations 33 and 34 next July.

Recommendation 6

We wholeheartedly support the inclusion of a provision calling for the signature and ratification of the UN Convention Against Corruption (UNCAC) in Rec 35. The inclusion supports FATF's recognition that "corruption and money laundering are intrinsically linked."¹ UNCAC brings together a wide range of anti-corruption tools, including the criminalization of bribery, the prevention of money laundering, and strong asset recovery mechanisms. Signature and ratification are only the first step, however, and FATF should also work with the United Nations to actively encourage and assist the transposition of the UNCAC into national law, where necessary, given that the UNCAC AML provisions support the more detailed work of FATF.

As part of their risk-based due diligence, financial institutions should be monitoring all those who are "politically-exposed", regardless of which country they are from, and therefore we welcome the suggestion that Rec. 6 would be expanded to cover domestic politically exposed persons (PEPs). This is in line with Article 52 of UNCAC and the recommendations of a recent World Bank report.² According to the World Bank report, 24 jurisdictions already include domestic PEPs in their AML/CFT framework, including Brazil, Mexico, and the British Virgin Islands. The proposed two-stage solution is an intelligent one in that it would require financial institutions to identify all of their customers who were domestic PEPs, and then conduct enhanced due diligence on those deemed to be higher risk. This is in line with the broad thrust of the proposed changes in this consultation document to increase the risk-based nature of customer due diligence.

Comments were made by some industry representatives at the consultative meetings in November 2010 that reviewing for domestic PEPs would add a significant burden to bank resources. One representative noted, however, that one country's domestic PEP is another country's foreign PEP and, to this end, existing commercial databases should be as reliable from a domestic perspective as they are from an international perspective. We felt that it was important to reiterate this important and entirely logical rebuttal should others attempt the same argument.

We are very concerned, however, about the implications of paragraph 30, in which FATF is proposing that financial institutions should no longer be required to determine if a client is a family member or close associate of a PEP and then treat the account and account holder as potentially higher risk. The proposal is couched in language that gives the impression that FATF is talking about a change of emphasis rather than a substantive alteration of the

¹ *Corruption: A Reference Guide and Information Note on the use of the FATF Recommendations to support the fight against Corruption*, FATF/OECD 2010.

² Theodore Greenberg, Larissa Gray, Delphine Schantz, Michael Latham and Carolin Gardner, *Politically Exposed Persons: A policy paper on strengthening preventive measures*, World Bank/StAR Initiative, 2009

requirement, but the proposed change itself is in fact substantive, with grave consequences for regulated institutions' management of PEP risk.

We understand that the majority of PEPs are simply government officials doing their jobs and living their lives as productive members of society, just as the majority of people in the world do not commit crimes and launder the proceeds of those crimes. For the same reason, the majority of families and close associates of PEPs are not a cause for concern. FATF's Recommendations are focused on identifying, investigating and prosecuting those persons who are committing crimes and laundering the proceeds, however. Failure to identify higher risk individuals in the first instance, and the fact that the nature of the position of a PEP provides opportunity for abuses that other people cannot access and therefore warrants a higher risk analysis, undermines the entire point of the due diligence process and FATF Recommendations. There may be legitimate reasons for the relative of a foreign public official to need financial services abroad, for example if they are studying abroad. However, financial institutions should be able to identify such legitimate circumstances in the course of doing their due diligence in order to establish risk and to set appropriate value and volume thresholds for such accounts that they decide to open.

By requiring institutions to focus on those cases where a PEP is the beneficial owner of an account rather than requiring them to determine if a customer/beneficial owner is a family member or associate of a public official, we are concerned that FATF is misunderstanding the nature of corruption and its relationship to money laundering. While a public official will sometimes divert funds for his or her *own* benefit, using accounts and corporate vehicles either in their name or those of their family and associates, the laundering of the proceeds of corruption often occurs when public officials distribute the illicit benefits of their office *to their family members and associates* for the latter's benefit (and, of course, for the indirect benefit of the public official who helps to cement support for their remaining in power), thereby disguising the corruption-associated origin of the funds and introducing them into the legitimate financial system. As we know, that is money laundering.

Therefore, the family members and associates of a PEP (who is a PEP by dint of being a public official) are PEPs in their own right, as they present a corruption-based money laundering risk, a risk which may be higher in some countries than others and thus can be evaluated by banks on a risk based basis.

The proposed change may allow banks to miss crucial information required to assess their PEP risk. For example: the wife of President X. She is not designated as a PEP by virtue of holding a public office, but she should be designated as a PEP because she is *politically exposed* through her relationship with a government official. Under the current regime, a trust and company service provider acts to open a bank account in the name of a company of which she is the beneficial owner. The bank has to identify her as the beneficial owner, then discover if she is a PEP either by being a public official or by being related to one. When they establish she is a PEP, they must do enhanced due diligence on the source of funds and might set some value and volume thresholds on transactions through the account. The proposed change suggests that if the trust and company service provider opens a bank account in the name of a company of which she is the beneficial owner, and if the bank does its customer due diligence and discovers that she is not a public official *herself*, they may be permitted to stop there, may consequently downgrade the risk of her account, do less due diligence, and consequently be unaware of corruption risk associated with their customer.

Several reports by the U.S. Senate Permanent Subcommittee on Investigations on corruption and money laundering have provided examples of relatives' and associates' accounts being used for corrupt funds.

As a final point on this subject, we note that FATF has recommended that all countries sign and ratify the United Nations Convention Against Corruption (UNCAC). The UNCAC includes family members and close associates of government officials as PEPs. It also includes both domestic and foreign public officials as PEPs. For FATF to alter the definition of PEPs to include domestic officials in order to match the UNCAC standard, but to simultaneously exclude family members and close associates from the definition of PEPs, is incongruous and undermines the ultimate goal of a global, unified and comprehensive approach to risk analysis of PEPs.

Other Rec.6-related proposals we would like to suggest:

- As part of its list of suggested enhanced customer due diligence measures for PEPs, FATF should:
 - Recommend that banks only accept funds from a high risk senior political figure where the bank's due diligence has satisfactorily identified that the source of funds is derived from legitimate activity.
 - Recommend that financial institutions carry out at least annual reviews of their PEP customers by a senior level audit committee. If the financial institution is multi-national, this committee should examine PEP customers across the group. As the consultation document notes, a customer's risk profile may vary over time and financial institutions must ensure that they are able to monitor the fluctuating risk posed by PEP customers. Such a committee would be able to take a bigger picture approach, and avoid focusing on individual transactions as opposed to aggregates or trends. As part of this process, the financial institution would have to keep an up-to-date list of PEP customers. This requirement should not be risk-based and such a committee should examine all PEP customers, whether domestic or foreign. Periodic reviews of PEP customers was a key recommendation of the World Bank's recent policy paper on PEPs.³
 - Recommend that banks , establish value and volume thresholds for PEP transactions using a risk based approach, above which a red flag should automatically be raised.
 - Recommend that banks draw on a range of sources for establishing corruption risk. These should not be limited to international financial transparency instruments and guidelines, but should extend to IMF/World Bank and NGO analyses of governance, corruption, revenue management and transparency (including natural resource revenue management and transparency).
 - Recommend that regulated institutions are required to be aware of which countries require asset declarations from their PEPs. Financial institutions should require clients to submit copies of such declarations and use them to help assess a PEP customer's risk level, for example by understanding their expected income.

In addition with respect to PEPs:

³ Theodore Greenberg, Larissa Gray, Delphine Schantz, Michael Latham and Carolin Gardner, *Politically Exposed Persons: A policy paper on strengthening preventive measures*, World Bank/StAR Initiative, 2009

-
- At present much of the discussion about PEPs is focused on the availability and quality of PEP databases. Many financial institutions rely on commercial databases to identify PEPs. However, the quality of these databases varies and they can throw up a large number of false positives. FATF should recommend that supervisors assess the quality of the commercially available PEP databases on which their financial institutions rely.
 - FATF should consider requiring governments to publish a list of official posts that give rise to a PEP designation. This information should be made available to regulated institutions, for example through the Egmont Group; each national financial intelligence unit (FIU) would then ensure the information is conveyed to its country's regulated institutions. This information should not be considered by regulated institutions to be exhaustive, however, because some governments will have a vested interest in limiting the positions and individuals identified as PEPs. The 2007 APG/FATF corruption and AML report supported this recommendation.⁴ In addition, financial institutions at the national level should consider engaging with civil society organizations who may be able to provide them with more information about the identities of public officials.

Recommendation 9: Third party reliance

The proposed changes to Recommendation 9 focus on two very different issues. The first covers (i) what rules should govern a financial institution's reliance on a third party's due diligence, (ii) what rules should govern an outsourcing relationship, and (iii) clarifying what constitutes reliance versus outsourcing. The second issue is whether financial institutions should have group-level compliance programs and to what extent intra-group CDD may be relied upon and in what manner.

The details of the first question, third party reliance versus outsourcing, is less of a concern from our perspective. What is important is that CDD is either carried out by a regulated entity (i.e. outsourced to a regulated entity) or, if not outsourced, that liability for a non-regulated third party's CDD rests with the entity relying on the diligence. We welcome the clarification proposed in this area, and draw your attention to Chapter 5 of Global Witness' 2009 report *Undue Diligence: How banks do business with corrupt regimes* for an example of how confusion in this area can have profoundly negative repercussions. We recommend, however, that FATF recommend that in all cases the underlying CDD documentation must be transferred to the entity responsible for the client relationship.

The second issue, whether financial institutions should have group-level compliance programs and to what extent intra-group CDD may be relied upon and in what manner, is significantly more complicated.

We welcome the proposal that multinational financial institutions should have a group level AML/CFT programme. This largely reflects the reality on the ground where most significant international banks have a group level programme.

Intra-group reliance, on the other hand, requires additional consideration. In theory, reliance makes sense from a practical and risk-based perspective. We would like nothing more than for

⁴ APG/FATF *Anti-Corruption/AML/CFT Research Paper*, prepared for the FATF/APG Project Group on Corruption and Money Laundering by Dr David Chaikin and Dr Jason Sharman, September 2007, para 200

financial and due diligence information to flow between and among entities in the same corporate group, irrespective of national boundaries and local laws, in an effort to create a seamless and coherent anti-money laundering strategy and to capitalize on intelligence gathered in any jurisdictions with respect to money laundering risks. Clearly FATF would like this to be the case as well.

Unfortunately, we must consider these proposals in the context of today's practical realities and jurisdictional limitations. The assumption underpinning FATF's proposal is that an over-arching compliance program ensures access to and transfer of critical information as and when necessary. Evidence repeatedly shows that this is not the case, however. Intra-group customer due diligence cannot work unless (i) a financial institution (a) is permitted by law to and (b) agrees to supply information across international lines, and (ii) both the local branch and the entity responsible for the compliance programme can be held liable for failures in the AML regime, meaning effectively that liability is not encapsulated in one legal entity.

To elaborate, we see two key problems with the proposal to allow group level reliance, and they both manifest in the vast dissonance between the way that banks, when doing business, can reach across jurisdictional boundaries with ease (and indeed, advertise this strongly to their customers), but when faced with inquiries from supervisors or law enforcement investigating transactions after they have been made, jurisdictional barriers are paramount.

Firstly, as FATF recognizes, the prerequisite for allowing third party reliance within a group is an effective and supervised group policy. If there is no policy to verify that branches and subsidiaries are applying group policy, then reliance cannot happen. The problem here – and we believe this is significant – is that unlike prudential supervision, which is done by the home country regulator of a bank, AML supervision is usually done by the host country regulator, which may not have a purview of the whole group's policy. Even if a home country regulator takes responsibility for supervising a group policy, it may not have the practical means to test how it is being *implemented* in other jurisdictions.

Secondly, there can be serious barriers to intra-group reliance. Hearings of the U.S. Senate's Permanent Subcommittee on Investigations in 2004 and 2010 have shown how bank secrecy laws prevent international banks from sharing beneficial ownership information internally between sister entities in different jurisdictions. Recommendation 5 of the Subcommittee's 2004 hearing on Riggs Bank said: "Authorize Intra-bank Disclosures: The U.S. should work with the European Union and other international bodies to enable financial institutions within the U.S. and foreign affiliates to exchange client information across international lines to safeguard against money laundering and terrorist financing." There has been no movement on this front.

The European Union has also published a Staff Working Paper which details the problems that data protection and bank secrecy laws can pose to the sharing of AML-related information within a multi-national banking group. For example, in some EU member states banks are not allowed to disclose customer information to their parent company or subsidiary if the customer is not under suspicion, unless the customer consents to this sharing of information.⁵

⁵ These countries include Belgium, France and Portugal. European Commission, *Commission Staff Working Paper: Compliance with the anti-money laundering directive by cross-border banking groups at group level*, 30 June 2009, section 6.

FATF's proposal to allow intra-group reliance for customer due diligence purposes would only be effective if (i) countries were required to amend banking secrecy laws to permit the sharing of information between entities within the same group and (ii) the financial institutions agreed to share AML information across international lines for AML purposes. Rigorous enforcement of FATF Recommendation 4 is necessary here, something that is not currently pursued in reality despite the reasonably high marks for many jurisdictions in the mutual evaluation process. However, if FATF were to pursue this route and make inroads into banking secrecy to make the customer due diligence process easier for banks, consistency and the need for effectiveness would dictate that secrecy provisions should also be amended to permit law enforcement in one jurisdiction to obtain information regarding the beneficial owner of an account held by another branch of the same group in a different jurisdiction. It is highly unlikely that for any given multinational financial institution, mutual legal assistance treaties are in place between every possible combination of jurisdictions in which subsidiaries reside. There will inevitably be enforcement black holes.

Separate to the problem of intra-group reliance, there is also a problem with the principle that institutions can rely on any jurisdiction that adequately applies the FATF standard. In some countries this is implemented as an "equivalence list," e.g. in the EU, which can be deeply problematic. There is also no guidance as to what adequately applying the FATF standard means in practice. No country in the world is fully compliant with the 40+9 recommendations. There is also the problem that a jurisdiction can be compliant with the standard as currently measured by the FATF evaluations, which is about having the law in place, but they might not be implementing and enforcing it. This reinforces the argument, recognised by FATF, that its mutual evaluations in the 4th round should focus on implementation and enforcement. To this end, and to provide effective guidance to regulated institutions about who they can rely on, we recommend that FATF develop a "Methodology for Assessing Implementation and Enforcement".

Of course, as with Recommendation 5, the issue of reliance overlaps significantly with Recommendations 33 and 34 on access to beneficial ownership information. The difficulties surrounding Recommendation 9 would be significantly eased if verified beneficial ownership information was required to be in the public domain in each jurisdiction.

Recommendation 1: Tax crimes as a predicate offense

We applaud FATF's decision to propose that tax evasion be added as a predicate offense for money laundering. Tax evasion robs both wealthy and low-income countries of badly needed revenue for social services; in some cases the most basic of social services like education and health care. Tax evasion is a crime committed by both individuals and corporate entities and the proceeds of the crime are the funds that should have been paid to a local or national government. We are all victims of the crime of tax evasion and recognizing it as a crime with real proceeds, real consequences and real victims is a critical step to curbing the problem. While it is an historical and ongoing problem, tackling it now has very current benefits given the fiscal crises in many countries.

In today's world, tax evasion is often carried out using jurisdictional arbitrage, hiding funds behind bank secrecy laws and notions of sovereignty that should no longer be applicable in today's integrated, global economy. As a result, an international solution is required and we

strongly support FATF's decision, as an international standard-setter, to recognize the problem as an international standard-setter.

We note, however, that FATF's proposals in this area lack some critical detail necessary for us to fully consider their proposal. For example, how "tax evasion" or "tax crimes" are defined is of critical importance as the concept varies considerably between jurisdictions. For this change to be meaningful, FATF should not leave it up to individual countries to define these terms or else the current situation, in which certain jurisdictions do not recognize certain activities as tax crimes while others do, will persist. This leads not only to uneven application of the legal concept, but also a lack of cooperation in cross-border enforcement that is generally more significant for tax than for other types of criminal activity.

We would be very interested in reviewing more detailed proposals in this area and would also welcome the opportunity to work with the FATF Secretariat to flesh out these concepts in greater detail. We propose that the potential definition could be similar to the one used in many tax treaties: that a tax crime exists if any party to an agreement or inquiry defines the conduct as a tax crime.

We would like to add a few thoughts in response to some of the comments on this issue made by participants in the consultation meeting. The definition should not permit a spurious distinction between "common" tax crimes that are not covered and "serious" tax crimes that are; all tax crimes are serious offences and should be treated as such. Nor should there be any spurious distinction should be made between tax fraud and tax evasion. Nor should a distinction be made between tax evasion in the home jurisdiction and tax evasion abroad. Finally, work will need to be done to more clearly identify the proceeds of tax crimes and what activity constitutes laundering of those funds.

We would be very interested in reviewing more detailed proposals in this area and would also welcome the opportunity to work with the FATF Secretariat to flesh out these concepts in greater detail. We propose that the potential definition could be similar to the one in tax treaties: that a tax crime exists if any party to an agreement or inquiry defines the conduct as a tax crime.

Financial institutions might understandably be concerned at needing to have knowledge of the tax laws of other jurisdictions in order to fulfill a suspicious activity reporting requirement for tax crimes. FATF should make it explicit that – as with other predicate offences – regulated institutions do not need to act as judges and decide *whether* something is tax evasion. What is needed is to recognize that tax evasion or other financial crime might be taking place and act on that suspicion by filing a suspicious activity report.

We urge FATF to be wary of arguments by the larger, multinational financial institutions that this determination will be too difficult for their employees to make – a significant portion of their business requires them to understand the differences between tax laws of different jurisdictions. Likewise, professional services providers such as lawyers and accountants are expert in the tax laws of other jurisdictions as that is the basis on which they currently give expensive expert advice to their corporate and individual high net worth clients on how to structure their tax affairs across multiple jurisdictions. While employees of small, local financial institutions may find tax evasion somewhat more difficult to recognize, the issue is less likely to arise given that the majority of their clients, certainly in the wealthier countries, will be subject to automatic deduction from their pay checks and rarely have the opportunity to engage in significant tax evading activities.

Special Recommendation VII: wire transfers

As FATF recognizes, wire transfers are open to abuse. This is particularly the case where banks are processing thousands, if not millions, of transfers a day. Global Witness' report, *The Secret Life of a Shopaholic*, demonstrates some of the loopholes in the current regulations regarding wire transfers.

We would welcome more information to be included on wire transfers. The identity of the recipient of the funds (the beneficiary) is a crucial component of the risk profile of any transaction, and the effectiveness of global sanctions programmes rests on the issue of beneficiary information. To this end, we also support the proposal to require screening of wire transfers against UN Security Council sanctions lists.

In some cases the inclusion of beneficiary information will require the bank to find out more about the payment from the originating customer, who will undoubtedly know to whom he is sending money. Beneficiary information would be particularly useful for intermediary correspondent banks, which have limited or no ability to engage in any level of CDD at the points of origination or termination.

There is currently no explicit FATF requirement not to process a transfer that comes without full originator information. Currently, if a transfer lacks full originator information, financial institutions are supposed to assess it under a risk-based analysis. The standard should be that banks either obtain originator (and now, beneficiary) information, or not process the transfer. This approach is consistent with similar positions taken in the 2009 Basel paper on cover payments and the latest EU standard.⁶ The downside of not providing the information must be very real for the customer – the transaction will not be processed.

Recommendations 36-39: Mutual legal assistance

The existing mutual legal assistance (MLA) system is inefficient, slow and too often dependent on political will. The measures proposed should help to improve the efficiency and usefulness of MLA.

We are particularly pleased to see a recognition of the usefulness of non-conviction based asset recovery. This can be an extremely effective tool when a criminal conviction is not possible. It is particularly helpful in cases of laundering proceeds of corruption, since the ability to loot one's country's treasury tends to go hand in hand with an ability to prevent any judicial processes against oneself.

In addition, every jurisdiction should be required to publish annual information on the number of requests for cross-border legal assistance received from each jurisdiction, including preliminary enquiries, and the proportion fulfilled. This would help to reveal where the MLA system is effective and where it is failing to deliver. Such information would inject some accountability into

⁶ Basel Committee on Banking Supervision, *Due diligence and transparency regarding cover payment messages related to crossborder wire transfers*, May 2009; Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds

the process of cross border cooperation and provide for recognition of successful cooperation that might assist in the development of best practice guidance. Information about specific investigations need not be released, merely overall numbers of requests from each jurisdiction and the proportion that have been fulfilled.

Recommendations 27 and 28: Law enforcement

We welcome the suggestions in the consultation document that would increase the role that law enforcement plays in tackling money laundering. However, the consultation could go further and suggest that law enforcement units dealing with money laundering forge close links with anti-corruption agencies. FATF could explore how information from anti-corruption commissions, such as asset declaration registers, can be made available to banks to help with their customer due diligence. In the other direction, information produced by the AML system is currently rarely employed for anti-corruption purposes. The FATF/APG paper on corruption noted that compartmentalization between AML initiatives and anti-corruption initiatives was a greater threat to the effectiveness of efforts against the movement of corrupt funds than any corruption of the systems designed to counter such movements, which tend to receive greater attention.⁷

Mutual evaluation reports

As civil society organizations, we are pleased that mutual evaluation reviews are conducted and that the results are made publicly available. They are one of the few quasi-enforcement mechanisms available to underscore the importance of the normative standards established by FATF and other international, intergovernmental organizations.

Having said that, we do see scope for maximizing the usefulness of these instruments. First and foremost, FATF needs to develop an effective methodology to assess how well jurisdictions are implementing and enforcing the FATF standards. Mutual evaluations should assess the legal compliance with FATF's standards, but they should also develop a clear methodology to assess how well jurisdictions are actually implementing and enforcing the legislation they pass.

FATF should also publish on its website a clearly accessible roster of each country's compliance status with each of the FATF recommendations, and the date by which that country has to comply, in order to increase the public pressure for compliance.

FATF should also ensure that its mutual evaluation reports (and those of its regional bodies) are published promptly. If the original findings are altered after discussion in plenary, the original finding, the objection, and the final text should all be provided. This is a system that is already used by the United States Government Accountability Office.⁸

Additional point not covered in the consultation document:

⁷ *APG/FATF Anti-Corruption/AML/CFT Research Paper*, prepared for the FATF/APG Project Group on Corruption and Money Laundering by Dr David Chaikin and Dr Jason Sharman, September 2007, para 161

⁸ See "Disposition of Agency Comments" in *GAO's Agency Principles*, October 2004, p22

We propose that FATF should impose a requirement as part of Recommendation 15 that the independence of the compliance function should be guaranteed, and that the head of compliance should have a direct reporting line to the board of the financial institution, to help circumvent the kind of pressure from the business unit that we hear about so frequently. Supervisors should be required to include this as part of their assessment of the AML programmes undertaken by regulated institutions.

This submission represents the views of the member organizations of the Coordinating Committee of the Task Force on Financial Integrity and Economic Development:

- Global Witness
- Global Financial Integrity
- Tax Justice Network
- Transparency International
- Tax Research LLP
- Christian Aid
- European Network on Debt and Development

It has also been endorsed by the following organizations:

- Asociación Civil por la Igualdad y la Justicia, Argentina
- CorruptionWatch, Aruba
- Uniting Church in Australia, Synod of Victoria and Tasmania, Australia
- The Australian Make Poverty History Coalition, Australia
- Stop The Traffik, Australia
- Joy Geary, AML Master, Australia
- Groupe d'Action, de Paix et de Formation pour la Transformation(GAPAFOT), Central African Republic
- Egyptians Against Corruption, Egypt
- Afro-Egyptian Human Rights Organization, Egypt
- Plateforme Paradis Fiscaux et Judiciaires, France
- 5th Pillar, India
- Socio-Economic Rights and Accountability Project (SERAP), Nigeria
- Alliance Sud--the Swiss Coalition of Development Organisations, Switzerland
- Public Finance Africa, U.K.
- Sustainable Business Network of Washington, U.S.
- Association for Accountancy and Business Affairs, U.S.
- New Rules for Global Finance, U.S.
- Caux Round Table, U.S.

I provide anti-money laundering training and advice in the UK, Guernsey, Jersey, the Isle of Man, Ireland and the Cayman Islands, and so I am frequently giving advice to Money Laundering Reporting Officers on the 40+9 Recommendations, what they mean, and how to interpret the evaluations that are measured against the FATF methodology.

With regard to this current consultation, this is my response.

1. The risk-based approach

I welcome the proposal to develop a single comprehensive statement on the risk-based approach, and the proposed draft Interpretive Note seems good in principle.

However, I think that dividing obligations and decisions for countries into mandatory and optional obligations is confusing – particularly when they are numerically mixed in together. It would be clearer to separate them out into two distinct groups. The confusion is exacerbated when the numbering in the obligations for financial institutions and DNFPBs is different, and also mixed up with obligatory and optional. Again, two separate lists (one of mandatory items and the other of optional) would be clearer.

2. Recommendation 5 and its Interpretive Note

I find one example that you give confusing and think that – in practical terms – it would be hard to administer: “For certain customers, normal CDD measures may be perfectly appropriate at the customer acceptance stage, but higher level of due diligence measures may be required for ongoing monitoring of transactions”. How is a firm to “tag” a customer as normal risk for one activity and high risk for another?

The phrase “mind and management” is a good one – perhaps it would be further clarified as “controlling mind and management”?

I note that you still refer to a “suspicious transaction report” – surely this should now be a “suspicious activity report”, as is the norm in most legislation.

3. Recommendation 6: Politically Exposed Persons

I very much like your suggestion regarding domestic PEPs – this recognises that they can be risky, but gives flexibility where it is needed.

Is the FATF also planning to make a statement with regard to the “duration” of a PEP? In some jurisdictions (e.g. Guernsey), PEP status lasts forever, whereas in other (e.g. the UK), PEP status expires once the individual has been out of office for a year. The difference between these two approaches is vast – they cannot both be right, and I think that the FATF is ideally placed to make some sort of recommendation on this.

4. Recommendation 9: Third party reliance

It is right that we should be able to rely upon those who are subject to AML/CFT requirement and to effective supervision or monitoring, as per your proposal.

With regard to paragraph 38, I agree that we may be able to extend intra-group reliance beyond countries that comply with FATF standards, but it should be made clear that it is the responsibility of the group AML/CFT programme to check that things are being done correctly at local level – through random sampling, regular reviews, etc. It is notoriously hard to get a local office to adhere to group standards that are higher than the standard in operation locally (as it puts them at a local competitive disadvantage).

5. Tax crimes as a predicate offence for ML

Yes – anything we can do to stress the fact that tax evasion is a crime will be welcome.

6. SR VII and its Interpretive Note

No comment.

7. Other issues

No comment.

8. Usefulness of mutual evaluation reports

I read every single FATF evaluation report – but then I am reading them to tell other people about them.

The executive summary is very useful, but a “headline” might be good – e.g. “Well-supervised on the whole, but lawyers and accountants are not covered”. And I like the idea of a clear “overall compliance ranking” – e.g. as a percentage, perhaps?

Yes, the linking of evaluation reports to risk factors (perhaps in sectoral chapters) would be useful – particularly as an example of how to apply a risk-based approach.

Please do not shorten your evaluations – where else can we go for this level of close detail, if not to the FATF?

It would be useful to have the reports in HTML format, for easier navigation.

Thank you for this opportunity to comment.

Best wishes

Thinking about Crime Limited

Registered address:

9 Albert Street
Cambridge
CB4 3BE

www.thinkingaboutcrime.com

Company registered in England and Wales, number 4919193