



Financial Action Task Force

Groupe d'action financière

**GUIDANCE ON CAPACITY BUILDING
FOR MUTUAL EVALUATIONS AND IMPLEMENTATION
OF THE FATF STANDARDS
WITHIN LOW CAPACITY COUNTRIES**

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I. INTRODUCTION

Recognising the particular problems faced by low capacity countries (LCCs), the FATF has produced this Guidance which identifies a number of principles, and specific mechanisms and procedures that may be used to ensure effective prioritisation and implementation of the FATF standards on money laundering and terrorist financing.

Full and effective roll-out of the FATF standards in all countries is one of the fundamental goals of the FATF. The consistent application of these standards is essential to make it more difficult for criminals and terrorists to penetrate the system.

Purpose of this Guidance, target audience and status

The purpose of this Guidance is to:

- Support the full and effective implementation of the FATF standards in LCCs taking into account its risk profiles, and resource constraints which may affect the speed of implementation.
- Support LCCs to mitigate money laundering and terrorist financing risks in a manner consistent with the country's specific structural particularities and vulnerabilities.
- Improve the relevance and the benefits of AML/CFT evaluations in LCCs.

The Guidance set out within this document is primarily intended to support LCCs in implementing the FATF standards in a manner reflecting their national institutional systems, is consistent with the ML/FT risks they face, and takes account of their limited resources. However, many aspects of this document may also be useful to a broader audience including other assessed countries, those engaged in providing technical assistance, mutual evaluators and other international stakeholders.

It should be emphasised that this Guidance is not intended to alter the commitment to one global standard for AML/CFT as established in the FATF Recommendations and to the FATF Methodology applicable to assessing compliance of all countries with this standard.

Sources of Guidance

This Guidance provides only one of many sources available to LCCs to assist them to implement an effective AML/CFT system. It aims at setting out key principles and examples, to help ensure that all relevant stakeholders (LCCs, assessor bodies and technical assistance providers) have a common understanding of the issues. In addition, FSRBs (through their Secretariats) and technical assistance providers (multilateral and bilateral) are able and willing to provide additional guidance to countries and comparative experience on establishing an effective AML/CFT regime.

Along with the guidance set out within this document, LCCs should also refer to the following:

- FATF Methodology.
- FATF Handbook for Countries and Assessors.
- FATF and FSRB Mutual Evaluation Procedures Manuals.

II. BACKGROUND AND SUMMARY OF ISSUES

Global AML/CFT Regime and Implementation within Low Capacity Countries

The revised FATF Forty Recommendations provide a complete set of counter-measures against money laundering covering the criminal justice system and law enforcement, the financial system and

its regulation, and international co-operation. The FATF has also issued 9 Special Recommendations on terrorist financing, which set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts. Together, these are commonly known as the FATF Recommendations or the FATF standards.

The FATF standards have been recognised, endorsed, or adopted by a number of international bodies and although they do not represent a binding international convention, many countries in the world have made a political commitment to combat money laundering and terrorist financing by implementing the FATF standards. The standards set out the principles for action by governments and competent authorities, and allow countries a measure of flexibility in implementing these principles according to their particular circumstances and constitutional frameworks.

The FATF, FATF Style Regional Bodies (FSRBs) and International Financial Institutions (IFIs) monitor progress made by countries in the implementation of the FATF standards and assess the effectiveness of the anti-money laundering and counter-terrorist financing systems through a common mutual evaluation process. To ensure global consistency, all assessing bodies (and member countries) have agreed to adopt equivalent procedures to produce assessment reports based on the 2004 AML/CFT Methodology (as amended from time to time).

A number of partners play a role in supporting the implementation and evaluation of the FATF standards including:

- Countries/jurisdictions committed to implement and be assessed against the FATF standards.
- Technical assistance providers and co-ordinators – FSRBs, OGBS, IMF, World Bank, United Nations, Commonwealth Secretariat, bilateral/multilateral country providers.
- Assessing bodies – FATF, FSRBs, OGBS, IMF and World Bank.

Statement of the problem

Implementing the FATF standards challenges the capacity of all countries, regardless of their level of economic development. However, evidence of the FSRBs and World Bank suggests that LCCs share several structural characteristics that severely constrain their capacity to implement AML/CFT measures. A common element to all the identified principles, mechanisms and procedures is the need to ensure informed use of the flexibility enshrined in the FATF standards to achieve effective implementation of the AML/CFT systems, in the context of severe lack of capacity and resources.

An LCC is generally characterised as a low income country with the following types of difficulties:

A. Competing priorities for scarce government resources

LCCs suffer from acute competition for scarce resources across government, meaning AML/CFT implementation must compete for limited resources with high priority issues that affect basic living conditions in the country.

B. Severe lack of resources and skilled workforce to implement Government programmes

Evaluation reports to date suggest that within LCCs the Government agencies in general suffer from a severe lack of both material and human resources, which has a detrimental impact on the effective implementation of AML/CFT measures.

C. Overall weakness in legal institutions

The legal and institutional framework in LCCs can be weak and legal institutions lack the technical resources, which makes AML/CFT implementation particularly challenging.

D. Dominant informal sector and cash-based economy

LCCs are predominantly cash-based economies and the majority of economic activity takes place in the informal sector. Most transactions, large and small, are settled in cash and the infrastructure for the use of other methods of payments is not fully developed. This is a challenge when the FATF standards presume a level of formality in the economy.

E. Poor documentation and data retention systems

LCCs lack adequate documentation and data retention systems, and there are serious impediments to basic customer identification and verification, and record keeping.

F. Very small financial sector

LCCs are characterised by a very small financial sector with a limited exposure to the international financial system, dominated by banks, with small securities and insurance sectors. Typically banking products and services are basic and, unsophisticated and market shares concentrated in very few institutions.

These structural characteristics often impede countries' implementation of the FATF standards, and when supporting the LCCs it is important to enable them to take such constraints into account as they implement effective AML/CFT measures. This should help ensure consistency between AML/CFT measures and goals of universal access to financial services, expanding the formal financial sector and bringing more economic activities into the formal sector to reduce ML and TF risks.

The FATF has identified “core” recommendations that should be the priority areas for sequenced implementation in all countries, including LCCs. The “core” FATF Recommendations include criminalisation of money laundering and terrorist financing (R1 and SR1); customer due diligence and record keeping (R5 and R10); and suspicious transaction reporting (R13 and SR14). A particular challenge for LCCs is to address implementation of AML/CFT measures in a sequence that ensures that these core recommendations are implemented as a priority.

Beyond these “core” recommendations, the structural characteristics of an LCC, along with its particular vulnerabilities, will have to be taken into account in defining a proper sequence for implementation. For example, in some LCCs where cash is predominant, the informal sector may be relatively more important than some components of the financial sector in combating money laundering and terrorist financing.

III. GUIDANCE ON ACTION TO SUPPORT AML/CFT IMPLEMENTATION

The mutual evaluation of an LCC is one step in a long term process to implement the FATF standards. It is important that LCCs plan for and initiate AML/CFT implementation as part of an ongoing, medium to long term strategy, rather than just beginning to consider this in advance of the mutual evaluation. This allows the LCC to take a holistic, longer term view in implementing the FATF standards, of which the mutual evaluation is only one milestone, albeit an important one.

This Guidance covers a number of themes which are relevant throughout the process of implementing the FATF standards, including the strategic planning, the mutual evaluation process and the post-evaluation implementation action plan. The Guidance provides suggestions on how to obtain co-operation and engagement – political commitment, leadership and interagency co-operation and co-ordination, private sector outreach and consultation, and technical assistance/engagement with FSRBs;

and what type of prioritisation and planning this may involve – risk assessment and implementation action plan.

Co-operation and Engagement

Political commitment

Implementation of the FATF standards requires strong political commitment to begin and sustain the process and pace of reforms. Without this it is very difficult to identify and commit the resources required for effective AML/CFT implementation.

Government officials need to make the case for AML/CFT reforms. This will involve addressing the question of why the LCC may apply scarce resources to AML/CFT measures. The case for taking action would address the risks of not responding and the benefits from taking action. LCCs may work with FSRBs to share examples of comparative experience.

It may be helpful to involve political decision-makers in awareness-raising workshops to allow them to better understand the case for AML/CFT implementation. FSRBs and technical assistance providers may be able to assist with multilateral and bilateral input to such workshops. Similarly, FSRBs may be able to assist with bilateral dialogue to demystify AML/CFT implementation.

In addition, Ministers would need to be regularly briefed on the FATF standards, in particular the “core” recommendations, what the commitment involves, the implications, implementation planning and progress made.

The timing of a mutual evaluation can play a useful role in fostering political commitment and in drawing Ministers’ attention to AML/CFT-related challenges. The level of scrutiny, the resource intensiveness, as well as the “benchmarking” that a mutual evaluation entails, provide an opportunity for enhanced political will for AML/CFT implementation. As part of an LCC's long-term planning in implementing the FATF standards, it could set the timing of a mutual evaluation to provide a key milestone, thereby focussing political commitment, avoiding delays, and measuring the impact of efforts undertaken thus far.

Depending on the steps in the implementation action plan (see paragraphs 50-57), the Ministers and Members of Parliament will be briefed on proposed reforms, including possible legislative amendments. Regular reporting to Parliament on progress made in implementing the action plan will enable it to appreciate the efforts made and, if relevant, potentially commit further resources.

Officials may find it helpful to develop a post-mutual evaluation strategy for communicating with key stakeholders (public and private) the outcomes of the mutual evaluation report (MER) and implications for the next steps in AML/CFT implementation. A priority step will be to brief lead agencies, in particular key Ministers, on the outcomes of the mutual evaluation process and next steps.

Once the mutual evaluation is completed and the MER is adopted, it is crucial for the next phase of reforms that political commitment is sustained to implement the measures recommended. This could include preparing an implementation action plan or updating an existing one following the evaluation. Publication of the MER (which is a near-universal practice under the FATF and FSRB procedures) can serve as a key tool to demonstrate and maintain awareness, as well as target resources to where they are most required.

Leadership and interagency co-operation and co-ordination

Identifying a lead government agency with sufficient political influence and credibility to drive the process of national AML/CFT implementation, in co-ordination with all relevant stakeholders is best practice. Other actors within the LCC would continue to play a role and have ownership for

certain key aspects of the AML/CFT policy, but leadership in the implementation of the FATF standards supports efficient and effective use of resources.

Establishing a national co-ordination committee, consisting of all the key stakeholders in the domestic AML/CFT regime, helps to provide strategic policy oversight and direction, and drive the implementation process. It can also measure the impact and effectiveness of the AML/CFT framework on an on-going basis.

The terms of reference for an AML/CFT national co-ordination committee do not need to be set down in statute, but should be agreed between all relevant participants and indicate the roles and responsibilities of all members.

While national co-ordination committees may have a role in determining national AML/CFT policy, it is important that the membership of such a committee strikes the right balance between the ability to make policy decisions and capacity to work through operation-level issues of AML/CFT implementation.

It would also be best practice (depending on the specific local institutional framework, and taking into account when relevant specific issues relating to monetary unions) to include the following types of ministries, departments or agencies as active members of a national co-ordination committee:

- Financial Intelligence Unit.
- Justice ministries/agencies (legal policy, legislative drafting, Mutual Legal Assistance etc).
- Finance Ministries.
- Financial sector policy, regulatory and supervisory agencies.
- The Central Bank.
- Law enforcement agencies.
- Prosecution authorities.
- Taxation and revenue authorities.
- Customs and border enforcement authorities.
- Foreign Affairs ministries.
- Regulators of non-profit organisations.
- Regulators for legal persons/companies.
- Regulators (including self-regulatory organisations) for designated non-financial businesses and professions (*e.g.* casinos and gaming, lawyers, accountants etc.).
- Regulators for particular sectors that may be vulnerable to ML or TF (*e.g.* Fisheries, forestry, natural resources etc).
- Anti-corruption bureaus/commissions.

Example terms of reference for national co-ordination committees are available from FSRBs to assist LCCs.

When an LCC is to undergo a mutual evaluation, a key step is to establish a mutual evaluation co-ordination group to co-ordinate all relevant agencies in their preparations for the mutual evaluation and to serve as a focal point for the assessing body. Where a national co-ordination committee does not exist, setting-up a “mutual evaluation co-ordination group” can prove to be a useful starting point for the establishment of a future co-ordination committee *i.e.* lessons learnt, key stakeholders to be involved etc. The co-ordinating group should ensure the LCC meets all deadlines as set out during the mutual evaluation process.

Private sector outreach and consultation

Effective implementation of the FATF standards is only possible with the co-operation of all stakeholders, including the private sector whose support is crucial on the implementation plans. Transparency with stakeholders is essential.

It would be beneficial for the authorities to engage and consult with the private sector when planning and undertaking the implementation of AML/CFT requirements. This could include engaging with the private sector on designing and or updating the implementation action plan, the priority steps and the risk assessment.

Many countries have established strategic level forums/consultation groups which include representatives from the public and private sector. These forums are designed to discuss topical issues, inform AML/CFT policy, and allow the authorities to identify priorities, bottlenecks and possible challenges in implementation. This type of forum would allow competent authorities to canvas opinion from a broad range of interested parties, help establish a more co-ordinated approach to AML/CFT issues and sustain the engagement with the private sector. The membership of such a forum could possibly include all competent authorities, law enforcement, regulators and representatives from the private sector who can represent a cross-section of views.

Effective information exchange between the public and private sector should form an integral part of an LCC's AML/CFT system. This will help ensure that financial institutions and DNFBP's are aware of their legal obligations and regulatory requirements. This may take the form of awareness raising workshops, publications, websites, electronic sources of information, national AML/CFT forums, linkages with trade bodies and so forth.

Examples of the types of information that might be usefully shared between the public and private sector would include, if available:

- Assessments of country/product/customer risk.
- Typologies of how money launderers and terrorists have abused the financial and non-financial system.
- Feedback on suspicious transaction reports;

In addition, regular and targeted outreach can have an impact on the overall effectiveness of LCCs' AML/CFT regime. For example, competent authorities, whether law enforcement agencies, regulators or other bodies, have access to information that may assist the private sector to reach informed judgments on how best to implement AML/CFT strategies. Similarly, financial institutions and DNFBP's routinely transact with a great number of customers on a daily basis, and are able to provide input on the practical aspects of implementing government policies. It is therefore desirable that public and private bodies collaborate to identify what information is valuable to help combat money laundering and terrorist financing, and to develop means by which this information might be shared in a timely and effective manner.

It should be recognised that a significant technical co-operation contribution can be made by the private sector in LCCs, including shared training for the private sector and regulators.

Example of private sector outreach:

A number of jurisdictions have regular consultation meetings between FIUs and compliance officers' networks. This allows information exchange, awareness raising, training etc.

Technical assistance/Engagement with FSRBs

LCCs may want to consider working with technical assistance providers to understand how to implement the international standards in their specific circumstances, to identify technical assistance

needs and to work on all aspects of setting up an effective AML/CFT regime, including preparing for the mutual evaluation and reform post-evaluation. The use of technical assistance providers may facilitate the development of a common understanding between the various agencies at the early stages of an AML/CFT implementation programme.

To benefit from technical assistance LCCs need to request it from the relevant technical assistance providers, and have a reasonably clear idea of their requirements. There is a very broad scale of assistance that can be delivered by the technical assistance providers. This could include, for instance, a review of the current AML/CFT regime or overall AML/CFT needs assessment, assistance in developing a risk assessment of ML/FT risks and vulnerabilities; awareness-raising seminars on AML/CFT legal framework and implementation issues; drafting of AML or CFT legislation and/or regulations; assistance with drafting or updating financial sector AML/CFT guidelines; advising on establishing an FIU or FIU-related policy decisions; strengthening the operational aspects of the FIU; and training for FIU staff, financial regulators, criminal justice personnel.

Technical co-operation will be most effective if priorities are determined by the national risks, conditions and level of implementation of the international standards. It may be helpful for the national co-ordination committee to make decisions on where technical assistance could most usefully be targeted. Recipient countries should have appropriate internal mechanisms to identify their AML/CFT technical assistance priorities. Technical assistance providers should be mindful of the LCCs needs and requirements when providing technical assistance.

It is important to recognise the benefits for LCCs from working with FSRBs and technical assistance providers to support co-ordinated assistance. Technical assistance providers participate in the FSRBs' efforts to assist co-ordination of technical assistance in member countries. FSRBs can play an important role in bringing together the demand and supply of technical assistance, for example by organising forums and individual country co-ordination meetings with the donors and providers; and maintaining mechanisms for donors and providers to share planning and delivery information.

In addition, where LCCs in a particular region are facing similar issues with the implementation of the FATF standards, it may be useful for the relevant FSRB to co-ordinate technical assistance to ensure the most efficient and effective use of resources. However, co-ordination mechanisms should not act to control or constrain the mandates and activities of the donors, nor act as a 'buffer zone' between the countries requesting assistance and the donor/provider. The process needs to be voluntary and flexible and must add value, but not excessive cost.

It is recognised that there is a need for technical assistance providers and FSRBs to support implementation planning well before an LCC is assessed, immediately prior to the mutual evaluation and following the mutual evaluation.

A number of FSRBs have processes for co-ordination between LCCs and donors and providers on technical assistance and training. There are detailed terms of reference and template matrix documents available for sharing information between countries, and the providers.

Example of Practice: APG's Technical Assistance & Training (TA&T) role

- Provide a co-ordination, advisory and information-sharing forum for TA&T.
- Maintain a detailed matrix of TA&T needs information for each APG member.
- Convene the APG Donors and Providers Group under agreed Terms of Reference (*model terms of reference are available*).
- Conduct an APG Annual TA&T Forum including donor co-ordination meeting and individual meetings of countries and the Donors and Providers Group.
- Conduct technical seminars on specialist topics.
- Deliver in-country and regional assistance, in conjunction with various donors.
- Develop TA&T regional co-operation mechanisms (*model terms of reference are available*).

The continuing support and co-operation of donor and provider organisations and countries has been critical to the success of the APG's work in this area.

Prioritisation and Planning

Risk assessment

LCCs need accurate information on the priority areas of ML/TF risk to be addressed to support implementation planning and to help influence political commitment. Therefore, they should consider implementing a money laundering and terrorist financing risk assessment or updating an existing one. LCCs could make use of the risk assessment models being developed by the standard setter and the IFIs. The *FATF Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing – High Level Principles and Procedures*, (Chapter 2: Implementation of the Risk-Based Approach) also includes some guidance on national risk assessments.¹ Further information on risk assessment models will be available from the FATF and IFIs.

To mitigate the resource implication of conducting a risk assessment exercise, countries may seek available technical assistance. However, the LCC should retain overall ownership of the risk assessment and the actions that follow. Ownership of the outcomes of the risk assessment is vital for it to be influential in setting priorities for resource allocation.

The risk assessment may identify: the types of proceed-generating criminal activities, their incidence and volume, the methods of money laundering and terrorism financing, the attractiveness of the LCC to foreign criminal proceeds, and the high and low risk sectors. The risk assessment should be seen as the starting point which would then inform the LCC's implementation of FATF standards taking account of local particularities.

Factors that may influence the risk of money laundering and terrorist financing in a country could include the following:

- Political environment.
- Legal environment.
- A country's economic structure.
- Cultural factors and the nature of civil society.
- Sources, location and concentration of criminal activity.
- Size of the financial services industry.
- Composition of the financial services industry;
- Ownership structure of financial institutions.
- Corporate governance arrangements in financial institutions and the wider economy.
- The nature of payment systems and the prevalence of cash-based transactions.
- Geographical spread of financial industry's operations and customers.
- Types of products and services offered by the financial services industry.

¹ <http://www.fatf-gafi.org/dataoecd/43/46/38960576.pdf>

- Types of customers serviced by the financial services industry.
- Types of predicate offences.
- Amounts of illicit money generated domestically.
- Amounts of illicit money generated abroad and laundered domestically.
- Main channels or instruments used for laundering or financing terrorism.
- Sectors of the legal economy affected
- Underground areas in the economy

Source: FATF Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing – High Level Principles and Procedures, paragraph 2.24

Implementation Action Plan

An implementation action plan should be developed as part of the process to implement the FATF standards, and should be updated following the publication of the MER. This would typically focus on key areas of reform, the priority areas which would reflect the “core” FATF Recommendations, the particular vulnerabilities identified in the jurisdiction, and the timeframes in which these reforms would be implemented. The national co-ordination committee would benefit from being closely involved in inter-agency consultation to develop or update the implementation action plan.

The competent authorities within an LCC could work with FSRBs and technical assistance providers in drawing up an implementation action plan.

Designating a lead agency for coordinating implementation of the FATF standards and the recommendations from the MER recommendations can prove beneficial. In addition, all agencies involved in the implementation phase before a mutual evaluation, and in the mutual evaluation process itself, should maintain their involvement during the post-ME implementation stage.

Following a LCCs mutual evaluation, the MER will provide a comprehensive assessment of the country’s AML/CFT regime and how it compares against the FATF standards. The MER will identify the strengths and weaknesses in the existing AML/CFT regime and will make recommendations on how an LCC should consider addressing these. The competent authorities could use the MER and the risk assessment as the basis for updating a plan of action towards implementation of the FATF standards or where one does not exist to design an implementation plan.

An overarching implementation action plan should, if possible, be developed within 6 months following the adoption of the MER. The implementation action plan may include the following:

- Identify priority areas for implementation from the MER.
- Identify key actions for grouped recommendations.
- Classify/assign implementation of particular recommendations to responsible agencies.
- Prioritise recommendations on the basis of the “core” FATF recommendations and taking into account priority risks and national conditions; An attempt should be made to do a risk assessment, if one has not be done prior to the mutual evaluation, using as appropriate the summary risk profile identified in the MER.
- Steps taken to ensure effective international co-operation.
- Sequence the implementation action plan, both in terms of respective priorities and progressive logical built-up of the various measures to be adopted or implemented.
- Identify resources required, including technical assistance if needed.

- Ensure that statistics are collected as a step in an implementation action plan to ensure that effectiveness of measures can be determined. LCCs should avoid imposing undue burdens if there is limited infrastructure in place for the collection of such data.

The LCC would benefit from developing and maintaining a system which allows it to monitor progress against the implementation action plan. This important work could possibly be overseen by the national co-ordination committee.

Following the development of an implementation action plan, detailed implementation action plans for individual agencies could be subsequently developed.

A post mutual evaluation implementation action plan will assist countries to report back to their FSRB on progress to implement the mutual evaluation recommendations.

Effectiveness

Within this guidance there have been frequent references to the need for effective implementation of the AML/CFT measures. This is a universal challenge not only to put in place the structural and institutional arrangements, but also to ensure that the legal, investigative, preventive and other measures are properly implemented by all relevant stakeholders. In jurisdictions with limited capacity, this will require very careful consideration of how best to deploy resources, how to identify and deliver specific training needs, and how to achieve continuity and sustainability of skills within the key agencies. Again, this is an area where close co-operation with technical assistance providers can be extremely beneficial.

Conclusion

The global implementation of the FATF standards effectively by all members and non-members, including LCCs will ensure a more effective global system for combating AML/CFT risks. This will help deter and detect money launder and terrorist financing whilst at the same time secure a more stable and transparent financial system.