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FATF landmark report: A Guernsey perspective

MAY 2022

This Report is gold dust and a glimpse at what the future may hold!

On 20 April 2022, the Financial Action Task Force (**FATF**) published what it termed a landmark report on the state of effectiveness and compliance with the FATF standards.

Its purpose: to provide an insight into its key findings from its fourth round of mutual evaluations, focusing on the effectiveness of countries' implementation of relevant AML/CFT/CPF laws and regulations.

In his opening remarks, current FATF President Marcus Pleyer said that '… *across the Global Network and particularly regarding the effective implementation of laws, regulations and policies, all countries still need to make more tangible progress.*'

FATF's focus is on the participating countries and is clear on the promotion of a risk-based approach, effectiveness and efficiency.

The Strategic Review that the FATF commenced in 2019 (which this Report forms part of) is intended to make the '*next round* (fifth round of mutual evaluations) *timelier, more risk-based and effective*', with the purpose that '*[U]ltimately, we must make the world a safer place for all citizens.*' In the current climate, that is a position that is hard to argue against.

A brief reminder

FATF is an inter-governmental body, which sets international standards (**Standards**) on anti-money laundering, countering the financing of terrorism and countering proliferation financing (**AML/CFT/CPF**).

Although the Bailiwick of Guernsey is not a FATF Member, it is a Crown Dependency of the United Kingdom (a FATF Member). Guernsey is assessed against the FATF Standards by MONEYVAL, which is a FATF-Style Regional Body (**FSRB**).

Guernsey's next MONEYVAL visit is expected to be in Q1 of 2024. While we understand its assessment will be based on the FATF fourth round (2013) Methodology, this Report nevertheless provides a critical insight into what Guernsey may expect.

Seven key areas of the Report

1. Assessment of risk, coordination and policy setting

This Standard assesses whether money laundering and terrorist financing risks are understood by a jurisdiction and, where appropriate, that actions are coordinated domestically to mitigate the risks.

The Report draws attention to the importance of FATF's assessment of '*to what extent the relevant competent authorities' co-ordinate and implement policies and demonstrate action in practise.'*

The Report explains that a country could undertake a risk assessment either by conducting a national risk assessment (**NRA**) or an individual threat and sector assessment. Guernsey chose to undertake a NRA (published January 2020).

The NRA must be used by FSBs to inform and assess firm-specific risks on an ongoing basis, as part of building and maintaining a robust AML/CFT/CPF framework.

Indicators where countries performed well

Countries that performed were able to demonstrate:

- They had ongoing mechanisms to monitor and update ML/TF risks, and shared with other agencies and (where possible) the private sector;
- Risk assessments that were detailed, clear, and adequately weighed the identified risks from low to high. There had been more time, prior to their assessment, for relevant authorities to understand and develop strategies to mitigate risks.

Main findings

- For many FSRB members this was the first time they had completed an assessment of their exposure to risks;
- Most countries undertaking their first assessment did so in the form of a NRA; and,
- Countries' national policies should reflect changing risks nevertheless, many countries were found to be conducting risk assessments and adopting the risk-based approach late, and at a slow-pace.

2. International co-operation

This Standard assesses whether international co-operation delivers appropriate information, financial intelligence and evidence, and facilitates action against criminals and their assets.

FATF is explicit in its view that international cooperation, involving engagement between competent authorities with foreign counterparts, is an essential component of an effective national AML/CFT system.

Indicators where countries performed well

Countries that performed well were able to demonstrate:

- The ability to provide or seek information such as mutual legal assistance and extradition through formal channels;
- Making reasonable efforts to accommodate requests, overcoming common obstacles such as high evidentiary thresholds or strict dual criminality requirements.

Main findings

- Half of jurisdictions were able to demonstrate a satisfactory level of effectiveness;
- In general, countries are found to be cooperating with international counterparts.

3. Supervision

This Standard assesses whether supervisors appropriately supervise, monitor and regulate financial institutions for compliance with AML/CFT/CPF requirements, commensurate with their risks.

The Report notes the crucial role that supervisors play in preventing ML or TF, and that supervision should be a cohesive and resilient part of every country's AML/CFT/CPF framework, suggesting that improvements are required in several aspects of most supervisory efforts.

Indicators where countries performed well

Countries that performed well were able to demonstrate:

- A good understanding of risks, with regularly updated sectoral risk assessments (i.e. the NRA from a Guernsey perspective);
- The use of a combination of tools to identify and understand risk;
- That AML/CFT/CPF regulations covered most or all designated non-financial businesses (**DNFBs**), the equivalent of Prescribed Businesses or Non-Regulated Financial Services Businesses in Guernsey, with adequate supervision of implementation;
- Supervisory cooperation on a domestic and international basis;
- The application of the risk based-approach is applied to a large extent to financial institutions and DNFBs;
- Supervisors have access to a range of effective sanctions;
- Supervisors are conducting regular outreach activities to support both the understanding and implementation of obligations.

Main findings

- Effectiveness compliance fell well behind technical compliance - just 10% of countries having implemented supervisory measures;
- Most countries have a supervisory structure in place, but countries must prioritise effective practical supervision, particularly in regard to DNFBs.

4. Preventive measures

This Standard considers how adequately financial institutions apply AML/CFT/CPF measures commensurate with risk; and, report suspicion transactions.

The FATF note that the assessment of the effectiveness of preventive controls is a key new element of the 2013 Methodology.

Indicators where countries performed well

Countries that performed well were able to demonstrate:

- Authorities identify and understand the relative risk of each sector in a detailed manner, and conduct awareness training on a risk sensitive basis. Authorities work with the private sector to identify new and emerging risks, and the private sector demonstrates an effective understanding of relevant risks;
- Authorities engage with the private sector regularly and rapidly exchange information on risks and high-risk activities or persons;
- Strong regulatory coverage in the finance sector reaches all relevant sectors;
- Authorities ensure DNFBs conduct due diligence, keep records and file SARs in a manner that reflects risks.

Main findings

- Significant progress has been made across the global network in establishing a legal and regulatory framework that sets out the AML/CFT/CPF obligations for the private sector;
- Largely, financial institutions have a clear understanding of the risks they face and increasingly take positive action to improve risk mitigation measures;
- In contrast, the non-financial sector were found to generally have a poor understanding of the risks faced and regularly fail to mitigate them. 97% of assessed countries have low to moderate outcomes for preventive measures in this sector;
- Financial institutions and DNFBs still apply a tick-box approach to preventive measures. The adoption of truly risk-based approach requires a change of culture.

5. Transparency and beneficial ownership

This standard considers how effective jurisdictions are in preventing the misuse of legal persons and legal arrangements for ML or TF purposes, and the information of beneficial ownership is available to competent authorities, without impediments.

Indicators where countries performed well

Countries that performed well were able to demonstrate:

- The establishment of beneficial ownership registries and the restriction of the use of higher risk arrangements, such as bearer shares and warrants;
- Adequate measures to mitigate risks from nominee relationships;
- A strong understanding of risks by national authorities, as a result of risk assessments, and using this to apply mitigating measures that cover all relevant sectors;
- Use of multiple independent sources to collect information on beneficial owners;

- Implementation of laws and regulations to sanction non-compliance with reporting requirements, alongside proven ability to identify cases of non-compliance and apply sufficiently dissuasive sanctions.

Main findings

- Since the last round of evaluations, an increasing number of countries have implemented legal powers to collect information on beneficial ownership; and, to apply sanctions for non-compliance;
- The right combination of laws and regulations remains limited overall;
- Most countries have not yet made sufficient progress on preventing legal persons and arrangements from being abused.

6. Financial intelligence, money laundering investigations, prosecutions and confiscation

This Standard underlines the importance of successful criminal justice systems being able to detect and disrupt money laundering threats, sanction criminals and deprive them of their criminal proceeds. This is achieved by countries having effective and efficient mechanisms to punish offenders and dissuade would-be offenders in a manner consistent with risk.

Indicators where countries performed well

Countries that performed well were able to demonstrate:

- Operationally independent FIUs, which collect SARs, conduct suitable analysis and disseminate findings to investigative authorities;
- Investigative authorities are analysing financial intelligence and other sources of information, and conducting parallel financial investigations to identify and successfully prosecute money laundering;
- Asset recovery units or relevant authorities identifying, tracing, seizing and confiscating the proceeds of crime, in coordination with investigation authorities or independently.

Main findings

- Nearly all countries now have legal and operational frameworks to address money laundering and confiscate proceeds of crime;
- Most countries are not achieving the expected results for convictions and confiscations. The number of investigations and prosecutions are often small in comparison to risks;
- Often where investigations and prosecutions do occur, confiscations and asset recovery measures do not occur as part of the action;
- Money laundering investigations are more likely to be for self-laundering or non-complex cases. As a consequence, only a small fraction of the proceeds of crime is being recovered;
- More should be done by FATF and FSRBs around investigations and prosecutions, particularly around asset recovery, to deprive criminals of their proceeds and instrumentalities of crime.

7. Terrorist and proliferation financing

This Standard highlights that FATF plays a central role in global efforts to combat terrorist financing; and, provides a comprehensive framework that gives countries the tools they need to combat terrorist financing.

Indicators where countries performed well

Countries that performed well were able to demonstrate:

- Terrorist financing is adequately integrated into the country's counterterror strategy;
- A strong and demonstrated understanding of terror financing risks, including low risk or where the acts may not occur in the country;
- Authorities can prove the ability to conduct parallel financial investigations during terrorism cases;
- The legal framework enables terrorism finance prosecutions;
- NPOs most at risk of abuse from terrorist organisations are identified and risks mitigated in a targeted manner;
- Non-criminal or administrative process are used by countries to implement targeted financial sanctions against designated persons and entities;
- Countries have clearly identified procedures implemented for: designation/listing; freezing/unfreezing; delisting; and, granting exemptions for targeted financial sanctions;
- Countries have mechanisms for providing guidance to relevant sectors to understand the risks arising from breach, evasion or non-implementation of UN targeted financial sanctions related to proliferation;
- Countries have identified competent authorities who co-operate and co-ordinate on policies related to CPF.

Main findings

- Countries have made progress in implementing frameworks to fight terrorist financing and the financing of proliferation of weapons of mass destruction;
- There needs to be more focus on effectively using the framework to investigate and prosecute these crimes, transpose UNSC designations without delate and freeze or confiscate assets with links to terrorism or proliferation across the Global Network.

Concluding remarks

FATF have made it clear that the fifth round of assessments will be more timely, risk-based and effective; and, will include:

- a significantly shorter mutual evaluation cycle, so that countries get assessed more frequently;
- greater emphasis on the major risks and context to ensure that countries focus on the areas where the risks are highest; and
- a results-orientated follow-up assessment process, which will focus on specific actions to tackle money laundering, terrorist financing and the financing of WMD.

In terms of what this means for the Bailiwick of Guernsey: while it feels like we have a proactive government, legislature, regulator and industry all focused on ensuring that Guernsey is the very best it can be, and has adopted a framework appropriate for the islands, ultimately we must embrace the 2024 MONEYVAL visit and then await its findings.

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