



## **APG Typologies Workshop 2010**

### **Financial Action Task Force Draft Reference Guide on Anti Corruption and AML**

#### **Corruption - a Reference Guide and Information Note on the use of the FATF Recommendations to Support the Fight Against Corruption**

1. The attached draft Reference Guide from the FATF will be discussed by the FATF and is expected to be adopted on Friday 22 October.
2. After approval, the FATF Information Note will be published on the FATF public website as part of FATF's regular public outreach.
3. The Information Note is not designed as a policy or discussion paper, but is designed to explain the FATF Standards to non-experts in a comprehensive manner showing the benefits of effectively implementing the FATF Standards for an anti-corruption system.
4. In June 2010 the FATF Working Group on terrorist financing and money laundering decided to prepare a factual Information Note on how the current framework of AML/CFT measures may be used to combat corruption.
5. The Information Note enables the FATF to highlight the corruption issue and take further action in line with the call from the G20.

APG Secretariat  
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# CORRUPTION



A Reference Guide and Information Note  
on the use of the FATF Recommendations  
to support the fight against Corruption

The Financial Action Task Force (FATF) is the inter-governmental policy-making body with the mandate to develop and promote the effective implementation of anti-money laundering and combating the financing of terrorism standards (the FATF Recommendations).

The FATF Recommendations are the internationally recognised and globally endorsed standards in this area.

**The FATF has developed this information note to raise public awareness of how the FATF Recommendations, when effectively implemented, help combat corruption.**

- Safeguarding public sector integrity
- Protecting the private sector
- Increasing transparency in the financial system
- Detecting, investigating and prosecuting corruption and money laundering and, recovering stolen assets.

## *Introduction*

Leaders throughout the international community recognise that anti-money laundering (AML) and counter-terrorist financing (CFT) measures are powerful tools that are effective in the fight against corruption. The G20 leaders have asked the FATF to help detect and deter the proceeds of corruption by strengthening the FATF Recommendations. As part of this work, the FATF has developed this information note to raise public awareness of how the FATF Recommendations, when effectively implemented, help to combat corruption.

## *The link between corruption and money laundering*

Corruption and money laundering are intrinsically linked. Similar to other serious crimes, corruption offences, such as bribery and theft of public funds, are generally committed for the purpose of obtaining private gain. Money laundering is the process of concealing illicit gains that were generated from criminal activity. By successfully laundering the proceeds of a corruption offence, the illicit gains may be enjoyed without fear of being confiscated.

Combating money laundering is a cornerstone of the broader agenda to fight organized and serious crime by depriving criminals of ill-gotten gains and by prosecuting those who assist in the laundering of such ill-gotten gains. The FATF recognises the link between corruption and money laundering, including how AML/CFT measures help combat corruption. This is why corruption issues are taken into account during the FATF mutual evaluation process which assesses countries' compliance with the FATF Recommendations. For example, the FATF considers how effectively AML/CFT measures are implemented in a country by considering the number of investigations, prosecutions and convictions for money laundering, and the amount of property confiscated in relation to money laundering or underlying predicate offences, including corruption and bribery (Recommendation 32). As well, the FATF considers whether the country can demonstrate that it has a solid framework of measures to prevent and combat corruption through respect for transparency, good governance principles, high ethical and professional requirements, and established a reasonably efficient court system to ensure that judicial decisions are properly enforced (FATF Methodology, paragraphs 6-7 and 15-21). These elements are important because significant weaknesses or shortcomings in these areas may impede effective implementation of the FATF Recommendations.

By effectively implementing the FATF Recommendations, countries can:

- **better safeguard the integrity of the public sector**
- **protect designated private sector institutions from abuse**
- **increase transparency of the financial system**
- **facilitate the detection, investigation and prosecution of corruption and money laundering, and the recovery of stolen assets.**

A proper culture of compliance with AML/CFT standards creates an environment in which it is more difficult for corruption to thrive undetected and unpunished.

## *Safeguarding the integrity of the public sector*

Corruption flourishes in an environment where state officials and public sector employees misuse their positions for private gain. Effective implementation of the FATF Recommendations helps to safeguard the integrity of the public sector by ensuring that key government agencies involved in anti-money laundering and combating terrorist financing (such as the financial intelligence unit, law enforcement and prosecutorial authorities, supervisors and others) are adequately resourced and manned by staff of high integrity.

### **What do the FATF Recommendations require and how do these requirements fight corruption?**

Key government agencies must have **sufficient operational independence and autonomy** to ensure freedom from undue influence or interference. This reduces the likelihood of them falling under the influence or control of corrupt persons (*Recommendations 26 and 30*).

Key government agencies must be provided with **adequate budgetary resources** to fully and effectively perform their functions. Adequate compensation can at least eliminate the need to embezzle or take bribes to reach a fair level of compensation (*Recommendation 30*).

Staff of key government agencies must have appropriate **skills**, receive adequate **training**, and maintain **high professional standards**. Such measures help to foster a culture of honesty, integrity and professionalism (*Recommendation 30*).

## *Protecting designated private sector institutions from abuse*

Private sector institutions are an attractive venue for laundering the proceeds of corruption, particularly if they are owned or infiltrated by corrupt persons or have implemented weak AML/CFT measures. Effective implementation of the FATF Recommendations helps to protect designated financial institutions (such as banks, securities firms, insurance companies, foreign exchange dealers, and money remitters) and other designated businesses and professions (such as casinos, lawyers, accountants, real estate agents, dealers in precious metals and stones, and trust and company service providers) by requiring that their owners, controllers and employees are properly vetted, and they have adequate systems in place to comply with AML/CFT requirements.

### **What do the FATF Recommendations require and how do these requirements fight corruption?**

Persons holding a significant controlling interest or management function in a ~~financial institution or casino~~ designated private sector institution must be **vetted**. In the case of financial institutions, such vetting should use “**fit and proper**” criteria for directors and managers. This helps to prevent corrupt persons and other criminals from gaining control over a financial institution or casino (*Recommendations 23 and 24*).

Designated private sector institutions must **screen employees** to ensure high standards. This helps to prevent corrupt persons from infiltrating or otherwise criminally abusing a financial service provider (*Recommendations 15 and 16*).

Designated private sector institutions must implement **internal control systems and audit functions** to ensure compliance with AML/CFT measures. This helps such institutions to detect when they are being abused by criminals and corrupt persons (*Recommendations 15 and 16*).

~~Financial institutions and casinos~~ Designated private sector institutions must be subject to adequate **supervision and monitoring** by supervisory authorities (or self-regulatory organisations, in the case of lawyers, accountants, real estate agents, dealers in precious metals and stones, and trust and company service providers) with sufficient supervisory, inspection and sanctioning powers to ensure compliance with AML/CFT measures. Robust supervision and monitoring of the financial sector deters and facilitates the detection of corruption and other criminal activity (*Recommendations 17, 23, 24 and 29*).

## *Increasing transparency in the financial sector*

Corruption is more likely to go unpunished in opaque circumstances where the proceeds of such crimes are laundered and cannot be traced back to the underlying corrupt activity, as is the case when the ownership of assets is obscured, and transactions and transfers leave incomplete (or no) audit trail. Effective implementation of the FATF Recommendations increases the transparency of the financial system by creating a reliable paper trail of business relationships, transactions, and discloses the true ownership and movement of assets.

### **What do the FATF Recommendations require and how do these requirements fight corruption?**

When establishing business relationships or conducting transactions on behalf of customers, designated private sector institutions must **verify the identity of the customer**, any natural person on whose behalf a customer is acting, and any individuals who ultimately own or control customers that are legal persons (such as companies) or legal arrangements (such as trusts). Additional precautions must be taken when transactions are conducted through a third party or are not done ~~non~~-face-to-face. These precautions increase transparency by making it difficult for corrupt persons to conduct business anonymously, or hide their business relationships and transactions behind other people, corporate structures, or complex legal arrangements (*Recommendations 5, 6, 8, 9 and 12*).

All customer identification, transaction and account records, and business correspondence must be kept, so that they can be made available to the authorities on a timely basis. Such **record keeping** measures ensure that there is a reliable paper trail the authorities can use to trace the proceeds of corruption, and use as evidence to prosecute corruption and other crimes (*Recommendations 10 and 12*).

Financial service providers must put in place appropriate risk management systems to determine whether a (potential) customer or the individual who ultimately owns or controls the customer is a **politically exposed person (PEP)**. When doing business with a PEP, financial service providers must take reasonable measures to determine the PEP's source of wealth and funds. Such measures increase the possibility of detecting instances where public officials and other persons who are (or have been) entrusted with prominent public functions in a foreign country — such as Heads of State, senior politicians, senior government judicial or military officials, senior executives of state-owned corporations and important political party officials—are abusing their positions for private gain (*Recommendation 6*).

The authorities must have timely access to adequate, accurate and current information which identifies the individual(s) who own or control legal persons and legal arrangements. This increases the **transparency of ownership**, and makes difficult to hide the proceeds of corruption within a company or trust (*Recommendation 33 and 34*).

## *Increasing transparency in the financial sector*

Wire transfers are a fast way to move the proceeds of corruption elsewhere to obscure their source and must, therefore, be accompanied by accurate and meaningful information which identifies the person who sent the transaction. Likewise, cash or bearer negotiable instruments that are being moved across national borders either on one's person, through the mail, or in containerised cargo would also leave no paper trail and, therefore, must be declared or disclosed to the authorities. **Transparent movement of assets** makes it possible to trace the movement of corruption proceeds (*Special Recommendations VII and IX*).

**Financial secrecy laws** must not inhibit the implementation of the AML measures in excess of legitimate data protection and privacy concerns, including those aimed at increasing the transparency of the financial system thereby facilitating the prevention, detection and prosecution of corruption (*Recommendation 4*).

## *Detection, investigation, prosecution and recovery of stolen assets*

Jurisdictions become safe havens for persons and funds related to corrupt activities unless there is a legal framework and mechanisms to detect, investigate and prosecute corruption offences and related money laundering, and to recover stolen assets. Effective implementation of the FATF Recommendations establishes a legal framework and mechanisms to alert the authorities to suspicious activities in the financial system, and to provide them with sufficient powers to investigate and prosecute such activities, and to recover stolen assets.

### **What do the FATF Recommendations require and how do these requirements fight corruption?**

Designated private sector institutions must conduct ongoing due diligence on all business relationships to ensure that the transactions being conducted are consistent with their knowledge of the customer, business and risk profile, and where necessary, the source of funds. Special attention must be given to any complex, unusual or large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. Increased scrutiny must be given to high risk customers (such as foreign PEPs), jurisdictions, business relationships and transactions. This enables the **detection of unusual or suspicious activity** that might be related to corruption and which must be reported to the authorities for further analysis and investigation (*Recommendations 5, 6, 11, 12, 13, 16 and 21*).

Countries must establish a **financial intelligence unit** (FIU), with adequate capacity and powers, to receive and **analyse suspicious transaction reports**, and disseminate disclosed information to the proper authorities for further investigation, if appropriate. These requirements also apply to suspicious transaction reports that may be related to corruption (*Recommendation 26*).

The laundering of proceeds from all serious offences, including a sufficiently broad range of corruption and bribery offences, must be **criminalised**. This should normally apply to both natural and legal persons, regardless of whether they committed the predicate offence or are a facilitating third party. By ensuring that the related money laundering and corruption conduct can both be investigated and prosecuted, corrupt persons may be punished even if the corruption offence cannot be pursued. The law enforcement authorities must have sufficient powers to access financial records and obtain evidence for the purpose of ensuring proper **investigation and prosecution** of money laundering offences and underlying predicate offences. These powers also enable the authorities to “follow the money trail”, and trace back and investigate the underlying corruption offence (*Recommendations 1, 2, 27 and 28*).

Corruption is often driven by greed. Countries can remove a main objective and incentive for engaging in corrupt activities by depriving the perpetrators and others from the benefit of such crimes. To do so, countries must have effective laws and procedures to **freeze, seize and confiscate** stolen assets, the proceeds of corruption and laundered property, while also protecting the rights of bona fide third



## *Detection, investigation, prosecution and recovery of stolen assets*

parties. The authorities should have sufficient powers to trace assets, including in co-operation with foreign counterparts. Countries should consider sharing assets confiscated as a result of co-ordinated law enforcement actions and also consider establishing funds into which confiscated assets may be deposited for law enforcement, health, education or other appropriate purposes. These requirements facilitate the protection and compensation of the victims of corruption and bribery, and the **recovery of stolen assets**, even if such assets have been concealed abroad (*Recommendations 3 and 38*).

To fight cross-border corruption, countries need to implement effective laws and mechanisms which enable them to provide a wide range of mutual legal assistance, execute extradition requests and otherwise facilitate **international co-operation**. It is also important for countries to have mechanisms that facilitate **domestic co-operation and co-ordination** for all authorities (policy makers, the FIU, law enforcement, supervisors and other competent authorities) at the policy and operational levels (*Recommendations 31, 36 – 40*).

### *Further reading on [www.fatf-gafi.org](http://www.fatf-gafi.org)*

*Since its creation the FATF has spearheaded the effort to adopt and implement measures designed to counter the use of the financial system by criminals. It established 40 + 9 Recommendations that set out the basic framework for AML/CFT efforts and are of universal application.*

*Members of the FATF and of FATF-style regional bodies (FSRBs) are strongly committed to the discipline of multilateral peer review. The mutual evaluation programme is the primary instrument by which the FATF and FSRBs monitor progress made by member governments in implementing the FATF Recommendations. Through this process, the FATF monitors the implementation of the FATF Recommendations, ~~and~~ assesses the effectiveness of the AML/CFT systems in FATF member jurisdictions, and publishes these assessments.*

*The FATF also has procedures for identifying and reviewing non-cooperative and high-risk jurisdictions. Jurisdictions found to be high-risk or non-cooperative are publicly identified and can face multilateral counter measures.*