



Preparing for the 4th Round of the CFATF MUTUAL EVALUATION PROCESS



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SCOPE OF MUTUAL EVALUATIONS

Whereas the 3rd Round of Mutual Evaluations placed considerable significance on whether an assessed jurisdiction's legal and administrative frameworks were in place to address ML/TF, the 4th Round Caribbean Financial Action Task Force ("CFATF") Mutual Evaluations are now focused on effectiveness. Therefore, notwithstanding the fact that a jurisdiction has the necessary legislative provisions that are in force to comply with the FATF 40 Recommendations, the Assessors will need to be assured that in practice the AML/CFT framework is working. Hence, the scope of mutual evaluations is divided into two components: 1) technical compliance and 2) effectiveness.

The FATF Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems (page 5) describes these two components as follows:-

The technical compliance assessment addresses the specific requirements of the FATF Recommendations, principally as they relate to the relevant legal and institutional framework of the country, and the powers and procedures of the competent authorities. These represent the fundamental building blocks of an AML/CFT system.

The effectiveness assessment differs fundamentally from the assessment of technical compliance. It seeks to assess the adequacy of the implementation of the FATF Recommendations, and identifies the extent to which a country achieves a defined set of outcomes that are central to a robust AML/CFT system. The focus of the effectiveness assessment is therefore on the extent to which the legal and institutional framework is producing the expected results.

Together, the assessments of both technical compliance and effectiveness will present an integrated analysis of the extent to which the country is compliant with the FATF Standards and how successful it is in maintaining a strong AML/CFT system, as required by the FATF Recommendations.

The CFATF's 4th Round Mutual Evaluation of St. Kitts and Nevis will be conducted during the 2nd half of 2018 and the period under review will be 2014/2015 to 2017/2018. This month's Newsletter contains important information which should assist regulated entities with their preparations for the evaluation.

COMPOSITION OF THE ASSESSMENT TEAM

The team will comprise of four assessors referred to as experts who will be chosen by the CFATF Secretariat based on their prior assessment experience, knowledge of the FATF 40 Recommendations and qualifications, nature and size of the assessed jurisdiction, language of the evaluation, etc. The CFATF has only conducted two evaluations to date under the new methodology: 1) Trinidad and Tobago in January, 2015 and 2) Jamaica in June, 2015. The Assessment Team will usually have the following mix of experts: one Legal Expert; one Law Enforcement Expert and two Financial Experts, and two members of the CFATF Secretariat.

ON-SITE VISITS WITH THE PRIVATE SECTOR/ FINANCIAL SERVICES INDUSTRY

The Assessment Team will conduct interviews with not only government agencies and relevant competent authorities that are responsible for monitoring compliance with AML/CFT legislation and guidelines but also with regulated entities/licensees in the private sector. Therefore in order to properly assess the effectiveness of a jurisdiction's AML/CFT framework, much consideration will be given to the regulated entities/licensees' adherence to the AML/CFT legislation currently in force and administered in that jurisdiction. To achieve this goal, the assessment team will request interviews with key licensees in various sectors to ascertain their level of compliance with the FATF recommendations which have been given effect through domestic legislation and guidance. The interviewees from the private sector have traditionally been one large and one small institution representing:

- ◆ Domestic and International Banks,
- ◆ Micro-finance businesses,
- ◆ Credit Unions,
- ◆ Trust and Corporate Service Providers,
- ◆ Money Services Businesses,
- ◆ Insurance Companies (domestic and insurance managers of captive insurance companies),
- ◆ Accountants (or professional association, if applicable),
- ◆ Bar Association (which will represent Attorneys and Notaries),
- ◆ Gaming Companies,
- ◆ Real Estate Companies (or professional association, if applicable), and
- ◆ Dealers in Precious Metals and Stones/Jewellers.

OBSERVATIONS FROM PRIOR MUTUAL EVALUATIONS

Following the two mutual evaluations conducted thus far, the following were noted:-

- A.** The onus is on the assessed jurisdiction to prove that it has demonstrated effectiveness.
- B.** It is extremely important that the private sector co-operates with government agencies when preparing for the national risk assessment (Recommendation 1). The assessment is necessary to identify the nature and scale of ML/TF risks faced by the jurisdiction and to determine the weaknesses in the AML/CFT framework which can make it attractive to money launderers and financiers of terrorism. Resources can then be assigned to those areas that have been identified as having the highest level of risks. Therefore, private sector feedback in the form of surveys, questionnaires, consultations, etc. will be essential and mandatory in order to have a comprehensive national risk assessment. This is a fundamental step in the 4th Round Mutual Evaluation as the Assessors will determine how well the various competent authorities use their understanding of the risks in practice to inform policy development and what actions were taken to mitigate those risks.
- C.** Regulated Entities themselves are required to identify, assess and understand their ML/TF risks based on their own documented and current internal risk assessments. They will also be interviewed by assessors to determine whether they have senior management approved policies, controls and procedures in place to manage and mitigate those risks that have been identified both on a national and individual level. The interviews will be conducted without the presence of Government officials.
- D.** The use of data and statistics over a three-year period is critical in proving that the AML/CFT framework is effective. Accordingly, this will be evidenced, among other things, by the number of:
- ⇒ ML/TF investigations, prosecutions and convictions recorded;
 - ⇒ STRs filed, analysed and disseminated;
 - ⇒ on-site inspections conducted on regulated entities and subsequent feedback given by the relevant competent authorities;
 - ⇒ penalties and sanctions imposed on regulated entities that are non-compliant with relevant legislation;
 - ⇒ requests for information received and exchanged either through domestic or international co-operation;
 - ⇒ extradition requests handled; and
 - ⇒ goods or funds frozen, seized or confiscated, etc.
- E.** The types of questions that will be asked of regulated entities will surround the following issues (list not exhaustive):-
- ⇒ board/senior management oversight of regulated entities' compliance function;
 - ⇒ whether there is in place a board approved AML/CFT Policies and Procedures / Compliance Manual;
 - ⇒ whether the regulated entities' board/senior management underwent a fit and proper assessment by its licensing authority and state whether it is an ongoing exercise;
 - ⇒ whether there is a documented, board/senior management approved risk assessment. Assessors will ask regulated entities to briefly summarise the various risk-ratings given and the level of monitoring done on customers/clients as a result;
 - ⇒ a description of the on-boarding/screening procedures and ongoing monitoring for employees/customers/clients, (including KYC/CDD procedures, enhanced due diligence procedures, PEPs and different monitoring levels used based on FATF recommendations, beneficial owners, legal persons and arrangements, life-insurance policies, non-profit organisations, bearer shares, etc.);
 - ⇒ appointment of Compliance Officer (CO) and Money Laundering Reporting Officer (MLRO)
 - ⇒ responsibilities/duties/functions of the CO and MLRO (including training of staff and board members on AML/CFT procedures, annual work program, etc.);
 - ⇒ record keeping procedures;
 - ⇒ sanctions imposed on staff that breach AML/CFT procedures;
 - ⇒ tipping-off;
 - ⇒ relationship with the FSRC, FIU and other law enforcement authorities (co-operation during investigations, feedback, consultations, industry training initiatives, etc.);
 - ⇒ frequency of AML/CFT audits by the internal auditor, FSRC



- and external auditors;
- ⇒ contents of the last examination reports submitted by the internal auditor, FSRC or external auditor including the deficiencies noted and remedial action taken by the regulated entity or resulting regulatory actions, if any;
 - ⇒ filing of STRs (frequency of, procedures followed and compliance with legislation);
 - ⇒ regarding financial institutions, topics surrounding financial inclusion, de-risking, crypto-currencies, involvement in investigations by law enforcement and regulatory agencies, wire transfer procedures, implementation of targeted financial sanctions and account freezing procedures, use of intermediaries/third parties, correspondent banking relationships and adherence to core principles established by standard setting international bodies i.e. Basel Committee on Banking Supervision, International Association of Insurance Supervisors ("IAIS") and International Organisation of Securities Commission ("IOSCO") will also arise;
 - ⇒ general information such as the asset size, number of branches, number of employees, length of years licensed, type of license held, etc.

ENSURE FAMILIARIZATION WITH FATF RECOMMENDATIONS

Regulated entities should therefore familiarize themselves with the following FATF Recommendations and ensure that they are in compliance:-

- ◇ Recommendation 1 – National Risk Assessment
- ◇ Recommendation 8 – Non-Profit Organizations
- ◇ Recommendation 9 – Financial Secrecy
- ◇ Recommendation 10 – Customer Due Diligence
- ◇ Recommendation 11 – Record Keeping Requirements
- ◇ Recommendation 12 – PEPS
- ◇ Recommendation 13 – Correspondent Banking
- ◇ Recommendation 14 – Money Services Businesses
- ◇ Recommendation 15 – New technologies
- ◇ Recommendation 16 – Wire transfers
- ◇ Recommendation 17 – Third parties
- ◇ Recommendation 18 – Internal controls, foreign branches and subsidiaries
- ◇ Recommendation 19 – High risk countries
- ◇ Recommendation 20 – STRs
- ◇ Recommendation 21 – Tipping off
- ◇ Recommendation 22 – DNFBPs – CDD
- ◇ Recommendation 23 – DNFBPs – other
- ◇ Recommendation 24 – Legal persons
- ◇ Recommendation 25 – Legal arrangements

RECOMMENDED READING

- The CFATF Website features several reports on St. Kitts-Nevis: <https://www.cfatf-gafic.org/index.php/member-countries/s-v/saint-kitts-and-nevis>
- FATF's publications re: Best Practices:- <http://www.fatf-gafi.org/publications/?hf=10&b=0&q=best%2520practices&s=desc%28fatf%20releasedate%29>

2016 LICENSING RENEWAL PROCEDURES

Regulated Entities are reminded of the requirement to submit the renewal form as a condition for the renewal of their Registered Agent License for 2016.

Failure to submit the renewal form, relevant documentation along with the prescribed fees may result in the Department's refusal to issue the requisite renewal certificate.

NEW APPLICATION PROCESS FOR COMPLIANCE / REPORTING OFFICERS

Further to our 2015 March and April Newsletters, Issue Nos. 29 and 30 respectively, the Financial Services Regulatory Commission ("FSRC") has approved the Minimum Guidelines for the Role and Appointment of Compliance and Reporting Officers pursuant to the Financial Services Regulatory Commission Act, and other relevant legislation.

The application process for the approval of a Compliance/Reporting Officer has been revised to include the completion and submission of an application form together with all relevant documents and applicable fees.

A copy of the application form for the approval of the appointment of CO/RO will be forwarded to all regulated entities shortly.

The Guidelines will take effect from the 1st day of January, 2016.

Source

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