

FATF



GUIDANCE FOR A RISK-BASED APPROACH

EFFECTIVE SUPERVISION  
AND ENFORCEMENT BY  
AML/CFT SUPERVISORS OF  
THE FINANCIAL SECTOR AND  
LAW ENFORCEMENT

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The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

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## ACRONYMS

<b>ACPR</b>	<i>Autorité de contrôle prudentiel et de résolution</i>
<b>AML/CFT</b>	anti-money laundering and countering financing of terrorism
<b>CDD</b>	customer due diligence
<b>CNBV</b>	National Banking and Securities Commission
<b>DNFBP</b>	designated non-financial businesses and professions
<b>FCA</b>	Financial Conduct Authority
<b>FCA</b>	Financial Conduct Authority
<b>FINTRAC</b>	Financial Transactions and Reports Analysis Centre of Canada
<b>FIU</b>	Financial intelligence unit
<b>FRFI</b>	federally regulated financial institutions
<b>FSA</b>	Financial Services Authority
<b>HMRC</b>	HM Revenue and Customs
<b>IAIS</b>	International Association of Insurance Supervisors
<b>IOSCO</b>	International Organisation of Securities Commission
<b>ML</b>	money laundering
<b>MSB</b>	money service business
<b>OFAC</b>	Office of Foreign Assets Control
<b>OSFI</b>	Office of the Superintendent of Financial Institutions
<b>RBA</b>	risk-based approach
<b>SAR</b>	suspicious activity report
<b>STR</b>	suspicious transaction report
<b>TF</b>	terrorist financing
<b>TFS</b>	targeted financial sanctions

## I. OBJECTIVES AND SCOPE

1. The objective of this non-binding guidance paper is to describe the features of an effective supervisory system, with an aim to enhance countries'<sup>1</sup> understanding of the relevant FATF requirements by describing good practices and providing illustrative case examples. Effective supervision and enforcement is an important component of an effective anti-money laundering and countering financing of terrorism (AML/CFT) regime. For the purposes of this paper, an effective supervisory and enforcement system comprises a wide range of financial supervisory measures that include preventive measures and related sanctions<sup>2</sup> and other remedial actions<sup>3</sup> that AML/CFT supervisors<sup>4</sup> (including regulators) can apply, as well as separate yet complementary measures and actions by law enforcement and/or other relevant competent authorities. The overall effectiveness of a country's AML/CFT regime requires recognition of the important synergies that exist between AML/CFT, prudential and business conduct supervision and between those supervisors and judicial/law enforcement authorities. The recognition of this complementarity, as well as the willingness and ability to promote and encourage its application, can only further improve efforts to prevent and combat money laundering (ML)/terrorist financing (TF) in countries.

2. The practices described in this document are intended to serve as examples of the measures and means that relevant supervisors in countries may use to meet the requirement of the FATF Recommendations regarding a supervisory approach. This guidance does not pre-judge the institutional measures and other means that countries may use to achieve risk-based supervision and enforcement in their country, which vary according to each country's context, such as the size and complexity of the financial services sector and the degree of ML/TF risks (including threats and vulnerabilities) to which it is exposed<sup>5</sup>. As Recommendation 1 recognises that not all financial

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<sup>1</sup> All references in this paper to *country* or *countries* apply equally to territories or jurisdictions.

<sup>2</sup> Examples of types of sanctions include: written warnings; orders to comply with specific instructions (possibly accompanied with daily fines for non-compliance); ordering regular reports from the institution on the measures it is taking; fines for non-compliance; barring individuals from employment within that sector; removing, replacing or restricting the powers of managers, directors, and controlling owners; imposing conservatorship or suspension or withdrawal of the license; or criminal penalties where permitted.

<sup>3</sup> Examples of remedial actions are corrective actions such as written agreements, board resolutions/letters, supervisory letters, action plans, timelines, reprimands and fines.

<sup>4</sup> Throughout this paper, the terms *supervisor* and *AML/CFT supervisor* refer to the designated competent authorities or non-public bodies with responsibilities aimed at ensuring compliance by financial institutions with requirements to combat money laundering and terrorist financing. This includes:

- Core Principles supervisors who carry out supervisory functions that are related to the implementation of the *FATF Recommendations*, and
- non-public bodies, including certain types of *self-regulatory bodies* (as defined in the *Glossary to the FATF Recommendations*) that have the power to supervise and sanction financial institutions in relation to AML/CFT requirements are empowered by law to exercise the functions they perform, and are supervised by a competent authority in relation to such functions.

<sup>5</sup> This guidance is not a standard and is therefore not intended to designate specific actions or arrangements necessary to meet obligations under Recommendations 26, 27, 35 and their respective Interpretative Notes, nor does this guidance pre-empt the technical assessment of these Recommendations or the

institutions face the same ML/TF risks, there may be different approaches to supervision for different financial sectors (e.g., money or value transfer services, securities brokers and depository institutions). An actual assessment of effectiveness of the AML/CFT supervisory system in each country is part of the FATF's mutual evaluation process, where assessors evaluate whether the particular measures, controls, and actions taken by each country produce the desired effective outcomes.<sup>6</sup>

3. This guidance paper is intended to address AML/CFT supervision and enforcement of preventive measures for financial institutions<sup>7</sup> as defined by the FATF and should be read in conjunction with the relevant FATF Guidance Papers on the Risk Based Approach (RBA), such as the 2014 *RBA Guidance for the Banking Sector*<sup>8</sup>. Other documents that may assist countries are:

- *Sound Management of Risks Related to Money Laundering and Financing of Terrorism* (Basel Committee, January 2014);
- *Core Principles for Effective Banking Supervision* (Basel Committee, September 2012)
- *Core Principles of Securities Regulation* (IOSCO, 2015a)
- *Guidance on Credible Deterrence in the Enforcement of Securities Regulation* (IOSCO, 2015b); and
- *Insurance Core Principles* (IAIS, nd)

4. **Section II** sets out some examples of supervisory models, **Section III** sets out the features of an effective supervisory system, and **Section IV** sets out complementary processes and actions available to law enforcement. **Section V** shows a graphic representation of effective supervision and enforcement.

5. For the purpose of this guidance paper, the terms *Core Principles*, *financial group*, *financial institutions*, *money or value transfer service* (MVTs), and *targeted financial sanctions* have the same meaning as set out in the General Glossary to the FATF Recommendations.

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assessment of Immediate Outcome 3. Criteria for assessing technical compliance and effectiveness can be found in the FATF Methodology.

<sup>6</sup> Throughout this paper, use of the term *should* is not meant to infer that measures or actions described in this paper are the only way to achieve effective supervision and enforcement.

<sup>7</sup> This paper does not address the supervision and monitoring of designated non-financial businesses and professions (DNFBPs).

<sup>8</sup> *RBA Guidance for the Banking Sector* (FATF, 2014). The FATF will also issue the *RBA Guidance for Money or Value Transfer Services (MVTs)* towards 2016 which updates the 2009 *RBA Guidance for Money Service Businesses (MSBs)*.

## II. FINANCIAL SUPERVISION MODELS

6. There are many different supervisory approaches and while the FATF does not prescribe a particular supervisory model, whichever supervisory system is chosen, it should effectively address and mitigate the money laundering and terrorist financing risks in the financial sector. The basic requirements that countries should comply with are in

- Recommendation 1 (assessing risks and applying risk-based approach),
- Recommendations 26 (regulation and supervision of financial institutions),
- Recommendation 27 (powers of supervisors),
- Recommendation 34 (guidance and feedback),
- Recommendation 35 (sanctions), and
- Recommendation 40 (other forms of international cooperation), as well as
- Recommendation 2 (National cooperation and coordination).

7. Whatever the approach countries take to financial supervision, they should strive to have effective communication and coordination between AML/CFT supervisors and other supervisory agencies, central banks, finance ministries and any other relevant authorities. AML/CFT supervision can form part of the broader supervision (e.g., safety and soundness or business conduct), or it can be entirely separate. However, AML/CFT supervision must be included in whichever model a country chooses and cannot be undervalued.

8. The AML/CFT supervisory model is a national decision that should be adopted taking into consideration the structure and risk of the financial sector in each country. The FATF acknowledges that different institutional arrangements are capable of meeting the FATF Standards. The arrangements in place should meet the technical requirements noted in Paragraph 6, and be capable of being effectively implemented. Box 1 below sets out the principal models used by many countries, but is not an exhaustive set of options.

9. The integration of AML/CFT supervision into the broader framework of prudential and/or business conduct supervision can leverage synergies, expertise, and resources to enhance the effectiveness of both overall supervision of financial institutions and AML/CFT supervision. Likewise, the integration of AML/CFT supervision with the financial intelligence functions may provide strong synergies, allowing a more targeted supervision based on identified ML/TF risks.

10. The role of supervision in the AML/CFT framework is to supervise and monitor financial institutions to ensure their effective assessment and management of ML/TF risk and compliance with AML/CFT preventive measures. Sometimes these measures need to be prescriptive, for example, for foreign politically exposed persons, while at other times they need to be risk-based, for example, customer due diligence measures on other types of customers. AML/CFT supervisors assess institution's policies, procedures and controls for identifying and managing ML/TF risk, and take remedial action where appropriate. It is not a "tick the box" approach; it requires judgement in

understanding the characteristics and situation of every financial institution. In the event that weaknesses in risk management programmes or breaches of laws or regulations are identified, AML/CFT supervisors should apply a proportionate range of remedial actions to address the identified weaknesses including appropriate sanctions that may include financial penalties for more severe breaches of AML/CFT legal or regulatory requirements.

11. Additionally, the mutual evaluations conducted by the FATF from 2014 to date suggest that supervisors need to pay more attention to the implementation of targeted financial sanctions (TFS), as outlined in Recommendations 6 and 7, in the financial sector. Generally, supervisors paid a low level of attention to compliance with TFS. The FATF Standards require that supervision be applied to TFS implementation but leave it to countries to determine how to implement the requirement. A range of options is available, depending on the national institutional arrangements: for example, responsibility could be assigned to sector financial regulators, the AML/CFT supervisor or enforcement unit or law enforcement. Countries that assign TFS to their external affairs or finance ministries could assign enforcement to such agencies.

**Box 1. Examples of financial supervision models**

<b>Integrated Approach</b>	Single universal supervisor performs both safety and soundness supervision function and conduct-of-business regulation for all the sectors of financial services business.
<b>Twin Peaks Approach</b>	Separation of regulatory functions between two or more supervisors: for example, one that performs the safety and soundness supervision function and the other that focuses on conduct-of-business regulation.
<b>Functional Approach</b>	Supervisory oversight is determined by the business that is being transacted by the financial institution, without regard to legal status. Each type of business may have its own functional supervisor.
<b>Institutional Approach</b>	Financial institution’s legal status determines which supervisor is tasked with overseeing its activity.

*Source: Adapted from The Structure of Financial Supervision: Approaches and Challenges in a Global Marketplace (Group of Thirty, 2008)*

12. For example, when AML/CFT supervision is an integrated part of the broader supervisory process, AML/CFT supervisors may have broader and more direct access to relevant information on each financial institution (such as on quality of the management, quality of the internal control systems, quality of the risk management systems, level of the compliance culture, etc.), which may allow for an advantage of resource, expertise and cost efficiencies in conducting their AML/CFT supervision. Under the scope of an integrated approach, it is also possible to have a separate team/unit within the single supervisory agency that specializes on the AML/CFT supervision. Such an approach may facilitate ongoing interaction between the prudential and AML/CFT supervision while allowing better specialization and capacity building in AML/CFT supervision.

13. Where AML/CFT supervisors are not the competent authority for prudential or business conduct supervision, countries remain responsible for ensuring that AML/CFT supervision meeting



the Core Principles standards set out in Recommendation 26 is applied effectively. Cooperation between the AML/CFT supervisor and the prudential supervisors<sup>9</sup> can be an effective way of applying Core Principles supervision in the AML/CFT space, avoiding the necessity for the AML/CFT supervisor to duplicate work already being done in the prudential sector.

14. Equally, prudential supervisors who are not the designated competent authority for AML/CFT supervision should be aware of the consequences and implications of their supervised institutions' failures to adequately identify and manage ML/TF risks. Conversely, AML/CFT supervisors should understand how AML/CFT deficiencies may impact prudential supervision (e.g., impact on safety and soundness). This is particularly important in cases involving global, systemically important financial institutions where prudential supervisors can advise on any unintended consequences on confidence in, and the stability of, the institution and global financial system.

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<sup>9</sup> Throughout this paper, the terms *prudential supervisor* refers to Core Principles supervisors who may or may not have responsibilities for carrying out supervisory functions that are related to the implementation of the FATF Recommendations and requirements to combat money laundering and terrorist financing.

### III. BASIS OF AN EFFECTIVE SUPERVISORY SYSTEM

15. The effectiveness of a country's supervisory regime is based on a number of factors, as set out in the Immediate Outcome 3 of the FATF Methodology, including, but not limited to:

- a. How well does licensing, registration or other controls implemented by supervisors or other authorities prevent criminals and their associates from holding, or being the beneficial owner of a significant or controlling interest or holding a management function in financial institutions? How well are breaches of such licensing or registration requirements detected?
- b. How well do the supervisors identify and maintain an understanding of the ML/TF risks in the financial and other sectors as a whole, between different sectors and types of institution, and of individual institutions?
- c. With a view to mitigating the risks, how well do supervisors, on a risk-sensitive basis, supervise or monitor the extent to which financial institutions are complying with their AML/CFT requirements?
- d. To what extent are remedial actions and/or effective, proportionate and dissuasive sanctions applied in practice?
- e. To what extent are supervisors able to demonstrate that their actions have an effect on compliance by financial institutions?
- f. How well do the supervisors promote a clear understanding by financial institutions of their AML/CFT obligations and ML/TF risks?

16. These are explored in greater detail below.

#### A. MARKET ENTRY

17. Market entry controls (e.g., licensing or registration) are meant to prevent criminals or their associates from owning, controlling, holding a significant or controlling interest, or holding a management function in a financial institution.<sup>10</sup> Such controls should be applied at the time of initial licencing or registration of the financial institutions, and also to the directors or members of senior management when new persons are appointed to these positions.

18. While supervisory arrangements vary across countries, all financial institutions should be created and/or licenced/registered in accordance with laws or enforceable means, and policies and procedures that include AML/CFT laws and regulations, in addition to any other requirements. Examples of practices that have proven to be effective include conducting fit and proper tests and/or background checks prior to granting market entry, including, when needed, beneficial

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<sup>10</sup> See the FATF Methodology criteria for Recommendation 26: "26.2 Core Principles financial institutions should be required to be licensed. Other financial institutions, including those providing a money or value transfer service or a money or currency changing service, should be licensed or registered. Countries should not approve the establishment, or continued operation, of shell banks."

ownership determination. This is an instance where supervisors may seek information from law enforcement or share with the relevant authority's information discovered by the supervisor or any third party conducting a fit and proper test and/or background check.<sup>11</sup> This may lead to rejecting applications for reasons of criminality, fitness or propriety, as well as taking appropriate action when applicants make misrepresentations that allow them to obtain a charter or license.

### Examples illustrating various approaches to market entry

#### Example 1. "Fit and proper tests" (United States)

All banking institution applicants are subjected to "fit and proper tests" that include background checks. Should applicants have a criminal history, they are either denied participation or undergo a thorough review to determine if their past criminal history would negatively impact their ability to operate a financial institution. In cases where applicants omit information that would expose their criminal record, federal and/or laws and regulations allow for civil or criminal recourse. For example, the *Background Investigations* (2009)<sup>12</sup> booklet of the Comptroller's Licensing Manual incorporates policies and procedures used by the OCC to review the background of persons and certain companies (filers) interested in entering the national banking system, acquiring control of a national bank, and/or influencing its operations; *Changes in Directors and Senior Executive Officers* (2009) booklet which incorporates policies and procedures used by the OCC to review and evaluate changes in directors and senior executive officers.

#### Example 2. Registration of MSBs (Canada)

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is the responsible authority in Canada for the registration of MSBs under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA). In order to register with FINTRAC, MSBs have to provide identifying information and other business information in a registration form. FINTRAC's MSB registration program provides telephone assistance to potential MSB registrants, and throughout pre-registration, registration, renewal, denial, cessation and expiration process.

FINTRAC MSB registration process involves a criminal records check. Individuals convicted of the following offences are ineligible to own or control an MSB:

- money laundering or terrorist financing,
- an offence under certain sections under the PCMLTFA,
- an offence under most sections of the Controlled Drugs and Substances Act, and
- an offence under certain sections of the Canadian Criminal Code.

Should it be determined that an individual or entity that owns or controls the applying entity is ineligible, the application for registration is denied. It may also happen that, when FINTRAC

<sup>11</sup> Alternatively, supervisors may require regulated entities to obtain the relevant information themselves and certify their compliance to the supervisor.

<sup>12</sup> Office of the Comptroller of the Currency (2009a).

performs the criminal records check, the individuals have been charged with offence that makes them ineligible, but they are not yet convicted. In these instances, FINTRAC performs a regular follow-up on the criminal record check to ensure that the MSB registration is revoked upon conviction. FINTRAC also monitors open source information to be aware of charges laid against previously eligible MSB owners.

In addition, FINTRAC scrutinizes MSBs and potential MSBs on an on-going basis. FINTRAC requires MSBs to submit updated information on owning or controlling individuals or entities when changes occur and again when the MSB applies for renewal of its registration every two years. This information is verified again. FINTRAC also has a process of searching for unregistered MSBs through open source and by visiting them.

When an MSB registration is denied, revoked, expired or pending, FINTRAC conducts a “reporting entity validation” which is a brief off-site review or on-site visit to the MSBs’ last known address to establish if the MSB is still in operation. This ensures that the entity is not operating illegally. FINTRAC may also impose administrative monetary penalties (AMPs) on MSBs for failure to register, failure to submit an application in prescribed form and manner, and failure to submit notification of changes.

**Example 3. Prudential supervisor of federally regulated financial institutions (FRFIs) (Canada)**

Under the Bank Act, the Office of the Superintendent of Financial Institutions (OSFI) arranges for criminal and other background checks on the planned owners and operators of financial institutions. In addition, OSFI has prudential guidance in place that requires banks and other financial institutions to conduct background checks on directors and senior managers of federally regulated entities when these persons change. OSFI refers to such persons as “Responsible Persons”. When conducting an AML/CFT onsite assessment, OSFI reviews the FRFI’s compliance with this guidance and tests the application by reviewing the conduct and results of background checks. These reviews are particularly useful for assessing the processes around obtaining background information for individuals who have not resided in Canada.

For new applicants for banking or other financial institution licences, OSFI also reviews the planned AML/CFT risk assessment and compliance programs as part of the application process with an emphasis on the Applicant’s business plan and model, prior to the issue of Letters Patent by the Minister of Finance. If a potential financial institution does not seem to understand the risks, or address the AML/CFT requirements satisfactorily, the application is delayed from proceeding to Ministerial approval until issues are closed.

For applicants who already operate businesses which will be transferred to a financial institution status, the evaluation also includes an abbreviated on-site assessment as part of OSFI’s general pre-commencement exercise designed to determine operational readiness.

**Example 4. Technical report before registration (Mexico)**

Derived from the Financial Reform, specifically with the modifications made to The General Law of Organizations and Auxiliary Credit Activities (LGOAAC), the obligation of Money Exchange Centers

(MSBs) and Money Transmitters to obtain the Technical Report on the prevention of Money Laundering and Terrorist Financing (ML/TF) was implemented.

Technical Report is a tool that contributes to generate confidence in the financial sector and users of Money Exchange Centers and Money Transmitters. While it does not replace the function of supervision, which is in charge of the National Banking and Securities Commission (CNBV), Technical Report evaluates and verifies the implementation of measures and recommends implementation of best practices. The report is valid for three years from their issuance.

On 8 September, 2014, the deadline for the Money Exchange Centers and Money Transmitters to process their application for renewing their registration with the CNBV expired, for which, they must had obtained in advance a Technical Report on the ML/TF prevention.

The CNBV expects that compliance with the regulations of the Financial Reform, through obtaining the Technical Report will contribute to build trust among the sectors under the supervision of the CNBV. It is important to note that the Technical Report is a requirement to apply for or renew the registration for Money Exchange Centers or Money Transmitters with the CNBV. However, obtaining Technical Report does not involve the granting or renewal of the entity's registration; it only shows the general compliance regarding the AML/CFT measures: it does not prejudge proper registration application of the entity.

#### Example 5. Visit to newly authorised institutins (Mexico)

The supervisor performs visits to newly authorised FIs, prior to its start of operations. These visits are comprehensive reviews of all aspects of compliance with AML/CFT regulations, including: fit and proper test of the corporative structure (background of the legal person members), effective customer identification programs, know-your-customer policies, AML manual (document containing all relevant AML policies, procedures and internal structure (corporate governance) schemes according to the applicable legal framework), AML risk matrix, reporting obligations and an automated system to detect and make STRs and CTRs in a timely manner.

## B. UNDERSTANDING THE ML/TF RISKS

19. As stated in Recommendation 1, countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively. Based on that assessment,<sup>13</sup> countries should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. This risk-based approach should be an essential foundation to efficient allocation of resources across the AML/CFT

<sup>13</sup> The types of information that might form the basis of the supervisor's risk assessment include, but are not limited to: national risk assessments, information collected from reporting entities either off-site or on-site, the results of examinations and supervisory processes, and information from the FIU, including typologies and feedback on suspicious transaction reports.

regime and the implementation of measures throughout the FATF Recommendations. Where countries identify higher risks, they should ensure that their AML/CFT regime adequately addresses such risks

20. The 2014 *RBA Guidance for the Banking Sector*, particularly Section II – Guidance to Supervisors, contains relevant guidance explaining how to develop an understanding of the ML/TF risks which should then inform the supervisor’s inspection plans and approach. It should be noted that the broad principles contained in this guidance may also be directly relevant to the supervision and monitoring of other sectors. As it notes: “When assessing ML/TF risk<sup>14</sup>, countries, competent authorities, and financial institutions should analyse and seek to understand how the ML/TF risks they identified affect them; the risk assessment therefore provides the basis for the risk-sensitive application of AML/CFT measures<sup>15</sup>. The RBA is not intended to be a “zero failure” approach; there may be occasions where an institution has taken all reasonable measures to identify and mitigate ML/TF risks, but it is still used for ML or TF purposes.”<sup>16</sup> Additionally, when financial institutions do not effectively mitigate the risks due to a failure to understand risks, implement an appropriate risk-based approach, or failure of a risk-based programme that was not adequate in its design, the competent authorities should take action to ensure financial institutions correct any deficiencies in risk management and improve future compliance with AML/CFT requirements, as set out below.<sup>17</sup>

### **C. SUPERVISION AND MONITORING TO MITIGATE ML/TF RISKS**

21. Ongoing AML/CFT supervision comprises assessing the quality of controls designed to detect and deter ML and TF based on the assessed risks, including controls that are required by law or regulation. Such supervision is applied through off-site and on-site examinations, which can include questionnaires and dedicated meetings. The three global standard setting bodies have established the Core Principles: the standards for effective supervision and regulation by competent authorities, which are also relevant for AML/CFT supervision as required under Recommendation 26. Under these Core Principles, effective supervision should:

- 1) be risk-based, focusing on both major prudential and conduct of business risks, as well as a wide range of other risks, such as compliance risk, reputational risk, legal risk and ML/TF risks;
- 2) be the result of a combination of off-site and on-site supervision;
- 3) be based on having appropriate access to all the books and records of each supervised financial institution sufficient to collect the widest range of information that a supervisor needs; and

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<sup>14</sup> *FATF Guidance National Money Laundering and Terrorist Financing Risk Assessment*, Paragraph 10, (FATF, 2010).

<sup>15</sup> *Ibid.* See also Section III.B for further detail on identifying and assessing ML/TF risk.

<sup>16</sup> FATF (2014), Paragraph 10.

<sup>17</sup> See the previous *FATF Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing - High Level Principles and Procedures* (FATF, 2007), at par. 1.13;

- 4) include the international element of financial institutions or groups operating across borders by allowing for international cooperation (including arrangements for the sharing of confidential information with foreign counterparts).<sup>18</sup>

22. In a risk-based regime, financial institutions will adopt controls relevant to their business model and assessed risks, and thus not all financial institutions will adopt identical AML/CFT controls. Furthermore, isolated incidents of AML/CFT deficiencies that do not rise to a systemic risk level may not necessarily invalidate the integrity of a financial institution's AML/CFT controls. At the same time, financial institutions should understand that a flexible RBA does not exempt them from applying effective AML/CFT controls.

### FEATURES OF EFFECTIVE CONTROL/MONITORING PROCESSES

23. The supervisor should take adequate measures to identify and understand the ML/TF risks faced by financial institutions and sectors in its country, and internationally. These risks include, at minimum, the ML/TF risks associated with financial institutions' customers, products, geographical reach and delivery channels. The risk profiles of supervised entities should be reviewed periodically, including where there has been a change in circumstances, such as changes in management or business activities. Additionally, when determining the approach to supervision in a particular sector, in line with the RBA, supervisors should consider the capacity and AML/CFT experience of the sector being supervised. Supervisors may have greater expectations of sectors with greater AML/CFT capacity and which, in turn, should inform the supervisor's approach<sup>19</sup>. In other words, what constitutes an effective supervisory approach for the banking sector may not be a suitable approach for other types of financial institutions (i.e., those not subject to Core Principles or prudential regulation).

#### Example 6. On-going monitoring tool (France)

Each financial institution under AML-CFT supervision of the ACPR resets, each year, its answers to a questionnaire in the field of AML-CFT compliance.

This questionnaire is composed of ten parts and includes in particular questions related to:

- the organization and governance of the AML-CTF system;
- the implementation of the customer due diligence measures and of the reporting obligations to the FIU, including collection of statistical data ;
- the internal process and the institution's tools of the targeted financial sanctions related to terrorism and terrorism financing.

It is accompanied by an annual report of internal control which completes the given answers.

<sup>18</sup> The Core Principles are in line with Recommendation 26.

<sup>19</sup> Paragraph 1, Interpretive Note to Recommendation 1.

24. Financial institutions that are assessed as higher ML/TF risk by supervisors should be subject to closer supervision, such as more frequent and/or more comprehensive AML/CFT examinations/inspections (e.g., where there are indications that a ML/TF risk may have crystallised). There should be an analysis and decision process underpinning this risk-based AML/CFT supervision. The FATF's *Guidance for a Risk-Based Approach for the Banking Sector* has more detail on this.<sup>20</sup>

25. Supervisory examination processes should include:

- a. The supervisor should have clear and adequate methodologies and procedures for off-site supervision and on-site inspections. Off-site monitoring tools could include (self-assessment) questionnaires on the policies, procedures and controls in place in financial institutions. On-site assessment tools could include assessing the adequacy of AML/CFT controls, such as management reporting and oversight. In the Core Principles sector it is normal to include in the assessment a review of the financial institution's internal or external audits. Supervisors should consider interviewing members of the Board of Directors, staff of various levels of seniority and with different functions (e.g. senior management; compliance; internal audit/control functions; and customer-facing staff), assess procedures and policies in place and/or conduct testing (e.g., review of customer files, testing effectiveness of a transaction monitoring system, suspicious activity reporting, training and integrity of staff) to assess effective implementation of the financial institution's policies and controls. Sample testing is a particularly important tool when examining for compliance, both for risk-based and rules-based requirements.(e.g., the implementation of targeted financial sanctions).
- b. The supervisor should ensure that officers carrying out AML/CFT inspections are adequately trained and have up-to-date knowledge of AML/CFT issues.
- c. In addition to supervision at individual financial institutions, the supervisor should, where appropriate, conduct risk-based assessments across all or part of a financial sector where the supervisor considers the risks warrant this approach: for example, where a group of financial institutions face the same threats and vulnerabilities.
- d. Where appropriate, the supervisor should conduct consolidated AML/CFT supervision of the overseas branches and subsidiaries of financial institutions headquartered in its country via off-site supervision and on-site inspections.
- e. The supervisor should also consider taking risk-sensitive measures to inspect or review financial institution's governance and controls over third party service providers where AML/CFT measures are outsourced to others as agents of the financial institution, in order to determine whether the inspected financial institution's arrangements comply with its AML/CFT obligations.

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<sup>20</sup> See footnote 3.



## SUPERVISORY COORDINATION AND COOPERATION

26. Where more than one competent authority is responsible for supervising and enforcing the AML/CFT compliance of a financial institution, supervisory action should be coordinated, where appropriate, with other relevant competent authorities. Where more than one competent authority is responsible for supervising a financial institution at the domestic level (e.g., where the financial institution has both an AML/CFT supervisor and a separate prudential supervisor), such coordination and cooperation should occur among all relevant domestic supervisory authorities. Where the financial institution operates in multiple jurisdictions and is subject to supervision by competent authorities from different countries, such coordination and cooperation should occur internationally. This is particularly relevant where the institution involved is systemically important and/or operates in more than one country. Coordination can include coordination on supervisory approaches, coordination of supervisory expectations and coordination of supervisory actions (control actions, remedial actions and enforcement actions), and information exchange. Coordination with other supervisors, central banks and finance ministries, and, where relevant, law enforcement is also important.

## FEATURES OF EFFECTIVE SUPERVISORY COORDINATION AND COOPERATION

27. Coordination, cooperation and information exchange with other national and international authorities on AML/CFT issues and financial sanctions may be ensured through mechanisms (either AML/CFT specific or broader) such as: legislation authorising sharing of supervisory and/or compliance information, information exchange agreements (e.g., Memoranda of Understanding), established committees, working groups or other bilateral or multi-agency meetings. The applicable confidentiality provisions should be respected and applied to these mechanisms. These arrangements should ensure the timely exchange of information to facilitate the discharge by each authority of its responsibilities.

28. National authorities with which the AML/CFT supervisor may coordinate and cooperate may include:

- a. Financial Intelligence Unit (e.g., exchange of information including information on the quality of reports and information on entities; individuals and their transactions where permitted; joint policy actions);
- b. Ministry of Finance and other relevant ministries (e.g., to collaborate on policy issues, preparation of laws, regulations and guidance, not exclusively directed at financial institutions);
- c. Intelligence Services;
- d. Other supervisory authorities relevant for AML/CFT or financial sanctions (e.g., other prudential supervisory authorities, business conduct or financial market supervisory authorities, self-regulatory bodies/organisations where relevant, or those responsible for administering data protection legislation);
- e. Public prosecutor's office; and
- f. Law enforcement agencies.

29. International coordination and cooperation may include:
- a. Regular or ad-hoc cooperation and/or exchange of information in a timely manner, pursuant to specific requests from competent supervisory authorities in other countries;
  - b. Examination of foreign establishments of financial institutions with the assistance of the supervisory authorities of the host country;
  - c. Indirect cooperation with non-counterparts, in line with Recommendation 40;
  - d. Memoranda of understanding, consolidated supervision agreements between home and host supervisors of foreign-owned financial institutions, or other form of agreement which address cooperation and information exchange between authorities in different countries; and
  - e. Participation in the relevant international meetings (e.g., the Basel Committee, the FATF, the Financial Stability Board, International Organisation of Securities Commission (IOSCO), International Association of Insurance Supervisors (IAIS), EU meetings or other international fora).

### **Examples of cooperation/coordination with relevant authorities**

#### **Example 7. Special coordinating body (Sweden)**

In Sweden there is a special coordinating body for the supervision of measures against money laundering and terrorist financing. The body comprises representatives from supervisory authorities (FI and the authorities that supervise designated non-financial businesses and professions (DNFBP's)) and the financial intelligence unit (FIU). The body has the overall coordinating responsibility for the operations of the supervisory authorities relating to methods and the issuing of rules, together with the evaluation and follow-up of the supervision performed. The body also provides the supervisory authorities with support on matters relating to training and work to promote efficient collaboration between the supervisory authorities and the FIU.

According to the Swedish AML Act, a supervisory authority shall, without delay, notify the National Police Board (FIU) if the authority upon inspecting a natural or legal person or in any other way discovers a circumstance that may be assumed to be related to or constitute money laundering or terrorist financing.

#### **Example 8. Regular meetings (Netherlands)**

The Dutch National Bank and the Netherlands Authority for Financial Markets cooperate with criminal justice authorities and other relevant authorities through different cooperative efforts such as the monthly Tripartite meeting (TPO) between financial supervisors, the Fiscal Intelligence and Investigation Service (FIOD) and the Public Prosecutor's Office (OM) or through the Financial Expertise Center (FEC) which is a cooperative effort between various supervisory, investigative and enforcement agencies, working together on a policy as well as operational level. In addition, bilateral cooperation and information exchange with other supervisory authorities and criminal

justice authorities takes place.

The FEC comprises all the organisations that carry out duties related to the financial sector: supervisory authorities; control, intelligence, and investigative agencies; and prosecution authorities. The FEC was founded to strengthen the integrity of the financial sector. It does this by taking preventive action to identify and combat threats to this integrity. The FEC also plays an important role in providing and disseminating information.

Within the TPO, which takes place every month, cases are discussed which might be of interest to either the supervisory authorities or criminal justice authorities. The basic principle of enforcement is that a person is not punished twice for the same offence (*ne bis in idem*). If an administrative punitive sanction has been issued, authorities are not allowed to take criminal action for that same offence (*una via*). If supervisory actions reveal criminal/economic offences (and vice versa), within the TPO the most effective means of enforcement is discussed. Depending on several factors, such as the severity of the offence, criminal intent, recidivism, complexity, damages etc., a choice is made to transfer the case to the criminal justice authorities. It is then however, still possible to also handle this case with administrative powers which are not punitive but corrective.

#### Example 9. **AML/CFT Steering Committee (Singapore)**

Singapore has a high-level AML/CFT Steering Committee that leads the national effort to develop and implement its AML/CFT regime. The Committee comprises the Permanent Secretary of the Ministry of Home Affairs (MHA), Permanent Secretary of the Ministry of Finance (MOF) and Managing Director of the Monetary Authority of Singapore (MAS), heads of the respective agencies.

The Committee's mandate is to coordinate the whole of government approach to prevent and combat ML/TF by overseeing the effective implementation of AML/CFT measures by the respective agencies; and identifying and mitigating emerging ML/TF risks (e.g., through the National Risk Assessment exercise). The Committee meets 3 to 4 times a year, or more often if necessary. The AML/CFT Steering Committee is supported by an Inter-Agency Committee (IAC) made up of the key agencies in Singapore's AML/CFT regime.

#### Example 10. **Cooperation/ coordination with relevant authorities (United Kingdom)**

The UK's Financial Crime Network (FIN-NET) facilitates the sharing of financial crime related information between members - comprising of regulators, law enforcement and government departments. Established in 1992, in response to the collapse of the Bank of Credit and Commerce International (BCCI), the network helps to ensure the right people are communicating to the right people at the right time across an array of financial crime issues, including money laundering and terrorist financing.

FIN-NET has approximately 110 members from public sector organisations from both UK and overseas authorities. It relies on each member having a single point of contact that specialises in financial crime matters. Where members have a shared interest in a case then a meeting may be held to ensure that all parties are aware of the full intelligence picture; to help avoid duplication of effort; and to assist members in collaborating on a joint investigation. Typically around 180 requests

for information are made by members each year which can lead to positive results.

FIN-NET is an independent body - it is accountable to a Steering Group which is chaired by the UK Government's Home Office. The UK's Financial Conduct Authority provides the secretarial function of FIN-NET as well as being a member of the network itself.

## D. REMEDIAL ACTIONS AND SANCTIONS

### SUPERVISORY REMEDIAL ACTIONS

30. As the FATF Recommendations require, supervisors should have a sufficient range of sanctions available that can be applied proportionately to greater or lesser breaches of supervisory requirements. This range should extend from taking informal remedial actions to taking formal supervisory actions. Sanctions applied in practice should address the specific deficiencies identified, effective at ensuring future compliance by the sanctioned institution, and dissuasive of non-compliance by others.

31. Remedial actions should seek not only to correct weaknesses in processes, procedures, systems or controls within financial institutions, but also to influence and foster a corporate culture that contributes to effective risk management and compliance with national laws.

32. Remedial measures imposed by supervisors should be proportionate to the severity of the deficiency identified. They may include action plans and timelines, and supervisory follow-up to ensure that the required measures are effectively implemented. These plans, timelines and follow-up may include sufficient detail in terms of required action, deadlines and the nature of supervisory follow-up.

### FEATURES OF EFFECTIVE REMEDIAL ACTIONS

33. **Communication to financial institutions:** Supervisors should communicate clearly with financial institutions when issues arise, so that the financial institutions understand what their failings and shortcomings are, what supervisors expect (including the remedial action required), and the timeframe within which possible remedial work/actions must be completed. Supervisors should appropriately escalate issues to senior management and/or the Board of Directors in instances where required remedial actions respond to major issues, are of high impact or where previous supervisory intervention has not been effective. Supervisors should determine whether their finding is an isolated incident caused by a specific factor/issue or a systemic risk at the financial institution, or across the sector, and communicate their views to the relevant financial institutions.

### RANGE OF TOOLS USED, COMPREHENSIVENESS AND ESCALATION PROCESS

34. The supervisor should be able to apply a wide range of supervisory measures, such as warnings, action letters, limitations and conditions for activities of the financial institution, which may be progressive in severity, requiring financial institutions to remedy AML/CFT control deficiencies and any breach of AML/CFT obligations or failure to mitigate ML/TF risks in a timely

manner. Home supervisors receiving such warnings or signals should aim at addressing the issues, and should seek to apply the necessary supervisory tools to prevent an institution from lowering the AML standards in host country. The supervisor may require the financial institution to obtain an independent audit/test of their policies, procedures and controls in place to ensure compliance with applicable rules, regulations and guidance.

35. In the case of financial institutions under the consolidated supervision of foreign regulatory authorities (home supervisor), the host supervisor may send findings to the home supervisor and head/parent office of the financial institution so that they are aware of the weaknesses identified and to seek their co-operation to ensure that the financial institution rectifies the weaknesses noted during the inspection.

36. The supervisor may follow up with external/internal auditors of the financial institution and request them to follow up on the correction of weaknesses and the adequacy of the remedial measures taken by the financial institution.

### CONSISTENCY

37. The supervisor should work closely with financial institutions in order to be satisfied that the targets and deadlines of the remedial actions are well understood and capable of remediating the identified issues within acceptable timeframes. Follow-up of implementation of remedial actions should be systematic and there should be an appropriate response where financial institutions fail to fix the identified problems in a timely manner. Follow-up actions include utilizing inspection/examination information to track progress in supervised entities over time.

38. The supervisor should apply consistent policies with respect to remedial actions, while taking into account the specific characteristics of the financial institution. The supervisor should apply comparable, proportionate solutions to similar issues/cases.

39. Where more than one competent authority is responsible for supervising the same financial institution, those supervisors should coordinate to ensure that a consistent and coordinated approach is being taken to AML/CFT supervisory and compliance issues.

40. If the AML/CFT supervision and prudential supervision are being conducted by separate specialized teams or units within the same agency, these two units should coordinate to ensure that a consistent and coordinated approach is being taken to AML/CFT supervisory and compliance issues.

41. **Outcomes:** Supervisory measures should lead to adequate changes in behaviour of financial institutions (e.g., strengthening of AML/CFT controls, hiring experienced AML/CFT compliance officers, enhancing AML/CFT training of officers in the financial institutions).

### Examples of sanctions and other remedial actions from various countries

#### Example 11. Range of measures (Netherlands)

When deciding on an intervention strategy a choice will be made from three different strategies for influencing the supervised institution: educational (explaining and/or supporting), normative (persuading and/or guiding) and deterrent (punishing and/or rewarding). In some cases, explaining the background to a standard or norm suffices, while in others it will be necessary to impose a sanction. A choice can also be made between a group and individual approach; formal measures will always be targeted at an individual institution. Interventions are geared to the specific situation, cause and severity. In extreme cases, a solution will have to be found on the same day. In other cases, relatively light interventions will suffice and the use of formal enforcement instruments will not be necessary. Choices made are subject to peer review by colleagues, and the choice of enforcement instruments to be used is based on the enforcement policy of the Dutch National Bank and the Netherlands Authority for Financial Markets

#### Example 12. Range of measures from advice to criminal prosecution (United Kingdom)

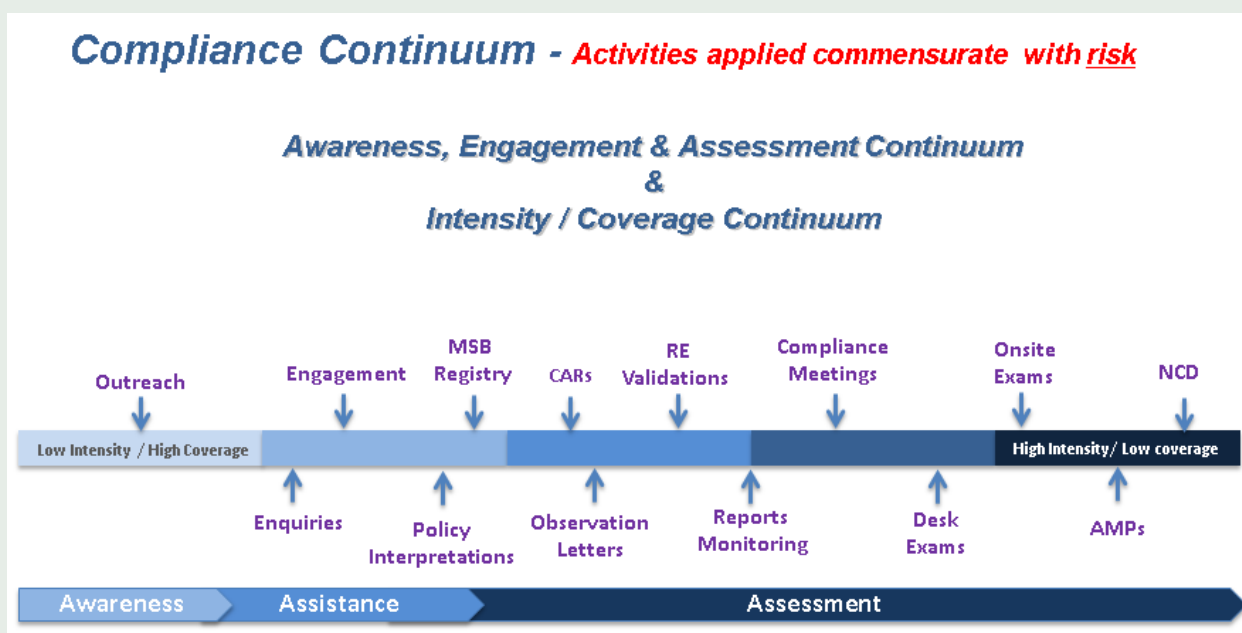
HM Revenue and Customs (HMRC) deals with AML/CFT breaches in a range of ways, depending on the seriousness and potential impact of the breach and the behaviours evidenced by the business concerned.

- Advice – where a business wants to comply but is uncertain it may be appropriate to simply issue advice and guidance to support them in understanding their obligations and ensure compliance.
- Warning letters - these may be appropriate for less serious breaches if there is no previous history of non-compliance. They will set out the improvements that the business must make within a specified timescale to avoid more serious sanctions and will be followed up by further checks to establish whether the business has taken all necessary action.
- Financial Penalties – these are intended to be effective, proportionate and dissuasive and will be applied where there is evidence of regulatory failures and HMRC is satisfied that the business has not taken reasonable steps to comply with their AML obligations.
- Refusal of Fit and Proper person status – This prevents any individual who is considered to pose a risk in relation to money laundering or terrorist financing from holding any management role or controlling an MSB, either directly or indirectly.
- Removal from the register – a business may be removed from the register because a relevant person in the business has had their fit and proper status withdrawn or because the business has failed to provide HMRC with information it has requested by notice.
- Criminal prosecution – The most serious AML regulatory breaches may be referred to law enforcement for potential criminal investigation and prosecution, leading to a sanction imposed by the courts, which could include a fine, non-custodial or prison sentence.

**Example 13. Range of measures on the compliance continuum (Canada)**

FINTRAC possesses a suite of compliance activities that are applied commensurate with various risks and to each sector. These activities range from “low intensity, high coverage” activities to “high intensity, low coverage” activities.

The initial stage of the “compliance continuum” generally refers to “awareness and assistance” as FINTRAC will obtain or provide information to the reporting entities via the following activities: compliance assessment reports (i.e. questionnaires that reporting entities are required to respond to and which help FINTRAC maintain a good knowledge of reporting entities and better assess the risks), outreach, compliance support and engagement. The second stage identifies potential compliance issues (via reports monitoring function that assesses any reporting deficiencies) and advise the reporting entities of these identified compliance deficiencies (through for example an observation letter which outlines to reporting entities their current deficiencies). The third stage comprises of the examination strategy where reporting entities are selected on a risk-based approach for either a desk or onsite exam. This stage also includes the imposition of Administrative Monetary Penalties (AMPs) and Non-Compliance Disclosures (NCD) to law enforcement for potential investigation. This “compliance continuum” is illustrated in the image below.



OSFI’s administrative powers of enforcement are derived from its mandate under governing legislation as a prudential regulator. OSFI applies these powers to its AML/CFT supervisory program in the same way as for all other areas of financial institution supervision. The specifics of actions taken in exercising these powers are found in OSFI’s Supervisory Framework (available at [www.osfi-bsif.gc.ca/Eng/Docs/sframew.pdf](http://www.osfi-bsif.gc.ca/Eng/Docs/sframew.pdf)) which explains how the level of supervisory intervention is determined. Intervention ratings higher than zero (normal) trigger staging of the FRFI with increased supervisory attention (frequency, depth, breadth) on the issues which caused the staging, including AML/CFT issues. In addition, the potential for staging acts as a dissuasive factor because it triggers increases in Canada Deposit Insurance Corporation premiums (for deposit taking

institutions) and Assuris policy protection (life insurance companies) - it should be noted that all financial institutions subject to AML/CFT supervision by OSFI are required by law to be members of these organizations. Finally, OSFI's findings and any lack of action by a financial institution to resolve the issues identified by OSFI could ultimately lead to the revocation of the financial institutions' licence to operate in Canada, if the issues seriously threaten the safety and soundness of the FRFI.

**Example 14. Banking: Remedial Measures to remedy AML/CFT issues (Canada)**

An AML/CFT assessment of a bank was conducted by the office of the Superintendent of Financial Institutions (OSFI) in March 2010. The bank has a significant retail banking operation in neighbouring and other foreign countries. The OSFI assessment found the bank's AML/CFT programme to be in a basic or rudimentary state. The OSFI assessment identified 27 findings, major deficiencies ranging from non-compliance to weak risk management processes and policies. A severe message was delivered by OSFI to the bank's senior management and Board of Directors.

In November 2011, a follow-up assessment was conducted by OSFI to assess implementation of the bank's plan to address the 2010 findings. There had been little progress made despite changes to governance structure and more senior management engagement.

Concurrently with the 2011 work, OSFI was aware that the regulator of the bank in the neighbouring country had identified similar concerns in respect of the bank's subsidiary operations in that country. In 2012, the supervisor initiated AML discussions with the regulator of the neighbouring country to coordinate the discussions with the bank.

In the summer 2012, OSFI called a meeting with the bank's senior management, including the CEO and the foreign regulator, to discuss concerns on execution risk. In response to the meeting, the Board of Directors and senior management directed that interim controls be developed to improve short-term risk management processes. The bank also struck a senior management committee, chaired by the CEO, to monitor development and appropriate implementation of these controls.

OSFI implemented enhanced monitoring: it typically monitors progress at major banks on a quarterly basis, however, monitoring meetings with this bank were increased to monthly.

A second follow-up on-site assessment was conducted by OSFI in 2013, which found 24 of 28 previous findings had been addressed.

OSFI's enhanced strategies with the bank resulted in a vastly improved AML/CFT programme with increased and constant focus on the implementation of controls appropriate for the size, complexity and risk of the bank.

**Example 15. Targeted Financial Sanctions: Range of measures from no action to criminal referral (United States)**

The Office of Foreign Assets Control (OFAC) administers and enforces economic sanctions programs primarily against countries and groups of individuals, such as terrorists and narcotics traffickers. On November 9, 2009, OFAC published its enforcement guidance for persons subject to the



requirements of U.S. sanctions statutes, which is outlined below.

*Types of Responses to Apparent Violations:* Depending on the facts and circumstances of a particular case, an OFAC investigation may lead to one or more of the following actions:

- A. *No Action:* If OFAC concludes that the conduct does not rise to a level warranting an administrative response, then no action will be taken.
- B. *Request Additional Information:* If OFAC determines that additional information regarding the apparent violation is needed, it may request further information from the Subject Person or third parties, including through an administrative subpoena.
- C. *Cautionary Letter:* If OFAC determines that there is insufficient evidence to conclude that a violation has occurred or that a Finding of Violation or a civil monetary penalty is not warranted under the circumstances, but believes that the underlying conduct could lead to a violation in other circumstances and/or that a Subject Person does not appear to be exercising due diligence in assuring compliance with the statutes, Executive orders, and regulations that OFAC enforces, OFAC may issue a cautionary letter, which may convey OFAC's concerns about the underlying conduct and/ or the Subject Person's OFAC compliance policies, practices and/or procedures.
- D. *Finding of Violation:* If OFAC determines that a violation has occurred and considers it important to document the occurrence of a violation and, based on an analysis of the General Factors outlined in Section III of its Guidelines, concludes that the Subject Person's conduct warrants an administrative response but that a civil monetary penalty is not the most appropriate response, OFAC may issue a Finding of Violation that identifies the violation.
- E. *Civil Monetary Penalty:* If OFAC determines that a violation has occurred and, based on an analysis of the General Factors outlined in Section III of these Guidelines, concludes that the Subject Person's conduct warrants the imposition of a monetary penalty, OFAC may impose a civil monetary penalty.
- F. *Criminal Referral:* In appropriate circumstances, OFAC may refer the matter to appropriate law enforcement agencies for criminal investigation and/or prosecution. Apparent sanctions violations that OFAC has referred for criminal investigation and/or prosecution also may be subject to OFAC civil penalty or other administrative action.
- G. *Other Administrative Actions:* In addition to or in lieu of other administrative actions, OFAC may also take the following administrative actions in response to an apparent violation:
  1. *License Denial, Suspension, Modification, or Revocation:* OFAC authorizations to engage in a transaction (including the release of blocked funds) pursuant to a general or specific license may be withheld, denied, suspended, modified, or revoked in response to an apparent violation.
  2. *Cease and Desist Order:* OFAC may order the Subject Person to cease and desist from conduct that is prohibited by any of the sanctions programs enforced by OFAC when OFAC has reason to believe that a Subject Person has engaged in such conduct and/or that such conduct is ongoing or may recur.

*General Factors Affecting Administrative Action:* As a general matter, OFAC will consider some or all of the following General Factors in determining the appropriate administrative action in response to an apparent violation of U.S. sanctions by a Subject Person, and, where a civil monetary penalty is imposed, in determining the appropriate amount of any such penalty:

A. Wilful or Reckless Violation of Law	G. Cooperation with OFAC
B. Awareness of Conduct at Issue	H. Timing of apparent violation in relation to imposition of sanctions
C. Harm to Sanctions Program Objectives	I. Other enforcement action
D. Individual Characteristics	J. Future Compliance/Deterrence Effect
E. Compliance Program	K. Other relevant factors on a case-by-case basis.
F. Remedial Response	

*Civil Penalties for Failure To Comply With a Requirement To Furnish Information or Keep Records:* In those cases in which a civil monetary penalty is deemed appropriate, OFAC will make a determination as to whether a case is deemed “egregious” for purposes of the base penalty calculation. This determination will be based on an analysis of the applicable General Factors.

See [www.treasury.gov/resource-center/sanctions/Documents/fr74\\_57593.pdf](http://www.treasury.gov/resource-center/sanctions/Documents/fr74_57593.pdf).

#### Example 16. Remedial action from various jurisdictions (United Kingdom)

*Seeking the best supervisory response to change behaviours (UK Financial Conduct Authority (FCA))*

In addition to its formal enforcement powers, the UK’s Financial Conduct Authority has a wide range of supervisory responses to improve compliance in firms. It targets resources strategically to achieve ‘credible deterrence’ in areas of greatest concern. By this the FCA seeks the best means to change the behaviour of those who are the subject of its actions and deter non-compliance by others.

Where firms have deficient AML systems and controls, it will work with them to put appropriate remedial plans in place. Over the last year, the FCA has achieved positive results in firms, particularly around increasing senior management engagement on AML issues, by making use of its ‘early intervention toolkit’ where it identifies weaknesses. These are a range of measures including, for example, restricting certain types of higher risk business until deficiencies in the firm are fixed. On some occasions, the FCA requires attestations from senior management that weaknesses have been remediated. For example, the FCA recently obtained a voluntary undertaking from a small bank with serious AML weaknesses that the bank would not establish new high risk or PEP relationships until it had corrected the weaknesses the FCA identified. The bank’s Chief Executive subsequently gave an attestation that remedial action had been carried out.

The FCA can also appoint a consultant (also referred to as ‘Skilled Person’) to test a firm’s systems and controls, identify weaknesses, and in some cases, remediate the weaknesses identified. It will

also undertake regular follow-up reviews with banks to assure itself that financial crime weaknesses have been rectified and overall compliance standards have improved. Where they have not, the FCA may consider further enforcement action.

#### Example 17. **Range of measures (France)**

The ACPR is an independent administrative Authority chaired by the Governor of the French central bank, which is in charge of the supervision of the banking sector and insurance sector, including as regards AML-CFT. It uses a range of remedial actions depending on the breaches:

- Follow-up letter: In the context of off-site controls, financial institution must provide explanations and documentation as a case maybe within a time limit.
- Action letter: Following the on-site inspections, a letter is systematically transmitted to the financial institution detailing the authority's findings and to address recommendations within specified timetable.

The ACPR has also administrative enforcement powers which are distinct from sanctions as an escalate means when the nature of the deficiencies is more serious and the financial institution has the ability to correct these deficiencies by themselves.

In the case of enforcing AML-CFT compliance, the ACPR uses its powers of cease-and-desist orders. In this case, the ACPR requires the correction within a specific time limit. At the end of the time limit, a new on-site inspection will be undertaken to make sure that the remedial measures have taken place and, if not, the ACPR has the power to escalate to sanctions measures.

Such administrative enforcement measure may be brought to the attention of the parent undertakings on a consolidated basis.

The ACPR can take sanction measures like a blame or revocation of licence to contraventions and pecuniary sanctions (until 100 thousands euros) in case of serious lack of vigilance or a deficiency in the organization of its internal control procedures and forwards the case to an enforcement authority for criminal prosecution.

## **SUPERVISORY ENFORCEMENT ACTIONS (SANCTIONS)**

42. Serious failures to comply with AML/CFT requirements or failures to address remedial supervisory actions to comply with AML/CFT requirements identified during supervisory examinations or through other means may lead to more severe measures, defined as supervisory enforcement actions (sanctions). The FATF Standards require that supervisory sanctions be effective, proportionate and dissuasive, and be applicable to both natural and legal persons (including the directors and senior management of financial institutions). Effective sanctions seek to change the behaviour of those who are the subject of supervisory actions, deter non-compliance by others and eliminate financial gain or benefit from non-compliance. This is one tool amongst a range of supervisory responses that might be used. Depending on the applicable legal and institutional

framework, supervisors may engage judicial or law enforcement authorities to assist in correcting deficiencies.

43. Supervisory enforcement actions may be public or non-public in nature, and supervisors may take either action, or combine them as needed. Jurisdictions should consider how to strike a balance when deciding to take either public or non-public enforcement action, and deciding on what form of enforcement action should be appropriate. In some cases, non-public supervisory enforcement actions can be highly effective. Additionally, supervisory intervention, particularly when publicised, can lead to focus on the particular area of risk at which the intervention was directed, while other areas could get neglected.

44. When making decisions on the proportionality of a sanction and whether it should be made public, supervisors should consider various factors, including the nature and severity of the identified non-compliance, the financial institution's commitment, the results of previous supervisory interventions to correct the deficiencies, and the possibility of destabilising confidence in the financial sector. Making supervisory sanctions public when appropriate, may contribute to greater transparency of enforcement and deter financial institutions from engaging in similar behaviour in the future, as well as deterring other financial institutions from acting in a similar manner. However, while there can be a deterrent effect in publicizing supervisory actions taken against a financial institution, public action may not always be appropriate, or proportionate, or achieve the intended outcome.

45. Supervisors should be able to take either public or non-public action, or both, in achieving their supervisory objectives, and as such, the absence of public action or the frequent application of non-public action should not be considered indicators of a lack of effectiveness of a country's supervisory system. The use of either public or non-public action, or both, should be recognized as part of the supervisory strategy to ensure the soundness of a country's financial system.

### **FEATURES OF EFFECTIVE SUPERVISORY ENFORCEMENT ACTIONS**

46. There should be a broad range of enforcement measures available to the supervisor. Sanctions should be effective, dissuasive and proportionate, and be applied by different supervisors in a consistent manner, providing legal certainty to the supervised entities. The supervisor may escalate the action if remedial measures are not taken adequately and/or within reasonable timeframes as agreed with the financial institution.

47. Supervisory enforcement action can:

- a. range from administrative sanctions, withdrawal of the capacity to be a fit and proper manager, imposition of a temporary limitation to business activities, imposition of a restriction or cancellation of business licences for the most egregious misconduct, to referral to law enforcement or judicial authorities for suspected criminal violation of AML/CFT preventive measures, including with respect to TFS.
- b. be both punitive to penalise past behaviour as well as remedial and preventive, to compel financial institutions to take action to prevent future compliance failures and to promote future compliant behaviours;

- c. be applied to legal as well as natural persons (i.e. the persons in charge of the administration or the management of the financial institution); and
- d. be published, whenever appropriate, as a consolidated report or as rulings of individual cases to promote transparency as well as guidance.

48. **Proportionality of measures:** The supervisor should proportionately sanction financial institutions for AML/CFT breaches in a fair and consistent manner. While the sanction applied to each case would be determined, taking into account a range of factors, including the seriousness of the breach and the extent to which the behaviour was deliberate or reckless, the supervisor should have and inform an enforcement/penalty framework to the respective sectors.

49. **Referral to other authorities:** Where there are severe AML/CFT weaknesses, poor management oversight and/or significant breaches of AML/CFT laws and regulations, and where the supervisor does not have authority to take appropriate enforcement measures against the financial institution, the supervisor should forward the case to the appropriate competent authority. Where the supervisor finds or assumes criminal offences in activities of financial institutions, it should notify the relevant law enforcement agencies and/or prosecutor's office. Section III describes in more detail the relationship between supervisors and law enforcement, and the importance of their cooperation and coordination.

### Examples of sanctions (supervisory enforcement actions) from various countries

#### Example 18. **Banking: Sanctions against management (Italy)**

In 2008, in connection with investigations by the judiciary on some individuals involved in organised crime, the Bank of Italy conducted an on-site inspection on the country's subsidiary of a foreign banking group. The on-site visit revealed serious breaches of AML legislation and serious deficiencies in the internal control system. The subsidiary systematically and wittingly ignored the country's customer due diligence (CDD) provisions in order to facilitate customers' transactions with off-shore entities.

The central bank decided to activate the special administration (SA) tool, which temporarily dissolves (normally up to one year) governing bodies of the bank and replaces them with special administrators appointed by the central bank, and imposed sanctions on old management. The central bank transmitted the findings to the judiciary and FIU. Information was also provided to the bank's parent country's home authorities, which conducted an overall review of the group activities. In 2010, the SA procedure ended and the bank returned to shareholders' hands. It was the first time for the central bank to test the SA for AML purposes. Cooperation with domestic and foreign authorities was also tested.

#### Example 19. **Currency exchange business: Face-to-face interventions uncovering disqualified person exercising control (United Kingdom)**

The supervisor of money service businesses, HM Revenue and Customs, strengthened its fit and proper person test since October 2012 and it delivered early results in February 2013. The

supervisor carried out a compliance visit to a currency exchange business. The business had previously been deregistered when the owner was convicted of fraud offences and had his fit and proper status removed, but had subsequently re-registered under new ownership. The new owner passed the fit and proper person test and provided information from accountants to evidence the transfer of ownership of the company.

The visiting officer was broadly satisfied with the business' AML procedures but discovered that the previous owner of the business was being employed by the business, which suggested that he continued to exercise control. The officer carried out a detailed investigation into the circumstances surrounding the sale of the company which eventually revealed that behind a complex set of artificial loan arrangements, share purchases and transfers, the new owner had not paid anything for the business.

The officer concluded that the new owner was simply a 'puppet' director and the previous owner was still the beneficial owner and was effectively directing the business. The supervisor withdrew the fit and proper status from the new director on the grounds that he had knowingly allowed a disqualified person to exercise control over the business and deregistered the business immediately. The situation came to light because a compliance visit was carried out at the business' premises, and this illustrates the effectiveness of face-to-face interventions when dealing with high-risk business.

#### **Example 20. Credit Card Issue: Limiting financial activities (Italy)**

In 2009, the central bank conducted an in-depth off-site review of a credit card issuer, following a report by the Board of Directors concerning deficiencies in the registration procedure. Subsequent on-site inspection confirmed weak AML practices over a long period. The central bank requested the firm to develop an action plan to address the deficiencies and prohibited issuance of new credit cards and imposed a specific capital add-on for operational risks, until completion of the action plan. The central bank informed the judiciary and FIU of these initiatives.

The limitation on business activity and the additional capital ratio were revoked in 2011, after a follow-up on-site visit verified that all deficiencies had been addressed and fixed.

#### **Example 21. Sanction against a life insurance firm (France)**

The on-site investigation team of the ACPR performed an on-site AML-CFT control at a life insurance firm. This on-site control noted serious failures in the AML-CFT system and policy of this institution, in particular in:

- the business-wide risk assessment established by the institution which did not take into account all of the ML-TF risks it could be confronted with, especially those related to the customers and the activities (those gaps are translated to vigilance defects regards to the business relationships);
- the on-going monitoring system which was insufficient for detecting efficiently all the atypical and suspicious transactions ;
- the customer due diligence measures and in particular, cases of absence of verification of

the identity of the beneficial owner and of insufficient knowledge of the business relationships ;

- the detection process of politically exposed persons which was inefficient ;
- the reporting of suspicious transactions, with identification of several suspicious transactions of high amounts for which no STR has been performed.

A disciplinary procedure has been opened against this French life insurance firm and it resulted to a censure and a financial penalty of an amount of EUR 5 000 000.

## E. EFFECT OF SUPERVISORY ACTIONS ON COMPLIANCE

50. The ML/TF risks may evolve and change over time. Consequently, it is important for supervisors to understand what impact their actions are having on the compliance of supervised entities with a view to ensuring that supervision is adequate to mitigate current ML/TF risks. A number of elements can be used to achieve this: the results of follow-up actions, the evolution of a sector or a particular entity's risk profile over time and following supervisory action (e.g., taking into account the adequacy of a financial institution's AML/CFT measures which may change as a result of supervisory action), and the extent to which business moves into the formal financial system or remains in the underground/informal system.

51. In regards to TFS compliance, past recent criminal prosecutions involving large global banks have revealed that some banks engage in deceptive practices to, for example, remove originator and beneficiary information from wire transfers in order to evade sanctions—a process called “stripping.” In line with the risk-based approach, given the increasing terrorist threat and this past experience, appropriate implementation of targeted financial sanctions continues to be an area warranting attention from supervisors with a view to determining whether those criminal prosecutions have had a positive impact on the behaviour of those banks.

### FEATURES OF EFFECTIVE IMPACT OF SUPERVISION ON COMPLIANCE

52. Ideally, the results of follow-up actions will demonstrate that supervisory actions are having a positive impact on the compliance of supervised entities. In other words, follow-up actions should show that the supervised entity has responded to supervisory concerns in a timely manner (e.g., by correcting deficiencies, or implementing more robust AML/CFT controls) and is mitigating its ML/TF risks better.

53. Follow-up actions include using inspection/examination information and review of the supervised entities' audit reports to track progress over time.

- a. **Optimal usage of findings:** The supervisor should facilitate sharing of the findings of AML/CFT inspections among its officers to ensure consistency of supervisory actions/measures. Where the AML/CFT supervision is carried out by different authorities, they should discuss and share the relevant AML/CFT information, exchange

expert guidance/opinions on AML/CFT supervision and ensure consistency in applying AML/CFT standards.

- b. **Periodic review:** The supervisor should also take the results of follow-up actions into account when reviewing a sector or particular entity's risk profile, and use this information for the purposes of fine tuning and recalibrating its inspection plans and supervisory approach, as needed, in order to mitigate current ML/TF risks.

54. Entities conducting financial activity underground (i.e., without proper authorisation) are identified, moved into the formal financial system (i.e., registered or licensed), and/or sanctioned, as appropriate.

## F. PROMOTING A CLEAR UNDERSTANDING OF AML/CFT OBLIGATIONS AND ML/TF RISKS

55. Effective information processes should ensure that clear, relevant, meaningful and up-to-date AML/CFT-related information is made available to financial institutions. Information provided by supervisors can take any form, be communicated in various ways, and may include changes to the AML/CFT-related legal framework, explanation of the AML/CFT regulatory requirements, relevant typologies, updates on ML/TF vulnerabilities, risks and threats, and regulatory expectations. For example, if a detected risk is new, such risks should be assessed and relevant information should be shared with financial institutions, and supervisors should determine whether additional guidance or other action is necessary. Inconsistent interpretation of AML/CFT obligations can impact the effectiveness of the supervisory regime. Information should be targeted for the audience, and may include guidance (international and domestic), updates, formal and informal meetings.

### FEATURES OF EFFECTIVE INFORMATION PROCESSES

56. Disclosed information to financial institutions should:

- a. be based on a clear understanding of ML/TF risks (including vulnerabilities and threats) present at both national and international level, specifically within the financial sector as a whole and within each of its subsectors;
- b. be targeted, practical, up-to-date, easy to understand and apply;
- c. outline supervisory expectations and explain rule-making: for example, it is based on supervisory work (e.g., best practices, bad practices, high risk areas) and on relevant documentation issued by standard setters;
- d. help financial institutions to identify ML/TF risks associated with customers, products and services, geographic areas of operations, or their distribution channels, by providing risk indicators and/or typologies for identifying and monitoring risk;
- e. clarify that financial institutions should not open accounts, commence business relations or perform transactions, or to terminate business relationships for customers when they are unable to apply appropriate CDD measures (pursuant to the FATF Recommendations); and



- f. highlight new requirements, emerging ML/TF risks, and examples of recent supervisory actions, where appropriate.

57. The disclosed information should be easily accessible:

- a. The supervisor should use as many different delivery channels as appropriate (e.g., web-based, written exchanges with individual financial institutions, bilateral meetings, seminars, conferences, outreach with representative associations, annual reports, advisory circulars) to communicate with financial institutions, and to enable the information to reach a wider audience.
- b. The supervisor's website should be easy to navigate and may include a dedicated page or site for AML/CFT preventive measures, including TFS issues.

58. The supervisor should engage in an on-going dialogue with the its supervised financial institutions. The supervisor should provide a framework for open communications with financial institutions. There should be clear and effective lines of communication between financial institutions and supervisors. Where it is appropriate to give feedback, the supervisor's responses should be clear, useful, and delivered in a timely fashion. Guidance or expectations can be communicated industry-wide through written materials, such as case studies or poor/better practices, or industry-wide training/seminars, so that all financial institutions are informed of good practices.

59. Messages and guidance from the supervisor should be consistent. The supervisor should review its regulations and guidelines on AML/CFT to ensure that they are relevant and up-to-date.

60. The supervisor should consult the industry when proposing to make new regulations or regulatory amendments, and respond to and clarify issues raised by the industry.

### Examples of dialogue with the sector

#### Example 22. **Thematic review to facilitate a root cause analysis (Netherlands)**

Thematic examinations are used to effectively influence the level of compliance of FIs. The examination was on ongoing due diligence measures of banks, life insurers and trust offices. The project focused on the measures regarding periodic review of clients, transaction monitoring, STR reporting, and screening and filtering against the sanctions lists. Thirty FIs, 10 from each sector, were selected based on several factors, such as size, client base and results of previous AML/CFT examinations. The selected FIs received a questionnaire with qualitative and quantitative questions.

The project team analysed all answers using a scoring system, 1 (compliant) to 4 (non-compliant). Based on the scores, several FIs were selected for a further in-depth on-site examination. The in-depth on-site AML/CFT examinations result in a report to the FIs and further enforcement actions in some cases. The sectors are kept informed of the thematic examinations through an annual publication on the themes and regular updates through newsletters.

The project team also made a root cause analysis in each sector: e.g., why a certain sector reports relatively few STRs, is the reason for non-compliance not being able to comply, or not

understanding the requirements? Based on the root cause analysis, additional supervisory approaches are used. For example, round table discussions or seminars in cooperation with the FIU and associations with representatives of FIs, or dialogue sessions with individual institutions to develop good and bad practices. Round table discussions or dialogue sessions result in further guidance.

**Example 23. Thematic review helps illustrate potential vulnerabilities with targeted financial sanctions compliance (Jersey)**

The supervisor is running a thematic review of AML/CFT compliance, covering systems and controls around client screening and sanctions. A self-assessment questionnaire has been completed by all deposit-takers, which was followed by a series of on-site examinations. Deposit-takers were provided with a list of names to pass through screening filters used at the FI. The list aims to test matching capacity of the system, and the exercise has proved very useful in illustrating potential vulnerabilities and demonstrating to what extent management of FIs understand the scope and calibration of their screening arrangements.

**Example 24. Thematic review helps to assess current or emerging risks (United Kingdom)**

The supervisor, the Financial Conduct Authority (FCA), uses thematic reviews to assess a current or emerging risk relating to an issue or product across a number of firms within a sector or market. In 2014, it published its report *How small banks manage money laundering and sanctions risk*. The report was a follow-up to an FSA (the FCA's predecessor) review in 2011 and paid particular attention to mid to smaller sized banks' management of higher risk money-laundering situations. As a result of these reviews, and following consultation with industry, the FCA has since updated its *Financial Crime: a guide for firms*. This guide provides practical guidance to firms on the steps they can take to reduce their financial crime risk. It is well utilised by industry; it does not contain rules but sets out good and poor practice on the management of higher risk situations so firms can adopt a more effective, risk-based and outcomes-focused approach to mitigating financial crime risk. To further expand its dialogue with industry on its 2014 report, the FCA broadcast its first ever AML thematic review webinar which attracted a large audience from across industry. The FCA is currently exploring similar innovative and effective methods of communicating with industry across other areas of its AML work.

**Example 25. Thematic review to have full knowledge of the sector (Mexico)**

In order to have full knowledge of financial institutions under its supervision, the National Banking and Securities Commission (CNBV) launched in May 2014 the "Know Your Entity Program", which covers in detail FIs' business model, types of their customers, products and services offered, monetary instruments, geographical areas they operate, among other key areas of topics.

Derived from the AML/CFT data analysis from each of the participating entities, recommendations to strengthen its processes and measures to manage and mitigate ML/TF risks are made.<sup>21</sup> This

<sup>21</sup> In accordance with paragraph 22 of the "Guide for Risk-Based Approach for the Banking Sector".

program represents a direct communication channel with the supervised sectors and an effective forum for sharing experiences and concerns between FIs and the authority.

**Example 26. Publication of common findings (Jersey)**

Summary findings reports, based on common findings from on-site examinations, are regularly published, so that licence-holders which did not undergo an examination can learn from issues emerging in the relevant sector. Occasional guidance notes are also published, informed by examination findings. Work is ongoing to produce a guidance note highlighting examples of effective and less effective compliance monitoring arrangements.

**Example 27. Regular meeting with the sector (South Africa)**

Quarterly meetings are held with the association for savings and investment in the country. All issues affecting the industry would be discussed. The regular meetings develop a good relationship between the supervisor and the industry and ensure industry's compliance with the regulatory frameworks, including AML/CFT measures. All issues of non-compliance are referred to the enforcement unit, and its decisions are published.

FIs complete an annual compliance report and submit it to the supervisor. The questionnaire in the compliance report guides FIs. In addition to compliance inspections to the premises of FIs, the supervisor provides guidance and training to FIs by hosting seminars and facilitating workshops on AML/CFT laws and regulations. These supervisory actions have proved effective on the part of FIs to improve overall compliance with AML/CFT legislation and the way to manage AML/CFT risks.

**Example 28. Cross section working groups (Isle of Man)**

The Isle of Man has identified that it is useful to discuss any potential issues with AML/CFT legislation with the industry and not just amongst the regulators. Therefore, if further information on a matter is needed, the FSC is able to send out electronic surveys to licence holders to gather comments / data on the matter. Also, the Isle of Man has established a working group entitled the Joint Anti-Money Laundering Advisory Group ("JAMLAG") which is made up of representatives from the industry, supervisors and professional bodies and is used as a forum to discuss any issues / areas for further development.

Considering a particular case study, the FSC recently undertook a visit to an Isle of Man-based group entity of a global financial services group. The supervisory visit uncovered some issues with AML/CFT compliance. These issues were raised firstly to the local entity and then escalated to the parent company and the supervisor in that country. It became apparent that the business had tried to use one set of procedures / processes across the business and this had not been suitable for that business.

**Example 29. The French CCLCB (France)**

Each instruction, guideline or position of the ACPR in the field of anti-money laundering and counter financing terrorism (AML-CFT) should, prior to its adoption by the board of the ACPR and its publication, receive an opinion of an advisory committee called the Consultative Commission Anti-

Money Laundering (CCLCB) which has been set up by the board of the ACPR. The CCLCB meets on average every two months. This commission is chaired by two members of the board of the ACPR.

It is composed of :

- all the professional associations of the French banking and insurance sectors (6 for the insurance sector; 4 for the banking sector);
- several representative persons of financial institutions designated by the ACPR.

The French Treasury Department as well as TRACFIN (French Financial Intelligence Unit) participate to meetings of the CCLCB. Other concerned authorities (for example: the Financial Market Authority or CNIL which is the competent authority on the protection of personal data) can as well be invited depending on the studied subjects.

This consultation work, including the development of guidelines, is done during meetings and can also be done by written procedure.

## IV. COMPLEMENTARY PROCESSES AND ACTIONS AVAILABLE TO LAW ENFORCEMENT

61. In establishing an effective supervision and enforcement regime, prohibiting and criminalising a particular activity by law or international convention alone is insufficient: laws and regulations also need to rely on enforcement agencies and mechanisms that investigate and prosecute money laundering, financing of terrorism and predicate offences. Law enforcement should seek to prevent, deter and disrupt ML, associated predicate offences, the financing of proliferation of weapons of mass destruction and TF activity. Also, law enforcement should be aiming to deprive criminals of their illicit proceeds and terrorists of the resources needed to finance their activities.<sup>22</sup> While supervisors focus on the process of implementing prevention and detection measures in the financial sector, law enforcement covers investigations, prosecution, and more public punishments for criminal violations that also serve as industry-wide deterrence. Actions taken by law enforcement, where appropriate, may complement effective compliance and supervision – in other words, they take over where supervisors' mandates end.

62. Law enforcement actions are based on criminal and/or civil authority that, in some countries, is contained in the same legislation governing financial supervision. Law enforcement processes and actions are covered in the FATF Recommendations in Recommendation 30 (responsibilities of law enforcement and investigative authorities) and Recommendation 31 (powers of law enforcement and investigative authorities) and are linked to effective supervision and enforcement issues through the criminal sanctions provisions in Recommendation 35 (sanctions), as well as Recommendation 2 (national cooperation and coordination).

### A. LAW ENFORCEMENT MECHANISMS

63. The law enforcement mechanism can vary, depending on what makes sense for the country. Some countries may have a dedicated or specialised unit(s) within the police force, FIU, prosecutor's office, and/or court that is able to investigate and prosecute criminal violations of AML/CFT preventive measures. Other countries may allow any law enforcement agency to bring forth criminal charges for ML/TF based on the predicate activity or criminal conduct. For further information on investigatory practices see the *FATF Financial Investigations Guidance*<sup>23</sup>.

64. A financial institution may be administratively sanctioned by a supervisor for failure in effective management of ML/TF risks in the institution. To the extent that the failures in the institution result in violations of law or regulation, it may also be subject to criminal sanctions.

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<sup>22</sup> See FATF (2012), paragraph 4.

<sup>23</sup> FATF (2010).

**Box 2. Examples of law enforcement mechanisms**

<b>Supervisors with both regulatory and criminal power</b>	Supervisors have the authority to take a range of supervisory actions, and the authority to take criminal actions.
<b>Enforcement referral from supervisor</b>	Law enforcement agency receives referral from supervisor and proceeds with investigation.
<b>Parallel actions / investigations</b>	Supervisor either refers an issue, or independent investigations by supervisor and/or law enforcement reveal an issue and both the supervisor(s) and law enforcement take an appropriate enforcement action.
<b>Direct action by law enforcement agency</b>	Action that is not prompted by supervisory action or an action undertaken independently from ongoing supervisory action.

65. Law enforcement authorities can be involved in a number of ways, and a country should determine which mechanism works best for its regime.

**SUPERVISORS WITH BOTH REGULATORY AND CRIMINAL POWER**

66. In some cases, supervisors have the authority to take a range of supervisory actions, and the authority to take criminal actions other arrangements.

**Example of supervisors with both regulatory and criminal power**

**Example 30. Supervisors with both regulatory and criminal power (United Kingdom)**

The UK's Financial Conduct Authority (FCA) takes regulatory action and imposes substantial fines against firms and individuals for AML systems and controls failures. The FCA does not have statutory powers of investigation allowing it to investigate stand-alone offences of substantive money laundering (as opposed to systems failures) but has prosecuted allegations of substantive money laundering in the context of criminal prosecutions (for offences such as insider dealing) brought in furtherance of its statutory objectives. The FCA also liaises closely with other law enforcement agencies to which it refers stand-alone investigations of substantive money laundering.

**ENFORCEMENT REFERRAL FROM SUPERVISOR**

67. In other arrangements, an AML/CFT supervisor may not have the legal authority to investigate potential criminal activity/conduct by the financial institution and is required by law or by common practice to communicate or make a formal referral to law enforcement. Law enforcement proceeds with the investigation, and based on their policies and procedures, determines whether or not to pursue an enforcement action.

### Examples of enforcement referral from supervisor

#### Example 31. Enforcement referral from supervisor (BVI)

It is usually the case that administrative AML/CFT breaches are handled either by the Financial Services Commission (FSC) or the Financial Intelligence Agency (FIA). If during this time it is found that there is some criminal element to the breach, it is then turned over to the police. Conversely, if the police encounter cases that may reveal a breach in the AML/CFT framework, this information is passed on to the police financial investigation unit for further investigation.

The police FIU can, through established memoranda of understanding share information with the BVI FIA and BVI FSC.

#### Example 32. Enforcement referral from supervisor (Denmark)

If *Finanstilsynets* (FSA) inspection/examination reveals breaches, the FSA reports its findings to the State Prosecutor for Serious Economic and International Crime. The Prosecutor will then decide on the merits of the case after due investigation of whether to initiate criminal proceedings. The FSA will issue administrative orders and continue its investigations until all administrative orders have been complied with.

## PARALLEL ACTIONS/INVESTIGATIONS

68. In other situations, the supervisor may refer an issue to law enforcement, or an independent investigation by supervisor and/or law enforcement may reveal a breach. Characteristics of parallel actions/investigations include both supervisors and law enforcement using their resources to address the issue and take the appropriate action. Effective coordination between agencies, including announcements of any enforcement decisions, is particularly important where more than one agency is conducting an investigation into the same financial institution at the same time.

### Examples of parallel actions/investigations

#### Example 33. Parallel investigations (United States)

Prosecutors and the FIU have complementary authorities to investigate and sanction financial institutions that do not comply with the US AML law. In addition to separate financial supervisors' corrective actions and enforcement action, in the United States, Department of Justice (DOJ), pursuant to 31 U.S.C. § 5322, has authority to bring criminal actions against financial institutions that wilfully fail to comply with the statutory and regulatory obligations under its principal AML law (Title 31 of the BSA). For example, under this authority, DOJ may pursue criminal charges against a financial institution that wilfully fails to comply with its statutory and regulatory requirements for maintaining an AML or customer identification program, reporting suspicious activity or other relevant provisions of the AML law. DOJ does not have any supervisory authority under the BSA.

DOJ has criminal authority for money laundering violations and the ability to prosecute unlicensed

money transmitting businesses.

FinCEN is also authorized to assess civil money penalties against a financial institution, non-financial trade or business, or a partner, director, officer, or employee of a financial institution or non-financial trade or business for wilful or negligent violations of the AML law. These violations can include record keeping, reporting, or failure to maintain and an adequate anti-money laundering program.

- Further, FinCEN may assess a penalty against a person who owns or controls a money services business and does not register with FinCEN.
- For a person who violates the structuring provisions of the AML law, FinCEN may assess a civil money penalty not to exceed the amount of the coins or currency involved in the transactions.
- FinCEN may assess a civil money penalty of not less than two times the amount of the transaction up to USD 1 000 000 against a financial institution that violates the AML requirements of due diligence on correspondent and private banking or the prohibition on correspondent shell banks.
- In addition to the ability to assess civil money penalties, FinCEN is authorised to seek injunctions, enact 311 special measures regulations, and issue geographic targeting orders. FinCEN may bring a civil action to enjoin a person who has violated, is violating, or will violate the AML law.

311 Special Measure regulations are enacted when a country outside of the United States, a financial institution operating outside of the United States, a class of transactions within or involving a country outside of the United States or a type of account is determined to be of primary money laundering concern.

## **DIRECT ACTION BY LAW ENFORCEMENT**

69. An action that is not prompted by supervisory action and undertaken independently from ongoing supervisory action is a direct standalone action. In this mechanism, law enforcement authorities that uncover possible involvement in criminal activity by financial institutions open a criminal investigation to determine if the financial institution is wittingly or unwittingly involved in the activity, and if the financial institution is complying with AML/CFT laws and regulations that are designed to prevent criminal abuse. Law enforcement action may extend to investigate criminal activity by those that abuse the financial institution. Effective coordination should be encouraged between law enforcement and supervisors as an action may have a de-stabilising impact for globally systemically important banks.



### Examples of direct action by law enforcement agency

#### Example 34. Direct action by law enforcement agency (Denmark)

According to the Danish AML/CTF Act, the FSA is obligated to complete a summary of all AML/CTF investigation reports, which should include, inter alia, a summary of administrative orders. The summary shall be published by the institution in question on its website and by the FSA on its website as well. On the basis hereof the State Prosecutor for Serious Economic and International Crime may decide to initiate prosecutions *ex officio*, i.e. without a formal request from the FSA.

#### Example 35. Slovak Republic (FIU as part of National Police Force)

FIU serves as central national unit for the area of the prevention and detection of legalization and terrorist financing. FIU disseminates information to law enforcement authorities (LEAs) obtained according to AML/CFT Law, if the facts indicate that a criminal offence has been committed. FIU within cooperation with LEAs ensures postponement of performing of unusual transaction pursuant to Section 18 of AML/CFT Law related to disseminated cases. On the basis of this act, LEAs have an appropriate time (72 hours) to make a decision about further steps (e.g. seizure of funds on the customer's bank account). In serious cases, FIU acquires information and documents from financial institutions for LEA's further utilization. FIU may also mediate direct contact between LEAs and compliance officer of obliged entity.

FIU is incorporated in the National Criminal Agency, within the organization structure of the Slovak Police Force. The most serious cases and information related to subject under special-interest of other Units of the National Criminal Agency are disseminating to LEAs within the National Criminal Agency. The National Criminal Agency has subject-matter jurisdiction for those crimes for which the Specialized Criminal Court is authorized. In other cases FIU disseminates information to LEAs pursuant to Regulation of Minister of Interior of the Slovak Republic No. 175/2010 on the definition of jurisdiction of police departments of Presidium of Police Force and departments of the Ministry of Interior of the Slovak Republic in detecting criminal offences, identifying their perpetrators and on the procedure in criminal proceedings.

LEAs are independent within process, they are authorised to request cooperation from FIU, other units of Police Force or state bodies.

## B. COOPERATION AND COORDINATION

70. Even under the most thorough supervisory framework, there is a risk of a financial institution breaching AML/CFT laws or regulations. In some circumstances, these breaches can result in actions taken by the jurisdiction's judicial or law enforcement authorities, in addition to, or as an alternative to, a supervisory action. For example, a financial institution may be sanctioned by a financial supervisor for failing to effectively manage the institution's ML/TF risks and, to the extent that such failures result in violations of law or regulation, it may also be subject to appropriate criminal sanctions provided by law where appropriate and proportionate, and where it is considered that such action will be effective in improving future compliance.

71. While in some countries, cooperation and coordination may not be mandated by law or regulation, in practice, law enforcement should engage with the supervisor(s) of the investigated financial institution as supervisors can share useful information that may impact the action. For example, where appropriate, supervisors may provide the relevant supervisory information (e.g., examination findings corrective plans) that may be useful to law enforcement during the course of their investigation, as well as information about the systemic importance of the financial institution in the sector. This is also applicable to broader prudential supervisors since they review risks beyond AML/CFT that could have impact on the safety and soundness of financial institutions.

72. Additionally, a parallel investigation by both law enforcement and supervisors, direct action or referral by either authority, and law enforcement and supervisors cooperation can maximize efficiency in resources, and a coordinated approach by both may send separate yet complementary messages to the broader financial community about AML/CFT priorities.

73. On the other hand, the failure of supervisors and law enforcement authorities to cooperate and coordinate in appropriate circumstances may have serious unintended consequences which may, in the worst case, jeopardise an ongoing criminal investigation (e.g., by inadvertently tipping off a suspect).

74. Further, where a financial institution operates in a number of countries and must comply with the laws of those countries, it is essential that law enforcement authorities and supervisors collaborate and coordinate their actions with those in the other relevant countries at both state and national level. Collaboration is particularly important in cases involving global, systemically important financial institutions where enforcement action can have unintended consequences on confidence in and the stability of the institution and global financial system.

### **FEATURES OF EFFECTIVE LAW ENFORCEMENT COORDINATION (DOMESTIC AND CROSS BORDER)**

75. Law enforcement authorities should coordinate their actions with supervisors and other law enforcement bodies. Coordination allows competent authorities to take action under their authorities and promote information sharing between them.

76. The level of coordination may also depend on information sharing practices (e.g., law enforcement authority's or other supervisor's access to STR information for the purpose of supervising implementation of the STR reporting requirements and quality of STRs, transparency of legal persons and arrangements, assessing risk, etc.) and the particular circumstances of the action (e.g., the types of action, whether criminal or civil, or whether other supervisors are also investigating the same conduct). Dialogues should be encouraged among the relevant authorities before public enforcement actions. When violations of AML/CFT regulatory requirements by financial institutions are investigated and prosecuted by law enforcement, coordination between supervisors and law enforcement should be strongly encouraged.

77. The broad objectives of maintaining financial market stability and preserving the rights of consumers may require a supervisor to carefully consider what kind of actions to take and whether they should be publicised or not. Actions by supervisors and law enforcement authorities represent separate but complementary components of a country's overall regulation of its financial

institutions and markets, focusing on different areas of potential weaknesses and deficiencies that require tailored responses.

### Examples of cooperation and coordination

#### Example 36. Coordination and referrals (United States)

**General Coordination:** Law enforcement, the FIU and supervisory agencies coordinate or consult with each other in connection with (i) the sharing of routine BSA/AML information pursuant to Memoranda of Understanding (MOUs); (ii) enforcement actions involving areas of mutual interest, and (iii) policy matters involving BSA/AML. With respect to item (i) the agencies generally have MOUs in place with FinCEN and OFAC for sharing routine examination information and significant problems. Generally, with respect to (ii), the agencies routinely work closely with FinCEN and OFAC and coordinate enforcement actions. The level of enforcement coordination depends on the particular circumstances of the action (e.g., the type of action, whether criminal or civil, or whether other supervisors are investigating the same conduct). In certain cases, the agencies will work closely with FinCEN and law enforcement in identifying and reporting suspicious activity. The agencies will also provide expertise and support to law enforcement in complex cases. The recent high-profile interagency public enforcement actions taken against a major bank involved the efforts of multiple USG agencies (OCC, FRB, FinCEN, DOJ, OFAC and the Office of the New York District Attorney (DANY)). In fact, virtually all high profile BSA/AML public enforcement actions have involved coordinated interagency efforts to ensure BSA/AML compliance.

With respect to (iii) FinCEN, the agencies and DOJ coordinate closely on BSA/AML policy matters including rulemaking and the issuance of guidance. Interagency working groups, such as the Bank Secrecy Act Advisory Group (BSAAG) and the FFIEC BSA/AML Working Group, bring together staff from, the various agencies on a regular basis to share information on threats, vulnerabilities and risks and discuss upcoming rulemakings, guidance issuances and other issues related to strengthening BSA compliance and enforcement.

**Referrals Generally:** Most agencies generally make and receive referrals on an ad-hoc, case-by-case basis. The process for referring matters to criminal authorities, however, can be more formalized at certain agencies because of legal issues that arise in connection with parallel criminal and civil enforcement actions. For example, the SEC has formal procedures for referring matters to the DOJ or criminal investigative authorities. The FDIC refers criminal matters through its Office of Inspector General-Office of Investigations, which acts as a primary point of contact for other criminal authorities. The OCC's Law Department acts as a primary point of contact for law enforcement and routinely coordinates on grand jury procedures and other information sharing processes. Similarly, the FRB's Legal Division acts as a primary point of contact for law enforcement matters.

#### Example 37. Cayman Islands

In 2005, a person of the Cayman Islands was sentenced to three years in prison for his role in an international money-laundering scheme. The person was convicted of assisting Mr. A and Mr. B,

both of the United States, with engaging and benefiting from criminal conduct using a “Ponzi” scheme known as Cash4Titles.

Two companies subjected to fraudulent activity were regulated by the Cayman Islands Monetary Authority (CIMA) pursuant to the Companies Management Law. Through effective exchange of information between the U.S. Securities and Exchange Commission and the Financial Reporting Authority, CIMA conducted onsite inspections of the respective entities to garner further information. This resulted in an application being filed in the Cayman Islands Grand Court with recommendations to have Controllers appointed to both entities in the interest of investors, creditors and public at large; the companies were subsequently placed into liquidation.

Following this case, CIMA implemented an onsite inspection program for trust and corporate services providers.

### **C. LAW ENFORCEMENT SANCTIONS**

78. The role of law enforcement authorities (who operate in the criminal context) is separate from the role of supervisory authorities (who operate in the regulatory context), as are the sanctions available to them.

#### **FEATURES OF EFFECTIVE LAW ENFORCEMENT SANCTIONS**

79. Criminal sanctions are available to address instances of egregious conduct (e.g., wilful and deliberate violations of sanctions or AML/CFT measures and/or behaviour which in itself constitutes money laundering or terrorist financing).

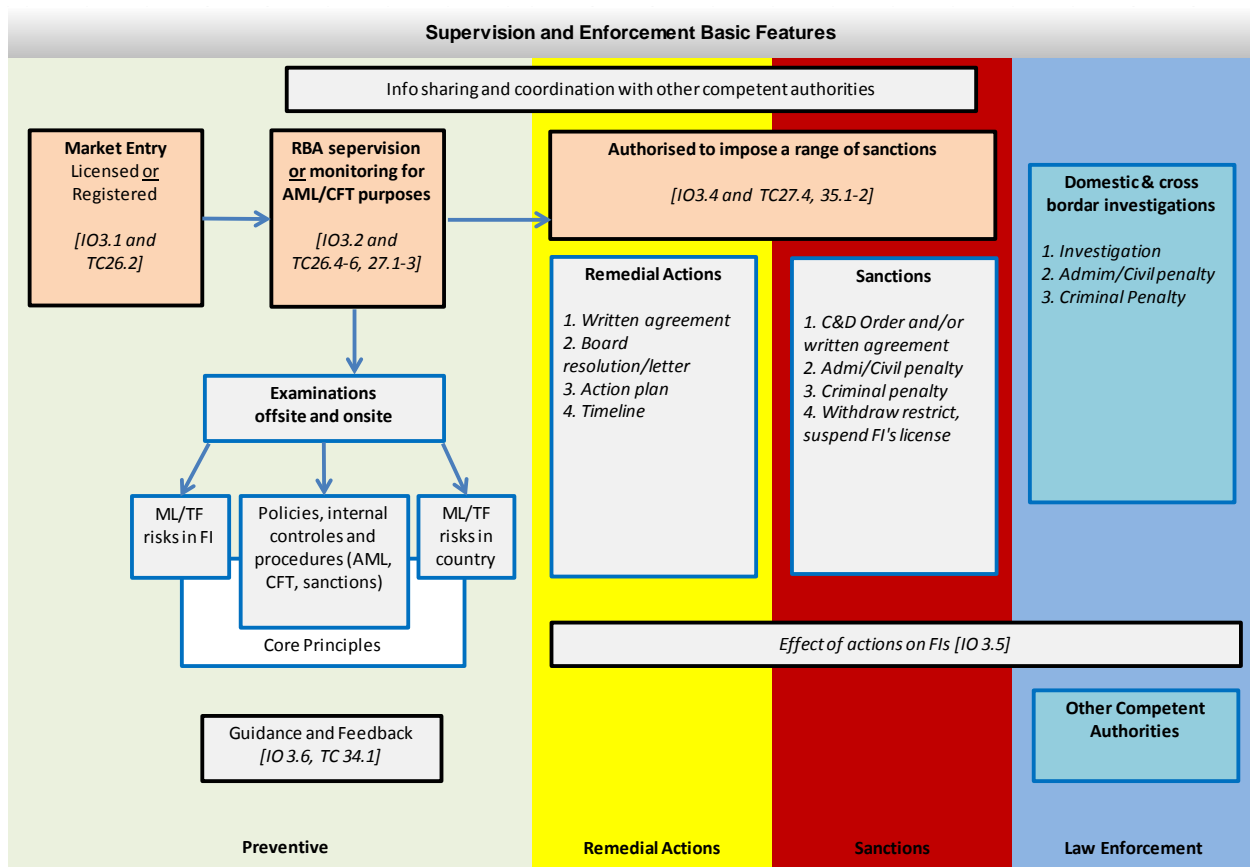
80. The sanctions available to law enforcement authorities include imprisonment, criminal fines and confiscation.

81. Criminal sanctions apply to natural persons and legal persons, unless the latter is not permitted by fundamental principles of domestic law.

## V. GRAPHIC OVERVIEW OF THESE ELEMENTS

82. For the purposes of achieving effective compliance with the FATF Recommendations, countries can be guided by the comprehensive graphic overview for effective supervision and enforcement as below.

**Graphic Overview of Basic Features of Supervision and Enforcement**



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## GLOSSARY

Glossary definitions from the FATF Recommendations, adopted February 2012.

<b>Core Principles</b>	<i>Core Principles</i> refers to the Core Principles for Effective Banking Supervision issued by the Basel Committee on Banking Supervision, the Objectives and Principles for Securities Regulation issued by the International Organization of Securities Commissions, and the Insurance Supervisory Principles issued by the International Association of Insurance Supervisors.
<b>Financial group</b>	<i>Financial group</i> means a group that consists of a parent company or of any other type of legal person exercising control and coordinating functions over the rest of the group for the application of group supervision under the Core Principles, together with branches and/or subsidiaries that are subject to AML/CFT policies and procedures at the group level.
<b>Financial institutions</b>	<p><i>Financial institutions</i> means any natural or legal person who conducts as a business one or more of the following activities or operations for or on behalf of a customer:</p> <ol style="list-style-type: none"> <li>1. Acceptance of deposits and other repayable funds from the public.<sup>24</sup></li> <li>2. Lending.<sup>25</sup></li> <li>3. Financial leasing.<sup>26</sup></li> <li>4. Money or value transfer services.<sup>27</sup></li> <li>5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money).</li> <li>6. Financial guarantees and commitments.</li> <li>7. Trading in:             <ol style="list-style-type: none"> <li>(a) money market instruments (cheques, bills, certificates of deposit, derivatives etc.);</li> </ol> </li> </ol>

<sup>24</sup> This also captures private banking.

<sup>25</sup> This includes *inter alia*: consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting).

<sup>26</sup> This does not extend to financial leasing arrangements in relation to consumer products.

<sup>27</sup> It does not apply to any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds. See the Interpretive Note to Recommendation 16.

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- (b) foreign exchange;
  - (c) exchange, interest rate and index instruments;
  - (d) transferable securities;
  - (e) commodity futures trading.
8. Participation in securities issues and the provision of financial services related to such issues.
  9. Individual and collective portfolio management.
  10. Safekeeping and administration of cash or liquid securities on behalf of other persons.
  11. Otherwise investing, administering or managing funds or money on behalf of other persons.
  12. Underwriting and placement of life insurance and other investment related insurance<sup>28</sup>.
  13. Money and currency changing.

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**Money or value transfer service**

*Money or value transfer services (MVTs)* refers to financial services that involve the acceptance of cash, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer, or through a clearing network to which the MVTs provider belongs. Transactions performed by such services can involve one or more intermediaries and a final payment to a third party, and may include any new payment methods. Sometimes these services have ties to particular geographic regions and are described using a variety of specific terms, including *hawala*, *hundi*, and *fei-chen*.

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**Targeted financial sanctions**

The term *targeted financial sanctions* means both asset freezing and prohibitions to prevent funds or other assets from being made available, directly or indirectly, for the benefit of designated persons and entities

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<sup>28</sup> This applies both to insurance undertakings and to insurance intermediaries (agents and brokers).