
Editorial: When the FATF comes calling

At its 1989 meeting, the G7 Heads of Government established the Financial Action Task Force (FATF), intended to dampen the growing threat posed by money laundering. As a task force, it was intended to be a temporary measure, but like so many initiatives, it acquired a life of its own. Its permanence was guaranteed when, in the aftermath of the horrific attacks in the USA on September 11, 2001, the G8 choose to add terrorist financing to its mandate. Today, the FATF remains the only international body dedicated to this bifurcated role.

The FATF expanded over the years, to include additional nations and to create nine regional bodies, composed of associate FATF members, which have become the lifeblood of the task force. In total, over 200 nations are affiliated to the FATF. In April 1990, the FATF issued Forty Recommendations, intended to serve as minimum international standards [1]. These became synonymous with the FATF, later increased by Special Recommendations dealing with the financing of terror. Collectively, they serve as the normative international standards expected of countries when dealing with the scourge of money laundering and terrorist financing [2].

Adherence to the FATF's Recommendations is voluntary, not directory. Nevertheless, to encourage compliance, the FATF adopted a peer review mechanism, akin to that used by the OECD for its *Anti-Bribery Convention* [3]. Most peer reviews are now conducted under the auspices of a regional body. There are two aspects to a review, technical compliance with the requirements of the Recommendations and an effectiveness assessment. Technical compliance requires that the necessary laws be in place. Effectiveness speaks to these laws having their intended effect, through education, compliance and enforcement.

In its early years, the FATF resorted to a "name and shame" policy to force nations into compliance. Originally, this took the form of a list of Non-Cooperative Countries and Territories (NCCTs). At one time or another, this list included Egypt, Israel, Nigeria, Philippines and Russia, among others. Over time, countries fell into line and were removed from the list. It evolved into one composed almost entirely of small island nations. The FATF received withering criticism for what was perceived to be a ganging up against less fortunate nations, thereby placing them at an economic disadvantage to their more advantaged colleagues. In October 2006, all nations were delisted. In place of the NCCT, the FATF now has both a black list of high-risk countries and a grey list of countries that require increased monitoring.

Being named and shamed by inclusion on either the grey or black list, is a worst-case scenario for a country, however criticism by the FATF short of shaming can also have considerable impact. Nations, like people, hate being singled out of the pack for criticism. Easier to go with the flow, do what must be done, than suffer the ignominy of criticism which may impact a country in many ways, not the least, economically. The FATF developed a coding system to signify the degree to which a nation adheres to the Recommendations: compliant, largely compliant, partially compliant and not compliant.

In early peer reviews, good marks were accorded to countries which created the necessary legal and enforcement frameworks to deal with money laundering and terrorist financing. Today, peer reviews look past the bald statute to ascertain whether the laws are being enforced, is improvement being made and is a country truly committed to dealing with these crimes. The schedule of peer reviews can be maddeningly slow, extending for years between



visitations. Nevertheless, change does take time, both passing legislation and giving effect to it. At a minimum, a peer review forces countries to strive to achieve goals by a date certain.

Despite its comparatively small population, Canada has been a member of the G-7 since its inception. Being part of the inner sanctum of the most powerful nations of the world carries considerable gravitas. This simply adds to the pressure on Canada to avoid criticism, at all costs, from bodies such as the FATF.

For Canada, we can turn back the clock to 1988, when laundering was not to be found in Canada's *Criminal Code*. However, with its ratification of the Vienna Convention in 1988, that changed [4]. On January 1, 1989, amendments to the *Criminal Code* added the offences of laundering and possession of the proceeds of crime. Also, in 1988, Canada ratified the *OECD Anti-Bribery Convention*, which required that Parliament pass implementing legislation. The *Corruption of Foreign Public Officials Act* was ineffective but, at least satisfied the requirements of the convention [5]. The FATF Recommendations required states to implement financial transaction recording and reporting legislation, as well as client identification rules. In 1991, Canada passed its *Proceeds of Crime (money laundering) Act* [6]. It contained mandatory financial recording but stopped short of requiring the reporting of suspicious, and other transactions.

Canada was last evaluated by the FATF in 2016. Among the key findings was that law enforcement results were "not commensurate with the ML [money laundering] risk and recovery is low." Also, legal persons and arrangements were considered "at a high risk of misuse, and that risk is not mitigated." Canada was found to be non-compliant with 5 Recommendations (FATF, 2016). This sent a shudder through the federal bureaucracy, resulting in two tranches of regulatory amendments. In a follow-up report five years later, the FATF re-rated upward, several of its 2016 findings, resulting in Canada now being compliant with 11 Recommendations, largely compliant with 23, partially compliant with 5 and non-compliant with 1 (FATF, 2021).

In 2026, Canada will undergo another peer review, this time as part of the 4th round of mutual evaluations. Undoubtedly, the examiners will use the 2016 report as a measuring stick. One might expect that after ten years, technical compliance will have been achieved, allowing for a concentration on effectiveness. Unfortunately, Canada continues to struggle with full compliance on various fronts. For example, lawyers are still not included in the reporting regime for suspicious transactions and beneficial ownership consists of one province having an operative beneficial ownership registry for land. There is no beneficial ownership registry for companies, despite the federal government rushing to implement one in advance of the 2026 review. In terms of effectiveness, criminal forfeiture remains low, although civil forfeitures are on an upward trajectory.

Do countries worry about the results of a peer review? Yes they do, particularly nations which boast the effectiveness of their programs and wish to be seen as part of the inner circle of nations.

But this is only part of the story. We live in a global world, in which domestic laws, our economies, our trade and so many other aspects of life are influenced by what occurs elsewhere. And so, it is with the fight against money laundering. Canada only has criminal prohibitions against laundering and possessing the proceeds of crime, forfeiture of assets and mutual legal assistance treaties, because of international instruments which it signed.

Similarly, legislation is often amended, strengthened and changed in material ways by factors outside of a nation's borders. The 9–11 attacks on the USA homeland were the impetus for laws which target terrorist financing. The attacks also gave added impetus to the establishment of a financial intelligence unit, FinTRAC, with a mandate which included countering both money laundering and the financing of terrorism.

The global fight against money laundering and terrorist financing is one discreet area of human interaction which is driven by international expectations. Other examples include the rules surrounding nuclear weapons and the NATO requirement that countries spend a minimum of 2% of GDP on their military. The advisory nature of international expectations belies their importance. We live in an interdependent world shackled by the centuries old concept of nation states. Casting aside these shackles requires co-operation and compliance.

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Notes

1. The FATF website is www.fatf-gafi.org/en/home.html
2. See the Recommendations at [FATF \(2012-2023\)](#)
3. *Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions*, adopted Nov. 21, 1997.
4. *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, adopted Dec. 20, 1988.
5. S.C. 1998, c. 34.
6. S.C. 1991, c. 26.

References

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