

FATF 40 RECOMMENDATIONS – PROVISIONS RELATING TO PRACTICING ACCOUNTANTS

Digest of the FATF 40 Recommendations 2012 version, as these relate to the work of accountants in practice.

The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF is therefore a "policy-making body" that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas. The FATF has published 40 Recommendations in order to meet these objectives. They are intended to be of universal application.

The 40 Recommendations provide a complete set of counter-measures against money laundering covering the criminal justice system and law enforcement, the financial system and its regulation, terrorist financing and international co-operation.

The following recommendations, impact directly on the accountancy profession. This is a digest of the recommendations, not a direct extract from them. It is designed for convenience only, and should not be used as an authoritative point of reference. [The full text of the 40 Recommendations can be found here.](#)

The 40 Recommendations

Recommendation 10 – Customer due diligence

Institutions should undertake customer due diligence, and should take the following measures:

- Identify and verify the identities of their customers;
- Identify the beneficial owner;
- Obtain information on the purpose and intended nature of the business relationship;
- Conduct ongoing due diligence on the business relationship, and scrutiny of transactions undertaken throughout the course of that relationship, to ensure that the transactions are consistent with the institution's knowledge of the customer, their business and risk profile;
- Undertake additional due diligence measures in relation to politically exposed persons, cross-border correspondent banking and other high risk customers.

Recommendation 11 – Record keeping

Institutions should:

- keep records of transactions for a minimum of 5 years;
- keep records of the identification data obtained through the customer due diligence process (eg, copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files and business correspondence for at least five years after the business relationship is ended.

Recommendation 22

The requirements for customer due diligence and record-keeping, set out for financial institutions in recommendations 10 and 11, should also apply to non-financial businesses and professions in the following situations:

1. Lawyers, notaries, other independent legal professionals and accountants when they prepare for, or carry out, transactions for their client concerning the following activities:
 - buying and selling of real estate;
 - managing of client money, securities or other assets;
 - management of bank, savings or securities accounts;
 - organisation of contributions for the creation, operation or management of companies;
 - creation, operation or management of legal persons or arrangements, and buying and selling of business entities.
2. Trust and company service providers: when they prepare for or carry out transactions for a client concerning the following activities:
 - acting as a formation agent of legal persons;
 - acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - acting as (or arranging for another person to act as) a trustee of an express trust;
 - acting as (or arranging for another person to act as) a nominee shareholder for another person.

Recommendation 20 – Reporting of suspicious transactions

- If an institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, directly by law or regulation, to report promptly its suspicions to the financial intelligence unit (FIU).

The Egmont Group defines a financial intelligence unit as a national centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis.¹

Recommendation 21 – Tipping off and confidentiality

- Institutions, their directors, officers and employees should be:
 - a) Protected from liability for breach of client confidentiality if they report their suspicions in good faith to the FIU, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.
 - b) Prohibited by law from disclosing the fact that a suspicious transaction report (STR) or related information is being reported to the FIU (tipping off).

Interpretative note to Recommendation 18 – Internal controls

Institutions should develop internal policies and systems to prevent money laundering and terrorist financing, including ongoing employee training.

¹ See <http://www.egmontgroup.org/about/faqs>

Recommendation 19 – Higher risk countries

Institutions should apply enhanced due diligence measures to business relationships and transactions with persons (natural and legal) from countries from which this is called for by the FATF.

Recommendation 23

The requirements set out for financial institutions in Recommendations 18 to 21 apply to all designated non-financial businesses and professions, subject to the following qualifications:

- Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in Recommendation 22. **Countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing. (Emphasis added)**

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- Trust and company service providers should be required to report suspicious transactions for a client when, on behalf of or for a client, they engage in a transaction in relation to the activities referred to in Recommendation 22.

Interpretative Note to Recommendation 23

- Lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.
- It is for each jurisdiction to determine the matters that would fall under legal professional privilege or professional secrecy. This would normally cover information lawyers, notaries or other independent legal professionals receive from or obtain through one of their clients: (a) in the course of ascertaining the legal position of their client, or (b) in performing their task of defending or representing that client in, or concerning judicial, administrative, arbitration or mediation proceedings. Where accountants are subject to the same obligations of secrecy or privilege, then they are also not required to report suspicious transactions.
- Countries may allow lawyers, notaries, other independent legal professionals and accountants to send their suspicious transaction reports (STRs) to their appropriate self-regulatory organisations, provided that there are appropriate forms of co-operation between these organisations and the FIU.
- Where lawyers, notaries, other independent legal professionals and accountants acting as independent legal professionals seek to dissuade a client from engaging in illegal activity, this does not amount to tipping off.

Recommendation 26

Countries should ensure that designated non-financial businesses and professions are subject to effective systems for monitoring and ensuring their compliance with requirements to combat money laundering and terrorist financing. This should be performed on a risk-sensitive basis. This may be performed by a supervisor or by an appropriate self-regulatory organisation, provided that such an organisation can ensure that its members comply with their obligations to combat money laundering and terrorist financing.

Interpretive Note to Recommendation 5

Given the close connection between terrorism and money laundering the objective is to obligate countries to include terrorist financing offences as predicate offences for money laundering.

GLOSSARY

DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

- a. Casinos (which also includes internet casinos).
- b. Real estate agents.
- c. Dealers in precious metals.
- d. Dealers in precious stones.
- e. Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to ‘internal’ professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering.
- f. Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the following services to third parties:
 - acting as a formation agent of legal persons;
 - acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - acting as (or arranging for another person to act as) a trustee of an express trust;
 - acting as (or arranging for another person to act as) a nominee shareholder for another person.