



FijiFIU
Fiji Financial Intelligence Unit



New Requirements under the International AML Standards

National Anti-Money Laundering Conference

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Presentation Outline

- ✓ **The Financial Action Task Force**
- ✓ **Part 1: AML/CFT Policies and Coordination**
- ✓ **Part 2: Money Laundering & Confiscation**
- ✓ **Part 3: Terrorism & Proliferation**
- ✓ **Part 4: Preventive Measures**
- ✓ **Part 5: Beneficial Ownership**
- ✓ **Part 6: Competent Authorities**
- ✓ **Part 7: International Cooperation**
- ✓ **Summary**
- ✓ **Conclusion**



The Financial Action Task Force

- ✓ Established in 1989;
- ✓ An inter-governmental body;
- ✓ Purpose: to develop & promote national and international policies to combat ML & TF;
- ✓ The international AML/CFT standards setter [**the FATF 40 Recommendations**];
- ✓ Assesses compliance with the FATF standards;
- ✓ Identifies and responds to threats to the integrity of the international financial system;
- ✓ A global network with over 180 jurisdictions that have endorsed the FATF Standards;
- ✓ Fiji is a member through the APG – one of the eight FSRBs.



Part 1: AML/CFT Policies and Coordination

- R.1** Assessing risks & applying a Risk-Based Approach
- R.2** National Cooperation & Coordination



Part 1: AML/CFT Policies and Coordination

- ✓ New Risk Based Approach (RBA);
- ✓ More clear & specific requirements for **countries, supervisory authorities, financial institutions & DNFBPs**;
- ✓ Countries (as well as FIs & DNFBPs) are now required to **identify, assess** and **understand** their ML/TF risks;
- ✓ The objectives of RBA: countries to focus on higher risk for more effective implementation and a more efficient allocation of resources;
- ✓ Key implication: **Conduct a national risk and threat assessment.**



Part 1: AML/CFT Policies and Coordination

- ✓ National AML/CFT policies, based on risks;
- ✓ Cooperation and coordination mechanisms required at policy & operational levels;
- Countries should ensure that policy-makers, the financial intelligence unit (FIU), law enforcement authorities, supervisors and other relevant competent authorities, at the policymaking and operational levels, have effective mechanisms in place which enable them to cooperate, and, where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. *FATF R.2*;
- Key implication: **Assess domestic cooperation and coordination mechanisms.**



Part 2: Money Laundering & Confiscation

R.3 Money laundering offence

R.4 Confiscation and provisional measures



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Part 2: Money Laundering & Confiscation

- ✓ The scope of predicate offences to money laundering is expanded;
- ✓ An additional designated category of offences has been included: **tax crimes** (related to direct taxes and indirect taxes).
- ✓ It is left to each country to define serious tax crimes;



Part 2: Money Laundering & Confiscation

- ✓ Legislative measures to freeze, seize, and confiscate:
 - Property laundered;
 - Proceeds of crime;
 - TF property;
 - Property of corresponding value;
- ✓ Non-conviction based confiscation;
- ✓ Key implication: tougher tax crime investigations and roles & powers of competent authorities.



Part 3: Terrorism & Proliferation

- R.5** Terrorist financing offence
- R.6** Targeted financial sanctions related to terrorism & terrorist financing
- R.7** Targeted financial sanctions related to proliferation
- R.8** Non-profit organisations



Part 3: Terrorism & Proliferation

- ✓ Countries required to implement targeted financial sanctions (TFS) pursuant to relevant UNSCRs.
- ✓ TFS = Freezing action + prohibitions on making funds available to designated persons & entities.
- ✓ Persons & entities may be designated by: (a) the UN Security Council (Al-Qaida, Taliban) pursuant to UNSCR 1267 and its successor resolutions; and (b) by countries pursuant to UNSCR 1373.



Part 3: Terrorism & Proliferation

- ✓ There is now a new requirement to implement TFS (freezing action + prohibitions) pursuant to relevant UNSCRs on proliferation;
- ✓ Persons & entities may be designated by the UN Security Council pursuant to: (a) UNSCR 1718 & its successor resolutions (DPRK) and (b) UNSCR 1737 & its successor resolutions (Iran).
- ✓ Key implication: International freezing considerations and mechanisms.



Part 4: Preventive Measures

9 - Financial institution
secrecy laws

10 - Customer due diligence

11 - Record keeping

12 - Politically exposed
persons

13 - Correspondent banking

14 - Money or value transfer
services

15 - New technologies

16 - Wire transfers

17 - Reliance on third parties

18 - Internal controls and
foreign branches and
subsidiaries

19 - Higher-risk countries

20 - Reporting STRs

21 - Tipping-off and
confidentiality

22 - DNFBPs: CDD

23 - DNFBPs: Other
measures



Part 4: Preventive Measures

Customer Due Diligence (CDD) (R.10)

- ✓ Greater emphasis on ID of beneficial ownership of customers that are legal persons or arrangements, and vis-à-vis the beneficiaries of life insurance policies.
- ✓ Additional examples on risk based CDD, lower & higher ML/TF risk factors, and simplified & enhanced measures.
- ✓ Key implication: Revisit beneficial ownership framework and requirements.



Part 4: Preventive Measures

Politically Exposed Persons (PEPs) (R.12)

- ✓ Requirements extended to domestic PEPs and PEPs from international organisations.
- **Domestic PEPs** are individuals who are or have been entrusted domestically with prominent public functions, for example, Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. **Persons who are or have been entrusted with a prominent function by an international organisation** refers to members of senior management, i.e. directors, deputy directors and members of the board or equivalent functions.
- ✓ Requirements apply to family members and close associates of PEPs
- ✓ Key implication: **Consider inclusion of domestic PEPs**



Part 4: Preventive Measures

Wire transfers (R.16), Third party reliance (R.17), Other:

- ✓ Enhanced the transparency of cross-border wire transfers:
- ✓ FIs to include beneficiary information on all cross-border wire transfers;
- ✓ Clarification of the requirement for MVTs service providers and their agents to comply with R.16.
- ✓ More clarity on FIs third party reliance and outsourcing or agency; and more flexibility on intra-group reliance.
- ✓ Financial groups to have group-wide AML/CFT programmes that include policies on information sharing within the group;



Part 5: Beneficial Ownership

R.24 Transparency and beneficial ownership of legal persons;

R.25 Transparency and beneficial ownership of legal arrangements

Misuse of corporate vehicles

Misuse of corporate vehicles is common in crime and money laundering. Legal persons (e.g. companies) and legal arrangements (e.g. trusts) are a layer between assets and their owner – which can be misused to conceal the identity of the owner.

World Bank report “The Puppet Masters” (2011) sets out the methods and scale of misuse of corporate vehicles.



Part 5: Beneficial Ownership

- ✓ Authorities should have adequate, accurate and timely access to beneficial ownership information about companies & trusts;

So, who is the beneficial owner?

The Beneficial Owner is the natural person who ultimately owns or controls a legal person or arrangement.

For a legal person, this is normally the person (if any) who ultimately has a controlling ownership interest – including through a chain of companies;

For a legal arrangement, ownership & control may be divided, so beneficial owners include the trustee(s), settlor, protector, and beneficiaries.

The beneficial owner must be a natural person – so could be at the end of a chain of legal persons and arrangements

The focus is on who has effective ownership/control.



Part 5: Beneficial Ownership

Who are legal persons?

any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property.

This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities.

Legal Arrangements:

express trusts or other similar legal arrangements. Examples of other similar arrangements (for AML/CFT purposes) include fiducie, treuhand and fideicomiso.

- ✓ All countries should ensure that trustees disclose their status to financial institutions and designated non-financial professions when they act as trustees.



Part 5: Beneficial Ownership

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Part 5: Beneficial Ownership

Sequence of steps to identify the beneficial owner:

A: Identify the natural person(s) (if any) who ultimately have a controlling ownership interest (this could be based on a threshold - e.g. 25%)

If that does not identify a beneficial owner, then

B: Identify the natural person(s) exercising control through other means (e.g. creditors);

If that does not identify a beneficial owner, then

C: Identify the natural person(s) who is the senior managing official;



Part 6: Competent Authorities

26 - Regulation and supervision of FI

27 - Powers of supervisors

28 - Regulation and supervision of DNFBPs

29 - Financial intelligence units

30 - Responsibilities of law enforcement and investigative authorities

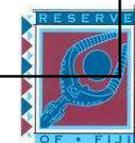
31 - Powers of law enforcement and investigative authorities

32 - Cash couriers

33 - Statistics

34 - Guidance and feedback

35 - Sanctions



Part 6: Competent Authorities

Regulation and Supervision

- ✓ Competent authorities, Supervisors (including Financial Supervisors) and Self-Regulatory Bodies (SRBs) may be involved in regulation and/or supervision;

A SRB is a body that represents a profession (e.g. lawyers, notaries, independent legal professionals or accountants), (and they should have powers and capacity to also perform certain supervisory

- ✓ Supervisors / SRBs should have :
 - Adequate powers, including access to information
 - Adequate resources and professional staff
 - Sufficient operational independence for Supervisors or monitoring type functions).



Part 6: Competent Authorities

Regulation and Supervision – Other DNFBPs

- ✓ Casinos – licensed, regulated and supervised by a competent authority;
- ✓ Other DNFBPs – supervised or monitored by supervisor or SRBs;
- ✓ Fit and proper test applicable for both casinos and
- ✓ other DNFBPs;
- ✓ Adequate powers to monitor and sanction – (must be effective, proportionate and dissuasive, whether criminal, civil or administrative);



Part 6: Competent Authorities

Financial intelligence units (FIUs) (R.29)

- ✓ Enhanced role of the FIU and its key contribution to the operational value chain (that is the analysis work);
- ✓ Broader demand for FIU analytical products;
- ✓ FIU should be operationally independent & autonomous;
 - authority and capacity to carry out its functions;
 - independent right to disseminate;
 - independent cooperation with domestic or foreign partners
 - free from undue influence or interference
- ✓ should have rules in place for access, handling, storage, dissemination, protection of information;



Part 6: Competent Authorities

Law enforcement responsibilities (R.30)

- ✓ LEAs mandated to investigate ML & predicate offences;
- ✓ LEAs to develop parallel financial investigations;
- ✓ LEAs to have mechanisms for “identifying, tracing and initiating freezing and seizing of property that is or may become subject to confiscation or suspected of being proceeds of crime”.
- ✓ Use of multi-disciplinary investigative groups, including anti-corruption agencies;



Part 6: Competent Authorities

Law enforcement responsibilities (R.30)

- ✓ The list of investigative techniques LEA and IA should have has been expanded:
 - controlled delivery,
 - undercover investigation,
 - wire tapping, etc., which should be available for investigations of ML, TF and predicate offences.
 - accessing computer systems.



Part 7: International Cooperation

- R.36** International instruments
- R.37** Mutual legal assistance
- R.38** MLA: freezing and confiscation
- R.39** Extradition
- R.40** Other forms of international cooperation



Part 7: International Cooperation

International instruments

Countries should take immediate steps to become party to and implement fully the **Vienna Convention, 1988**; the **Palermo Convention, 2000**; the **United Nations Convention against Corruption, 2003**; and the **Terrorist Financing Convention, 1999**. Where applicable, countries are also encouraged to ratify and implement other relevant international conventions, such as the Council of Europe Convention on **Cybercrime, 2001**; the Inter-American Convention against Terrorism, 2002; and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005.



Part 7: International Cooperation

Mutual legal assistance and extradition (R.37-39)

- ✓ The new Recommendations provide clarification of the obligations for countries to have clear and efficient processes to facilitate the execution of MLA requests in a timely manner.
- ✓ Strengthened requirements for countries to have arrangements for sharing confiscated assets; and to assist with requests based on foreign non-conviction based confiscation orders in certain circumstances.
- ✓ Countries are required to render MLA notwithstanding the absence of dual criminality when assistance does not involve coercive actions.



Part 7: International Cooperation

MLA: processing

- ✓ Strengthened requirements in terms of the processing of requests for MLA namely by requiring:
 - ✓ – Timely prioritization and execution of requests
 - ✓ – Use of a central authority or another official mechanism for the transmission and execution of requests
 - ✓ – Creation of a case management system to allow monitoring of progress made in the execution of requests
 - ✓ – Maintenance of confidentiality of the requests for MLA as well as of the information contained therein.



Summary

1. NRA and risk-based national AML/CFT policies;
2. FIs & DNFBPs adopt RBA to AML/CFT implementation;
3. Tougher tax crime investigations;
4. Addressing TFS and proliferation requirements;
5. Inclusion of domestic PEPs and PEPs from international organisations and application to family members and close associates;
6. Transparency and beneficial ownership of legal persons and legal arrangements;
7. Demand for FIU analytical products;
8. Parallel financial investigations & multi-disciplinary investigative groups;
9. Enhanced investigative techniques;
10. Stronger MLA and cooperation.



Conclusion

- ✓ The National AML Council to undertake a national risk assessment (2014);
- ✓ Develop a national action plan (to consider, prioritise and implement the new FATF Recommendations);
- ✓ FIU to issue policies, guidelines and provide more awareness to FIs and DNFBPs on their obligations;
- ✓ Private sector to also assist and participate in the NRA;
- ✓ Prepare for Fiji's assessment in 2015 by the APG;





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Thank you and Vinaka Vakalevu

