The FATF’s 4th Mutual Evaluations, the U.S., & Lawyers (2016 ILEC slides; see also cited 2015 & 2010 articles)

Laurel S. Terry
Overview of Remarks

• Introduction

• Status of FATF 4th Mutual Evaluations
  – Process
  – Countries Examined
  – My observations about FATF Mutual Eval. Reports

• My Advice for ILEC Conference Attendees
Why is FATF Relevant to those at ILEC?

- See Prof. Jack Sahl’s slide about FATF Members & Associates
- See my 2010 & 2012 FATF articles & the IBA’s website for additional info about FATF’s global impact:

Where to Go for More Info

FATF has a webpage about the 4th Mutual Eval. Reports:

http://www.fatf-gafi.org [select publications, then mutual evaluations]
**FATF’s 4th Round of Mutual Evaluations**

- Evaluates compliance with FATF 40 Recommendations (2012)
- Focuses on both technical compliance & effectiveness
  - These might be thought of as “inputs” and “output”
- FATF has a recommended Mutual Eval. Report template:
  - 5 page Exec. Summary; ≤100 page report; ≤ 60 pages of Annexes
- Exec. Summary identifies priority issues and effectiveness & technical compliance ratings on FATF’s 40 Recs.
- FATF for lawyers (DNFBPs): ##22-23 (see 10-13,15, 17 & 18-21)
- ME Reports are discussed & approved by FATF Plenary
- FATF’s approved “Procedures (2013)” includes follow-up

**Countries with FATF 4th ME Reports**

(or reports by FATF Associate Members that received FATF endorsement)

- Armenia (MONEYVAL)
- Australia
- Belgium
- Costa Rica (GAFISUD)
- Cuba (GAFISUD)
- Ethiopia (World Bank/ESAAMLG)
- Italy
- Malaysia
- Norway
- Samoa (APG)
- Serbia (MONEYVAL)
- Spain
- Sri Lanka (APG)
- Trinidad & Tobago (CFATF)
- Tunisia (MENAFATF)
- Turkey (Oct. 2014: Follow-up report #15 of its 2007 3rd MER)
- Vanuatu (APG)
- Future Reports: Canada, US, & other FATF members
Information about the U.S.

- The US-FATF visit was in Feb. 2016
- US legal profession reps sent info to the U.S. Dept. of the Treasury well before the FATF visit
- At the request of US Treasury, two US lawyers met with FATF reps (without any US gov’t reps)
- The FATF reps had questions – the US lawyers sent follow-up info
- Recap of the US situation: See related L.Terry articles

My Impression of the FATF 4th ME Reports

- Overall: It is common for the FATF 4th ME Reports to cite issues related to DNFBPs who are lawyers
- Note the Burden allocation: Some of the FATF Reports say that lawyers & their regulators haven’t done enough or proved that their systems are effective
- Common Complaints about Lawyers in FATF Reports:
  - Insufficient AML/CFT regimes
  - Lawyers don’t understand their legal obligations (rule issues)
  - Lawyers aren’t implementing AML/CFT (application issues)
- Rule of Law concerns are rarely if ever cited (but see FATF Interpretative Note to Recommendation 23)
Who Cares What the FATF Reports Say?

- FATF’s 40 Recommendations are “soft law”
  - They are not legally binding “hard law”
  - BUT… reports require follow-up and members who don’t comply with FATF Rec’s may be kicked out
  - Governments find FATF (& related organizations) useful
- Thus, governments may pressure and/or change legal profession rules if FATF criticizes them

My Advice for ILEC Attendees

- **Ask:** Do your legal profession reps & regulators know about FATF & are they involved in the 4th ME process?

- **Prepare:** Have your legal profession reps & regulators prepared a public document about ML/TF risks (& potential involvement in ML/TF by your lawyers?)

- **Educate on AML “rule” issues:** Do your lawyers know when it’s illegal to help clients take certain legal steps?

- **Educate on “application” issues:** Do your lawyers recognize AML/CFT red flags? See IBA/ABA/CCBE typologies
Lawyers, FATF & the Future

• I assume that in most countries, as in the US, it is **BOTH** illegal **AND** unethical for a lawyer to intentionally aid a client in money laundering/structuring payments to avoid detection, etc.

• I assume that most at ILEC are embarrassed by lawyer wrongdoing & by the Panama Papers/60 Minutes scandals

• I assume that most at ILEC agree that lawyers have an important role with respect to both AML and the rule of law

• Some lawyers may intentionally act illegally (see, e.g., FATF’s Typologies Report re prosecutions) but for many, the issue is education

• In my view, the priorities are educating lawyers on criminal law re ML/TF & on recognizing red flags [cf. Panama Papers]

Concluding Observations

• Lawyers, regulators & academics should pay attention to the FATF 4th Mutual Evaluations
  
  – Lawyers should **NOT** aid ML/TF, but I believe lawyers are a different kind of DNFBP than casinos & other DNFBPs
  
  – While the specifics of lawyer regulation vary, there are common principles (e.g., confidentiality, loyalty, and the role of lawyers in preserving the rule of law)
  
  – I don’t sense great sensitivity in FATF to these concerns

• Global legal professions collaborate vis-à-vis FATF

• **Query**: Should there be more intra-legal professions collaboration/mutual eval. re AML/CFT efforts?
To Read More About It…

- ABA Task Force on Gatekeeper Regulation and the Profession, http://www.americanbar.org/groups/criminal_justice/gatekeeper.html

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To Read More About It…

Laurel Terry’s FATF Articles & Presentations: see http://tinyurl.com/LaurelTerryslides
## Material Available on My Websites

**Articles:** http://tinyurl.com/laurelterry


**Presentation Slides:** http://tinyurl.com/laurelterryslides

- This 2016 ILEC Presentation: FATF’s 4th Mutual Evaluations & Lawyers
- 2014 New York Symposium: FATF Implementation & US Lawyers
- 2012 NOBC Meeting: The Financial Action Task Force and Lawyer Regulation Or Why NOBC Members Should Help Educate their Lawyers about the ABA’s Voluntary Good Practices Guidance

- These slides are available on my presentation webpage and at http://tinyurl.com/Terry-FATF-2014; http://tinyurl.com/NOBC-FATF; and http://tinyurl.com/AALS-FATF and 2016 ILEC

**Advice to Regulators Regarding Adding FATF Webpage Resources:** linked from Session #5, *ABA 40th National Legal Ethics Conference*: http://tinyurl.com/FATFadvice