




FATF's 4th Mutual Evaluations & Lawyers



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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:

The screenshot shows the FATF website's 'Mutual Evaluations' page. At the top left is the FATF logo. To its right are language selection buttons for 'EN' (English) and 'FR' (French). Further right is a 'Calendars' icon and a search bar with the text 'Search...'. Below this is a navigation menu with 'HOME', 'ABOUT', 'COUNTRIES', and 'PUBLICATIONS'. The main heading is 'Topic: Mutual Evaluations'. Below the heading is a paragraph: 'The FATF conducts peer reviews of each member on an ongoing basis to assess levels of implementation of the FATF Recommendations, providing an in-depth description and analysis of each country's system for preventing criminal abuse of the financial system.' Below this paragraph is a bullet point: '• Methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of AML/CFT systems'. At the bottom of the page is the URL '<http://www.fatf-gafi.org> [select publications, then mutual evaluations]'. The number '4' is visible in the bottom right corner of the screenshot.

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 7*

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) 8

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

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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*

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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] 11

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? 12

To Read More About It...



- IBA/ABA/CCBE , *A Lawyer's Guide...* (Oct. 2014), <http://tinyurl.com/IBA-ABA-CCBE-Guide>
- IBA Anti-Money Laundering Forum, <http://www.anti-moneylaundering.org/>
- Joint statement by the international legal profession to FATF (2003) http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/signed_statement_0301_1183723072.pdf
- Fed. L. Soc. Canada, Model Rules to fight Money Laundering, <http://flsc.ca/national-initiatives/model-rules-to-fight-money-laundering-and-terrorist-financing/>
- UK Money Laundering and “Know Your Client” Rules, <http://www.lawsociety.org.uk/advice/anti-money-laundering/>
- EU Money Laundering Directives & other EU or CCBE initiatives, http://www.ccbe.eu/index.php?id=94&id_comite=20&L=0
- Law Council of Australia, Anti-Money Laundering Reforms, <http://www.lawcouncil.asn.au/lawcouncil/index.php/resources/for-the-profession?id=57>
- 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>

SELECTED PRESENTATIONS – BY TOPIC (Note: the Chronological Listing includes links to related articles)

> **Global Developments in general** (See 1-14; 1-13; 1-11; 9-09 and 11-08) (See also 2008 Service Providers article, “The Legal World in Flux”, 2012 “Trends in Global Lawyer Expectations”, article and other “Global Legal Practice” articles on my 2013)

To read my law review articles (or summaries) on the topics listed below, please visit my “Publications By Topic” section of my webpage.

- > **Alternative Business Structure (ABS)** developments (including the UK’s Legal Services Act 2007, Australia’s publicly traded law firms, EU, and OECD developments) (See 4-08; 5-08; 10-08; 5-09; and 10-13)
- > **Anti-trust initiatives** directed towards the legal profession, including the EU’s Professional Services Competition Initiative (See 5-08; 4-09)
- > **the APEC Legal Services Initiative** (See 10-09)
- > **Australian Legal Profession Developments** (See 8-08; 5-09)
- > **the Bolzano Process** (See 3-06; 1-05; see also 1-11)
- > **Canadian Lawyer Regulation** (See 1-13; 10-13; 2-15) (See also 2-15 and my 2013 *Substantive Law Review* article on Canadian trends in lawyer regulation)
- > **Classification Systems for Counting Legal Services** (See 10-04; 4-07)
- > **Dickinson Law** (10-15)
- > **Double deontology** [aka ABA Model Rule 8.5 Choice of Law issues] (See 2-08 and 7-10) (NOTE: In October 2010, Professors Terry and Rogers revised the proposal contained in this talk. Their revised proposal is available in ABA 2010)
- > **EU lawyer regulation** (See 1-05; see also 4-08)
- > **Financial Action Task Force (FATF) and Lawyer Regulation** (See 4-2014; 2-2012; 1-2010) (See also 2010 FATF article)
- > **Foreign lawyer “recognition” issues** (including issues related to whether to have an ABA Model Rule Allowing Foreign Educated Applicants to sit for a Bar Examination) (See 5-15 (and materials below), 5-14; 4-09)
- > **Free Trade Agreements** (1-15 and 5-14 regarding the T-TIP US-EU trade negotiations; for discussion of 15 U.S. FTAs and APEC that apply to U.S. Legal Services, see 10-09)

Material Available on My Websites

Articles: <http://tinyurl.com/laurelterry>

Laurel S. Terry, *Legal Profession Efforts to Combat Money Laundering & Terrorist Financing*, 59 N. Y. L. S. L. Rev. 487 (2014/15)

Laurel S. Terry, *An Introduction to the Financial Action Task Force and its 2008 Lawyer Guidance*, 2010 J. Prof. Law. 3

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*

2010 AALS Meeting: *Transformative Law: the Impact of International Law on Lawyer Regulation: A Case Study Focusing on the Financial Action Task Force (FATF) and its 2008 Lawyer 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>