



# **Transformative Law: The Impact of International Law on Lawyer Regulation**

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***A Case Study Focusing on the Financial  
Action Task Force (FATF) and its 2008  
Lawyer Guidance***

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AALS Annual Meeting

January 8, 2010

[Full version at

<http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm>]



# My 10 Minute Introduction

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- What is the FATF?
- What are the 40+9 Recommendations?
- How have bars and governments responded?
- What is the October 2008 FATF Lawyer Guidance?
- **Part 1**: The legal profession's negotiators talk about the process and the results
- **Part 2**: Academics from different disciplines reflect on these developments and whether they may indeed be transformative
- **Part 3**: Your questions (start thinking...)



# What is the Financial Action Task Force (FATF)?

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- The FATF is a 35 member intergovernmental organization
- The U.S. is a founding member
- The FATF was established in 1989 to combat money laundering and the financing of terrorism [aka AML/CFT]
- FATF activities increased after 9-11
- It has no direct powers, but can expel members who do not comply
- There are a number of similar groups



### FATF (Home)

#### About the FATF

- Mission
- Members & Observers
- Presidency & Secretariat

#### Key Topics

#### News & Events

#### Publications

#### Resources & Links

### Frequently Asked Questions

#### Fraud Warning

#### General FAQ

#### Member Countries and Observers FAQ

#### Money Laundering FAQ

## About the FATF

The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing. The Task Force is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

Since its creation the FATF has spearheaded the effort to adopt and implement measures designed to counter the use of the financial system by criminals. It established a series of Recommendations in 1990, revised in 1996 and in 2003 to ensure that they remain up to date and relevant to the evolving threat of money laundering, that set out the basic framework for anti-money laundering efforts and are intended to be of universal application.

The FATF monitors members' progress in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. In performing these activities, the FATF collaborates with other international bodies involved in combating money laundering and the financing of terrorism. For more on Mutual Evaluations see [monitoring implementation of the FATF Recommendations](#).

The FATF does not have a tightly defined constitution or an unlimited life span. The Task Force periodically reviews its mission. The FATF has been in existence since 1989. The [current mandate](#) of the FATF (for 2004-2012) was subject to a mid-term review and was approved and revised at a Ministerial meeting in April 2008. For more information on the FATF's role, please see the [FATF's standards](#).

### History of the FATF

In response to mounting concern over money laundering, the Financial Action Task

### Quick Links

- 40 Recommendations
- 9 Special Recommendations
- Methodology
- Handbook for countries and assessors
- Contact us
- Site Map

### More about the FATF

- What is the FATF?
- History of the FATF

### FATF Annual Report



### Highlights from the past year

The Annual Report provides an overview of the work carried out by the FATF during 2008-2009 and highlights the key outcomes that have been achieved during this year.

### FATF Newsletter: April 2009

**FATF (Home)****About the FATF**[Mission](#)**Members & Observers**[Presidency & Secretariat](#)[Key Topics](#)[News & Events](#)[Publications](#)[Resources & Links](#)

## Members & Observers

The following list shows the countries, territories, and organisations that make up the membership of the FATF. The FATF membership is currently made up of 33 countries and territories and 2 regional organisations. The FATF also works in close co-operation with a number of international and regional bodies involved in combating money laundering and terrorist financing.

[FATF Members](#)[FATF Associate Members](#)[FATF Observer Bodies and Organisations](#) (*FATF Style Regional Bodies and Other International Organisations*)[FATF Membership Policy](#)[FATF Policy on Observers](#)

### FATF Members

1. [Argentina](#)
2. [Australia](#)
3. [Austria](#)
4. [Belgium](#)
5. [Brazil](#)
6. [Canada](#)
7. [China](#)
8. [Denmark](#)
9. [European Commission](#) ([Member States list](#))
10. [Finland](#)
11. [France](#)
12. [Germany](#)
13. [Greece](#)

**Quick Links**[40 Recommendations](#)[9 Special Recommendations](#)[Methodology](#)[Handbook for countries and assessors](#)[Contact us](#)[Site Map](#)[FAQ](#)[Member Countries and Organisations FAQ](#)[FATF Annual Report](#)[Highlights from the past year](#)

The Annual Report provides an overview of the work carried out by the FATF during 2008-2009 and highlights the key outcomes that have been achieved

14. [Gulf Co-operation Council](#)
15. [Hong Kong, China](#)
16. [Iceland](#)
17. [Ireland](#)
18. [Italy](#)
19. [Japan](#)
20. [Kingdom of the Netherlands\\*](#)
21. [Luxembourg](#)
22. [Mexico](#)
23. [New Zealand](#)
24. [Norway](#)
25. [Portugal](#)
26. [Republic of Korea](#)
27. [Russian Federation](#)
28. [Singapore](#)
29. [South Africa](#)
30. [Spain](#)
31. [Sweden](#)
32. [Switzerland](#)
33. [Turkey](#)
34. [United Kingdom](#)
35. [United States](#)

\* *the Kingdom of the Netherlands: the Netherlands, the Netherlands Antilles and Aruba.*

Country with observer status

India

[Back to top](#)

### FATF Associate Members

*Click on each FATF Associate Members to see their Member list and background information.*

- The [Asia/Pacific Group on Money Laundering](#) (APG)  
(See also: [APG website](#))
- [Caribbean Financial Action Task Force](#) (CFATF)  
(See also: [CFATF website](#))
- The [Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism](#) (MONEYVAL) - formerly PC-R-EV  
(See also: [Moneyval website](#))
- The [Financial Action Task Force on Money Laundering in South America](#) (GAFISUD)

during this year.

**FATF Newsletter:  
April 2009**



**New Zealand -  
Report**

**Other Mutual  
Evaluation reports**



**Money Laundering  
and Terrorist  
Financing in the  
Securities Sector**

**FATF-XXI Calendar  
of Events**

Key events for July  
2009 to June 2010.

[Home](#) | [Contact Us](#) | [Members Login](#) | [Observers Login](#) | [DAP Group](#) | [IIWG](#) | [Projects Area](#)

Search:

[About](#)

[Members](#)

[Observers](#)

[Documents](#)

[Legislation](#)

[Typologies](#)

[Implementation Issues](#)

[FAQs](#)

[Links](#)



#### ■ About APGML

The Asia/Pacific Group on Money Laundering (APG) is an international organisation consisting of 40 members and a number of international and regional observers including the United Nations, IMF and World Bank (see the "Members" and "Observers" buttons above for a complete list).

The APG is closely affiliated with the Financial Action Task Force ([FATF](#)) based in the OECD Headquarters at Paris, France. All APG members commit to effectively implement the FATF's international standards for anti-money laundering and combating financing of terrorism referred to as the [40+9 Recommendations](#). Part of this commitment includes implementing measures against terrorists listed by the United Nations in the "1267 Consolidated List":

**\*\* The UN Security Council 1267 Committee Consolidated List - Al-Qaida, Usama bin Laden, & the Taliban etc. is available via this [link](#).\*\***

## The Asia/Pacific Group on Money Laundering

#### ■ Next Event

**25 November, 2009**

[APG Mutual Evaluation of Tonga, November 2009](#)

The APG will conduct an on-site visit to Tonga to evaluate its anti-money laundering and countering the financing of terrorism framework and systems in November 2009.

[learn more](#)

**15 December, 2009**

[Joint APG/FATF mutual evaluation of](#)



# CFATF

## Caribbean Financial Action Task Force

Sunday, November 01, 2009 12:14:27 PM

Domingo, Noviembre 01, 2009

**English** ▾

[Home](#) [News](#) [Annual Reports](#) [Documentation](#) [Profiles](#) [Events](#) [Training](#) [Links](#) [Contact](#)

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[Página Inicial](#) [Noticias](#) [Informes Anuales](#) [Documentación](#) [Perfiles](#) [Eventos](#) [Formación](#) [Vínculos](#)

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### [CFATF/FATF Joint Typology Exercise](#)

The Caribbean Financial Action Task Force (CFATF) and the Financial Action Task Force (FATF) will...

### [Ministerial Meeting XVI - Opening Ceremony](#)

Friday 30th October 2009 will be a unique day in the global Anti Money Laundering...

### [Upcoming Plenary and Ministerial Meetings](#)

Monday, October 5, 2009

### [CFATF Overview](#)

The Caribbean Financial Action Task Force (CFATF) is an organisation of thirty states of the Caribbean Basin, which have agreed to implement common countermeasures to address the problem of criminal money laundering. It was established as the result of meetings convened in Aruba in May 1990 and Jamaica in November 1992.

[Read more...](#)

Friday, 09 October 2009 18:27

### [News Trinidad and Tobago bolsters AML legislation](#)

### [St. Lucia Mutual Evaluation Report](#)

St. Lucia Mutual Evaluation Report 31-Dec-2008

### [December 2008](#)

[CFATF Typology Report](#)  
CFATF Typology Report 1: Mar-2009 [CFATF Typology Report](#)

[St. Kitts & Nevis Mutual Evaluation Report June 20](#)  
St. Kitts & Nevis Mutual Evaluation Report June 20





## Activities

- [Working groups](#)
- [Events](#)
- [International cooperation](#)
- [Evaluations](#)
- [Typologies](#)
- [Technical assistance](#)

## Legal Documents

- [Legislation](#)
- [International legal documents](#)

## About EAG



The Eurasian Group on combating money laundering and financing of terrorism (EAG) is a FATF-style regional body uniting Belarus, Kazakhstan, China, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan. 16 more states and 14 international and regional organizations have observer status within the EAG.

The EAG supports countries in the region to create an appropriate legal and

## Calendar

- 07.12.2011  
[The 11th meeting of the group members](#)

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- 08.11.2011  
[The EAG evaluation mission to Uzbekistan](#)



## Eastern and Southern Africa Anti-Money Laundering Group

1st November 2009

Search Site:

### Members and Cooperating Partners

- [Home](#)
- [About Us](#)
- [Members & Cooperating Partners](#) ▶
- [MoU](#)
- [Strategic Plan](#)
- [Reports](#) ▶
- [FATF](#) ▶
- [News](#) ▶
- [Events](#) ▶
- [Useful Links](#)
- [Contact Us](#)
- [Comments & Enquiries](#)
- [Private Area](#)

#### Members who have signed the ESAAMLG MOU

- Botswana**
- Kenya**
- Lesotho**
- Malawi**
- Mauritius**
- Mozambique**
- Namibia**
- South Africa**
- Swaziland**
- Seychelles**
- Tanzania**
- Uganda**
- Zambia**
- Zimbabwe**


#### ESAAMLG Cooperating Partners

APG	Mr. Eliot	Acting Head of the APG	Asia/Pacific Group on Money Laundering Secretariat Goulburn Street, Sydney NSW 2000,
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[Português](#)
[:: HOME](#)
[:: FATF Advisory](#)
[:: Mutual Evaluation](#)
[:: Typologies](#)
[:: Reports](#)
[:: News](#)
[:: Events](#)
[:: Useful links](#)
[:: Opportunities at GIABA](#)
[:: Contact Us](#)

## Groupe Intergouvernemental d'Action contre le Blanchiment d'Argent en Afrique de l'Ouest Grupo InterGubernamental de Acção contra o Branqueamento de Capitais na África Ocidental

### Latest news from GIABA

 **DG visits Benin CENTIF**  
16 Sept , 2009

On the sidelines of the second workshop of the fight against money laundering and terrorist financing held in Cotonou from 16-18 September, 2009, the Director General of GIABA, Dr. Abdullahi Shehu paid a working visit to the new premises of Benin CENTIF. The objective of this meeting, held in the afternoon of September 16, shortly after the opening ceremony of the workshop was to see the progress of work and challenges of the Institution and to know what extent GIABA can provide solutions.

[\[Read more\]](#)

 **WABA second Workshop in Cotonou**  
16 Sept - 18 Sept , 2009

The Intergovernmental Action Group against Money Laundering and Terrorist Financing (GIABA) organised from 16-18 September 2009, the



### GIABA, what for ?

GIABA is responsible for the prevention and control of Money Laundering and Terrorist Financing in the West African Sub-Region.

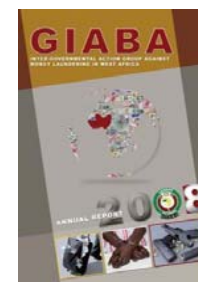


The Mandate of GIABA includes:

- Development of Strategies to protect the economies of Member States from abuse and the laundering of the proceeds of crime;
- Improvement of measures and intensifying efforts to combat the laundering of proceeds of crime in West Africa;
- Strengthening co-operation amongst its members.

[\[Read more\]](#)

Annual reports, 2008



Mutual Evaluation, Mali



Typologies of Money Laundering through the Real Estate Sector in Africa  
February 2009





[Home](#) | [Links](#) | [Contact Us](#) | [Arabic](#) | [French](#)

- ◆ About MENAFATF
- ◆ Regulatory
- ◆ Mutual Evaluation
- ◆ Typologies
- ◆ International Standards
- ◆ Press Releases
- ◆ Events
- ◆ Publications



❖ **Announcement**

**New Members..>>**

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**TA Questionnaire**

[English Questionnaire](#)  
 Posted: 3 April, 2005 Reads: 6817

[French Questionnaire](#)  
 Posted: 3 April, 2005 Reads: 5483

[Arabic Questionnaire](#)  
 Posted: 3 April, 2005 Reads: 8979

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**Welcome** to Middle East & North Africa Financial Action Task Force (MENAFATF) web site against money laundering and Terrorist Financing.

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**Latest News**

3rd workshop on "Training the assessors": June 28 – July 2nd, 2009 – Manama, Kingdom of Bahrain  
[Posted: 19 July, 2009](#) [More..](#)

APG Visit to the MENAFATF Headquarters on 17 May 2009  
[Posted: 10 June, 2009](#) [More..](#)

9th MENAFATF Plenary, Kingdom of Bahrain 18-20 May, 2009  
[Posted: 26 May, 2009](#) [More..](#)

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**Recent Postings**

- ❖ [13 August, 2009](#) :: Mutual Evaluation Report of the Arab Republic of Egypt
- ❖ [20 July, 2009](#) :: Fourth Annual Report (2008)

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**Upcoming Events**

- ❖ [9 November, 2009](#)  
Next Plenary Meeting, 9-11 Nov 2009, Lebanon

[More Events..](#)



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**ACERCA DE GAFISUD | ACERCA DO GAFISUD | ABOUT GAFISUD**

GAFISUD es una organización intergubernamental de base regional que agrupa a los países de América del Sur para combatir el lavado de dinero y la financiación del terrorismo, a través del compromiso de mejora continua de las políticas nacionales contra ambos temas y la profundización en los distintos mecanismos de cooperación entre los países miembros.

Se creó formalmente el 8 de diciembre de 2000 en Cartagena de Indias, Colombia, mediante la firma del Memorando de Entendimiento constitutivo del grupo por los representantes de los gobiernos de diez países: Argentina, Bolivia, Brasil, Chile, Colombia, Ecuador, México, Paraguay, Perú y Uruguay.

El Grupo goza de personalidad jurídica y estatus diplomático en la República Argentina donde tiene la sede su Secretaría. Sus órganos de funcionamiento son el Pleno de Representantes, el Consejo de Autoridades y la Secretaría del Grupo. Cuenta, además, con el ofrecimiento del gobierno de Uruguay que ha puesto a disposición del Grupo su centro de Capacitación en materia de lavado de dinero de Montevideo.

Participan como observadores Alemania, el Banco Mundial, Banco Interamericano de Desarrollo, Egmont, España, Estados Unidos, FMI, Francia, INTERPOL, INTOSAI, Naciones Unidas y Portugal. También asisten a sus reuniones, como organizaciones afines, el Grupo de Acción Financiera Internacional sobre lavado de dinero (GAFI/FATF), el Grupo de Acción Financiera del Caribe



## What are the FATF's 40+9 Recommendations?

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- The 40 recommendations were adopted in 1990 (revised in 2003)
- The 9 Special Recommendations were adopted Oct. 2001, rev'd 2004
- The **40+9** address "gatekeepers" (including lawyers, casinos, & others)
- Some are controversial - *e.g.*, they require disclosure w/o tipping off

**FATF (Home)****Key Topics****FATF Standards**[Money Laundering](#)[Terrorist Financing](#)[Meeting FATF Standards](#)[Methods & Trends](#)[About the FATF](#)[News & Events](#)[Publications](#)[Resources & Links](#)

## FATF Standards

The FATF Standards are comprised of:  
 the [Forty Recommendations on Money Laundering](#)  
 the [Nine Special Recommendations on Terrorist Financing](#)

### *What's new*

#### **[Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations](#)**

24-Oct-2008

The FATF revised in February 2008 its Methodology for Assessing Compliance with the FATF 40 + 9 Recommendations. It is the methodology followed in the mutual evaluation program to assess countries' anti-money laundering and counter terrorism financing (AML/CFT) systems.

#### **[The FATF Revised Interpretative Note to Special Recommendation VII: Wire Transfers](#)**

12-Mar-2008

The FATF has revised its Interpretative Note to SR VII on measures for dealing with cross-border wire transfers. Special Recommendation VII (SR VII) was originally developed with the objective of preventing terrorists and other criminals from having unfettered access to wire transfers for moving their funds and for detecting such misuse when it occurs.

#### **[Guidance on Capacity Building for Mutual Evaluations and Implementation of the FATF Standards Within Low Capacity Countries](#)**

**Quick Links**[40 Recommendations](#)[9 Special Recommendations](#)[Methodology](#)[Handbook for countries and assessors](#)[Contact us](#)[Site Map](#)**FATF Annual Report****Highlights from the past year**

The Annual Report provides an overview of the work carried out by the FATF during 2008-2009 and highlights the key outcomes that have been achieved during this year.

**FATF Newsletter: April 2009**

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## The 40 Recommendations

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

They have been recognised, endorsed, or adopted by many international bodies. The Recommendations are neither complex nor difficult, nor do they compromise the freedom to engage in legitimate transactions or threaten economic development. They set out the principles for action and allow countries a measure of flexibility in implementing these principles according to their particular circumstances and constitutional frameworks. Though not a binding international convention, many countries in the world have made a political commitment to combat money laundering by implementing the 40 Recommendations.

Initially developed in 1990, the Recommendations were revised for the first time in 1996 to take into account changes in money laundering trends and to anticipate potential future threats. More recently, the FATF has completed a thorough review and update of the 40 Recommendations (2003). The FATF has also elaborated various Interpretative Notes which are designed to clarify the application of specific Recommendations and to provide additional guidance.

### The 40 Recommendations

Click [here](#) to see *the Interpretative Notes to the 40 Recommendations originally adopted by the Plenary of the FATF in June 2003.*

[Introduction](#)[Legal Systems](#)

- **Scope of the criminal offence of money laundering**  
(Recommendations: [1](#), [2](#))
- **Provisional measures and confiscation**  
(Recommendation [3](#))

[Measures to be taken by Financial Institutions and Non-Financial Businesses and Professions to prevent Money Laundering and Terrorist Financing](#)

**Quick Links**[40 Recommendations](#)[9 Special Recommendations](#)[Methodology](#)[Handbook for countries and assessors](#)[Contact us](#)[Site Map](#)**Glossaries**

**40 Recommendations FATF Methodology**

**FATF Annual Report****Highlights from the past year**

The Annual Report provides an overview of the work carried out by the FATF during 2008-2009 and highlights the key outcomes that have been achieved during this year.

Mutual Evaluation of Austria

- **Customer due diligence and record-keeping**  
(Recommendations: [4](#), [5](#), [6](#), [7](#), [8](#), [9](#), [10](#), [11](#), [12](#))
- **Reporting of suspicious transactions and compliance**  
(Recommendations: [13](#), [14](#), [15](#), [16](#))
- **Other measures to deter money laundering and terrorist financing**  
(Recommendations: [17](#), [18](#), [19](#), [20](#))
- **Measures to be taken with respect to countries that do not or insufficiently comply with the FATF Recommendations**  
(Recommendations: [21](#), [22](#))
- **Regulation and supervision**  
(Recommendations: [23](#), [24](#), [25](#))

### [Institutional and other measures necessary in systems for combating Money Laundering and Terrorist Financing](#)

- **Competent authorities, their powers and resources**  
(Recommendations: [26](#), [27](#), [28](#), [29](#), [30](#), [31](#), [32](#))
- **Transparency of legal persons and arrangements**  
(Recommendations: [33](#), [34](#))
- **International Co-operation**  
(Recommendation [35](#))
- **Mutual legal assistance and extradition**  
(Recommendations: [36](#), [37](#), [38](#), [39](#))
- **Other forms of co-operation**  
(Recommendation [40](#))

### [Download the 40 Recommendations \(2003\)](#)

The 40 Recommendations are downloadable in [English](#) (102Kb, pdf, English), [French](#) (139Kb, pdf, French) and also in [Dutch](#) (122Kb, pdf, Dutch), translated by the Dutch Ministry of Finance.

The following translations have not yet been updated to reflect the October 2004 changes

- [Polish](#) (469Kb, pdf, Polish) - Translated by the National Bank of Poland
- [Portuguese](#) (182Kb, pdf, Portuguese) - Translated by the Bank of Portugal
- [Russian](#) (194Kb, pdf, Russian) - Translated by the Financial Monitoring Committee of the Russian Federation
- [Spanish](#) (482Kb, pdf, Spanish) - Translated by GAFISUD

### [Glossary to the 40 Recommendations](#)

[Glossary](#)

[Back to top](#)

### [The 40 Recommendations](#)

[Introduction](#)

Money laundering methods and techniques change in response to developing



#### [Other Mutual Evaluation reports](#)



#### [Money Laundering and Terrorist Financing in the Securities Sector](#)

#### [FATF-XXI Calendar of Events](#)

Key events for July 2009 to June 2010.

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Financial Action Task Force

Groupe d'action financière

*FATF Standards*

# FATF 40 Recommendations

*20 June 2003*

*(incorporating the amendments of 22 October 2004)*

The FATF Recommendations also cover a number of designated non-financial businesses and professions (DNFBPs), including legal professionals [but not in-house counsel].

Recommendation 12 [includes customer/client due diligence and record keeping] applies to legal professionals when they prepare for and carry out certain specified 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.



## How Have Bar Associations and Governments Responded?

---

- Many Governments have responded with new laws governing lawyers
- Bar associations have responded with protests and guidance to their lawyers
  - Joint statement by the international legal profession to the FATF (April 2003)[Canada, EU, Japan, Swiss, and U.S.]
  - ABA, Resolution#104 Regarding the FATF Gatekeeper Regulation (Feb. 2003),
  - ABA Resolution #300 (August 2008)



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**Taskforce Home**

[Who We Are](#)

[Gatekeeper Initiative Resources](#)

[News](#)

[Task Force Actions & Related Documents](#)

[Programs](#)

[Links](#)

[Contact Us](#)

## Task Force on Gatekeeper Regulation and the Profession



[Print This](#) | [Page Feedback](#)

### Gatekeeper Links

#### Links to Groups, Documents & Other Information

##### The Gatekeeper Initiative

- G8 Communiqué - Moscow, Oct. 1999
- G8 Communiqué - Milan, Feb. 2001 reaffirming Moscow Communiqué
- Financial Action Task Force on Money Laundering (FATF)
- FATF - Report on Money Laundering Typologies and Trends 2001-2002, February 1, 2002
- FATF - Members & Observers (Lists legislation and initiatives of each state)
- FATF - Caribbean Financial Action Task Force (CFATF) - Member states and observers
- FATF - Forty Recommendations - Financial Action Task Force on Money Laundering
- Review of the FATF Forty Recommendations Consultation Paper (May 30, 2002)
- Kingston Declaration on Money Laundering (Nov. 1992)
- CFATF 19 Recommendations (June 1990)

##### The US Government Money Laundering Strategies

- 1999: US National Money Laundering Strategy for 1999
- 2000: The National Money Laundering Strategy for 2000
- 2001: The 2001 National Money Laundering Strategy
- EU - Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering
- Federation of Law Societies of Canada

**AMERICAN BAR ASSOCIATION  
TASK FORCE ON GATEKEEPER REGULATION AND THE PROFESSION  
SECTION OF REAL PROPERTY, PROBATE AND TRUST LAW  
CRIMINAL JUSTICE SECTION  
SECTION OF LITIGATION  
SECTION OF INTERNATIONAL LAW AND PRACTICE**

**REPORT TO THE HOUSE OF DELEGATES**

**RECOMMENDATION**

1 RESOLVED, That the American Bar Association supports the enactment of reasonable  
2 and balanced initiatives designed to detect and prevent domestic and international money  
3 laundering and terrorist financing.

4  
5 FURTHER RESOLVED, That any efforts to establish and implement international and  
6 United States policies to combat domestic and international money laundering and  
7 terrorist financing should be consistent with the following principles:

8  
9 (1) lawyers play a critical and independent role in the administration of justice and in  
10 ensuring lawful compliance by persons and entities involved in commercial and financial  
11 activities;

12  
13 (2) the judiciary and the organized bar are responsible for establishing ethical rules  
14 governing the activities of lawyers and for ensuring that the profession adheres to the  
15 highest standards of professional and lawful conduct; and

16  
17 (3) there is a critical need for confidentiality in client communications with lawyers to  
18 ensure the independence of the bar, protect the lawyer-client relationship, and support the  
19 proper functioning of the legal system;

20  
21 FURTHER RESOLVED, That the American Bar Association:

22  
23 (1) opposes any law or regulation that, while taking action to combat money laundering  
24 or terrorist financing, would compel lawyers to disclose confidential information to  
25 government officials or otherwise compromise the lawyer-client relationship or the  
26 independence of the bar; and

27  
28 (2) will continue to review the Model Rules of Professional Responsibility and evaluate  
29 whether the rules permitting, in appropriate circumstances, disclosure of confidential  
30 information should be modified to permit disclosure of information demonstrating the  
31 clear intent of a client to commit criminal acts such as money laundering; and

32  
33 (3) urges bar associations and law schools to undertake education efforts to ensure that  
34 lawyers are informed regarding the scope of money laundering laws and the anti-money  
35 laundering requirements that apply to lawyers to safeguard the profession from being  
36 used to facilitate money laundering or terrorist financing activity.

**AMERICAN BAR ASSOCIATION  
TASK FORCE ON GATEKEEPER REGULATION AND THE PROFESSION  
SECTION OF REAL PROPERTY, PROBATE AND TRUST LAW  
CRIMINAL JUSTICE SECTION  
SECTION OF LITIGATION  
SECTION OF INTERNATIONAL LAW AND PRACTICE**

**REPORT TO THE HOUSE OF DELEGATES**

**RECOMMENDATION**

1 RESOLVED, That the American Bar Association supports the enactment of reasonable  
2 and balanced initiatives designed to detect and prevent domestic and international money  
3 laundering and terrorist financing.  
4

5 FURTHER RESOLVED, That any efforts to establish and implement international and  
6 United States policies to combat domestic and international money laundering and  
7 terrorist financing should be consistent with the following principles:  
8

9 (1) lawyers play a critical and independent role in the administration of justice and in  
10 ensuring lawful compliance by persons and entities involved in commercial and financial  
11 activities;  
12

13 (2) the judiciary and the organized bar are responsible for establishing ethical rules  
14 governing the activities of lawyers and for ensuring that the profession adheres to the  
15 highest standards of professional and lawful conduct; and  
16

17 (3) there is a critical need for confidentiality in client communications with lawyers to  
18 ensure the independence of the bar, protect the lawyer-client relationship, and support the  
19 proper functioning of the legal system;  
20

21 FURTHER RESOLVED, That the American Bar Association:  
22

23 (1) opposes any law or regulation that, while taking action to combat money laundering  
24 or terrorist financing, would compel lawyers to disclose confidential information to  
25 government officials or otherwise compromise the lawyer-client relationship or the  
26 independence of the bar; and  
27

28 (2) will continue to review the Model Rules of Professional Responsibility and evaluate  
29 whether the rules permitting, in appropriate circumstances, disclosure of confidential  
30 information should be modified to permit disclosure of information demonstrating the  
31 clear intent of a client to commit criminal acts such as money laundering; and  
32

33 (3) urges bar associations and law schools to undertake education efforts to ensure that  
34 lawyers are informed regarding the scope of money laundering laws and the anti-money  
35 laundering requirements that apply to lawyers to safeguard the profession from being  
36 used to facilitate money laundering or terrorist financing activity.

This report with recommendation was received after the May 7 filing deadline and therefore has not been reviewed by the Committee on Rules and Calendar. Pursuant to §45.5 of the House Rules of Procedure, this late report will be considered by the House if the Committee on Rules and Calendar recommends a waiver of the time requirement and the recommendation is approved by a two-thirds vote of the delegates voting.

**ADOPTED**

**AMERICAN BAR ASSOCIATION  
TASK FORCE ON GATEKEEPER REGULATION AND THE PROFESSION  
SECTION OF REAL PROPERTY, TRUST AND ESTATE LAW**

**REPORT TO THE HOUSE OF DELEGATES**

**RECOMMENDATION**

1 RESOLVED, That the American Bar Association supports all reasonable and necessary efforts  
2 of the United States government and the international community to combat money laundering  
3 and terrorist financing activity in the international financial system;  
4

5 FURTHER RESOLVED, That the American Bar Association urges that the regulation of those  
6 involved in the formation of business entities within the states and territories of the United States  
7 should remain a matter of state and territorial law and state sovereign prerogative, with a  
8 minimum of federal governmental regulation;  
9

10 FURTHER RESOLVED, That the American Bar Association urges Congress to refrain from  
11 enacting legislation that would regulate lawyers in the formation of business entities and to defer  
12 to the states as they consider amendments to the Model Business Corporation Act, Uniform  
13 Partnership Act, Uniform Limited Partnership Act, Uniform Limited Liability Company Act, and  
14 Uniform Limited Cooperative Association Act (collectively, the “Entity Paradigm Laws”)   
15 proposed by the American Bar Association, the National Conference of Commissioners on  
16 Uniform State Laws, and others;  
17

18 FURTHER RESOLVED, That the American Bar Association urges that the manner in which  
19 lawyers conduct client due diligence for purposes of rendering legal services and the manner in  
20 which record or beneficial ownership of business entities is documented, verified, and made  
21 available to law enforcement authorities, not conflict with the ethical requirements and  
22 regulations imposed by state authorities on the legal profession, be risk-based, and take into  
23 account:  
24

25 (1) the actual risk of money laundering and terrorist financing in the formation of  
26 business entities; and  
27

28           (2) the burdens that such requirements or regulations might impose on state and territorial  
29 authorities, those involved in the formation of such entities, and the bona fide investment  
30 community; and

31  
32 FURTHER RESOLVED, That the American Bar Association urges state and local bar  
33 associations, and other appropriate constituencies within the legal profession, with the assistance  
34 of the ABA Task Force on Gatekeeper Regulation & the Profession, to develop appropriate  
35 guidance on adopting voluntary risk-based approaches to client due diligence that will inform  
36 legal professionals of the risks of money laundering [and terrorist financing](#), and assist them in  
37 taking appropriate steps for compliance with anti-money laundering and anti-terrorist financing  
38 legal requirements.

# **VOLUNTARY GOOD PRACTICES GUIDANCE FOR LAWYERS TO DETECT AND COMBAT MONEY LAUNDERING AND TERRORIST FINANCING**

A collaborative effort of representatives of the American Bar Association (“ABA”) Task Force on Gatekeeper Regulation and the Profession, the ABA Section of Real Property, Trust and Estate Law, the ABA Section of International Law, the ABA Section of Business Law, the ABA Section of Taxation, the ABA Criminal Justice Section, the American College of Trust and Estate Counsel, the American College of Real Estate Lawyers, the American College of Mortgage Attorneys, and the American College of Commercial Finance Lawyers.

These organizations have not necessarily formally endorsed or approved this paper, and this Guidance should not be viewed as representing the policy of any of these organizations.

*[Insert date]*



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## APRL'S FIFTH INTERNATIONAL MEETING AMSTERDAM, THE NETHERLANDS

**Tuesday, May 6, 2008** 1:45 p.m.

### ***Risk Management and Regulatory Compliance in Multi-National, National and Local Law Firms: A Comparison of American and European Approaches in Different Practice Settings***

**Kevin P. McGoff, Co-Chair**, Bingham McHale, LLP, Indianapolis, IN

**Sarah Diane McShea, Co-Chair**, Law Offices of Sarah Diane McShea, New York, NY

**James B. Kobak, Jr.**, Hughes, Hubbard & Reed, LLP, New York, NY

**Hilary S. Foulkes**, Skadden, Arps, Slate, Meagher & Flom, LLP, Frankfurt

**Wednesday, May 7, 2008** 2:00 p.m.

### ***International Money Laundering and The Corrupt Practices Act***

**James Paul, Chair**, Partner and General Counsel, Clifford Chance US LLP, New York, NY

**Chris Andrews**, Director, Risk Management, Clifford Chance, LLP, London

This Panel will examine the U.K.'s money laundering statute, the regulations applying the law to solicitors, and other anti-terrorism laws in various jurisdictions. The panelists will compare the reporting duties created under these laws with lawyers' duties to preserve client confidences and, better yet, discuss how to comply.

Federation of Law Societies  
of Canada



Fédération des ordres professionnels  
de juristes du Canada

## Model Rule on Client Identification and Verification Requirements

*Adopted by Council of the Federation of Law Societies of Canada  
as of March 20, 2008*

### Definitions

1. In this Rule,  
“financial institution” means
  - (a) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada or a bank to which the *Bank Act* applies,



## HM Treasury approves Law Society AML practice note

Thursday 29 October 2009

HM Treasury has formally approved the Law Society's updated anti-money laundering practice note.

The SRA and the courts will now need to have regard to the practice note when considering whether a solicitor's conduct was reasonable in relation to allegations of:

- money laundering
- failing to report suspected money laundering and
- failure to comply with the requirements of the Money Laundering Regulations 2007.

[Read the updated and approved practice note](#)



## Anti-money laundering

### Chapter 2 – the risk-based approach

#### Contents

- 2.1 General comments
- 2.2 Application
- 2.3 Assessing your firm's risk profile
- 2.4 Assessing individual risk

#### 2.1 General comments

The possibility of being used to assist with money laundering and terrorist financing poses many risks for your firm, including:


- criminal and disciplinary sanctions for firms and individual solicitors
- civil action against the firm as a whole and individual partners
- damage to reputation leading to a loss of business

These risks must be identified, assessed and mitigated, just as you do for all business risks facing your firm. If you know your client well and understand your instructions thoroughly, you will be better placed to assess risks and spot suspicious activities. Applying the risk-based approach will vary between firms. While you can, and should, start from the premise that most of your clients are not launderers or terrorist financiers, you must assess the risk level particular to your firm and implement reasonable and considered controls to minimise those risks.


No matter how thorough your risk assessment or how appropriate your controls, some criminals may still succeed in exploiting you for criminal purposes. But an effective, risk-based approach and documented, risk-based judgements on


## Committees - Money Laundering - Documents attached

### Documents

 [Commission report on the impact of the second EU money laundering Directive on the legal profession](#) [2006-12-19]



### Judgements

 [Judgments of the Court of Justice of the European Communities, judgments and orders of the Court of First Instance concerning the legal profession](#) [2009-03-04]



 [Decision from the French Conseil d'Etat 10 April 2008](#) [2008-04-10] 



 [Decision from Belgian Constitutional Court 23 January 2008](#) [2008-01-23] 


 [Decision from the Court of Justice 26 June 2007](#) [2007-06-26] 

 [Decision of the Belgian Cour d'Arbitrage of 13 July 2005 to refer a question to the European Court of Justice](#) [2005-07-13] 



### Position Papers

 [CCBE comments on the Commission Staff Working Document - The application to the legal profession of Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering](#) [2007-02-13] 


 [CCBE position on the requirements on a lawyer to report suspicions of money laundering and on the European Commission Proposal for a Third EU Directive on Money Laundering.](#) [2004-11-04] 

 [Response from the Council of the Bars and Law Societies of the European Union \(CCBE\) to the Home Office Consultation on The Proceeds of Crime Act 2002 & The Money Laundering Regulations 2003: Obligations of Accountants to Report Money Laundering](#) [2004-09-30]

 [Overview of the implementation of the 2001 money laundering Directive](#) [2004-03-31]

 [Joint statement by the international legal profession to the FATF on the fight against money-laundering](#) [2003-04-03] 

 [CCBE Response to the Financial Action Task Force\(FATF\) Consultation Paper.](#) [2002-09-11] 

 [Action points for EU Bars and Law Societies on the implementation of the Money Laundering Directive.](#) [2002-01-31]



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## Anti-Money Laundering and Counter-Terrorism Financing Reforms

The Federal Government is currently engaged in reforming Australia's Anti-Money Laundering/Counter Terrorism Financing (AML/CTF) regime.

The main thrust of the reforms is to impose customer due diligence, reporting, record keeping and training obligations on entities that provide services which may facilitate money laundering.

Tranche one of the reforms aims to target the financial sector and has been largely implemented through the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* with the final set of obligations under that Act commencing on 12 December 2008. The Law Council expressed concern to the Government that because of the broad drafting of the legislation some services provided by lawyers may have been covered by Tranche one. Consequently, the Government made an Exemption Rule covering lawyers in relation to "designated remittance services" and is considering a rule defining an "exempt legal practitioner service" to exclude any other inadvertent coverage of lawyers in tranche one.

Tranche two of the reforms aims to target a range of other sectors including lawyers. Tranche two legislation is currently under development by the Government which has committed to consultation with the Law Council in relation to the legislation.

From the outset of these reforms the Law Council has been proactively engaged in lobbying the Government to ensure that any obligations imposed on legal practitioners are consistent with existing professional obligations and not unduly onerous.

The Law Council has submitted that the reforms should be precisely targeted so that they only capture the provision of services which are preparatory to or give effect to transactions through which money may be laundered. The reforms should not target legal services in general, nor low risk services or customers.



# LCA Brief

October 2008

## Anti-Money Laundering and Counter-Terrorism Financing

The Federal Government is currently engaged in reforming Australia's AML/CTF regime. The aim of the reforms is to bring Australia into compliance with the standards published by the Financial Action Task Force (FATF), an international inter-governmental body that develops and monitors policies to combat money laundering and terrorist financing.

The main thrust of the reforms, which the Government has opted to pursue in two stages, is to impose customer due diligence, reporting, record keeping and training obligations on entities which provide services which may facilitate money laundering.

### Stage One: The AML/CTF Act 2006

The *Anti-Money Laundering/Counter Terrorism Financing (AML/CTF) Act* was passed in December 2006 and is being phased in over two years. It represents stage one of the Government's reform agenda. It is aimed at the financial sector, the gambling sector and bullion dealers. Although it is not directly aimed at legal practitioners, they are not specifically

ANTI-M



## What is the Oct. 2008 FATF Risk Based Assessment (RBA) Lawyer Guidance?

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- This is one of many different “RBAs”
- Applies to lawyers who help clients:
  - buy or sell real estate
  - create, operate, or manage legal persons [corps]
  - establish or manage trusts
- Guidelines for doing the required client due diligence (“know your client” or KYC rules)
- Recordkeeping guidelines
- For now, it agrees to disagree re suspicious transaction reporting (STR) obligations
- It was negotiated by government and private sector representatives



F A T F ♦ G A F I

Financial Action Task Force

Groupe d'action financière

RBA GUIDANCE FOR LEGAL PROFESSIONALS 23 October 2008

**SECTION ONE: USING THE GUIDANCE PURPOSE OF THE RISK-BASED APPROACH .....4**

Chapter One: Background and Context .....4

Chapter Two: The Risk-Based Approach – Purpose, Benefits and Challenges .....8

Chapter Three: FATF and the Risk-Based Approach .....11

**SECTION TWO: GUIDANCE FOR PUBLIC AUTHORITIES .....15**

Chapter One: High-level principles for creating a risk-based approach .....15

Chapter Two: Implementation of the Risk-Based Approach .....19

**SECTION THREE: GUIDANCE FOR LEGAL PROFESSIONALS ON IMPLEMENTING A RISK-BASED APPROACH .....25**

Chapter One: Risk Categories .....25

Chapter Two: Application of a Risk-Based Approach .....31

Chapter Three: Internal Controls .....34

ANNEXES ..... 36

ANNEX 1..... 36

A. Financial Action Task Force Documents .....36

B. Legislation/and Court Decisions .....36

C. Links to Information on the Supervisory Program in Certain Countries .....36

D. Guidance on the Risk-based Approach ..... 37

E. Other sources of information to help assist countries’ and legal professionals’ risk assessment of countries and cross-border activities .....37

ANNEX 2..... 39

ANNEX 3..... 41



## FATF (Home)

### Publications

Annual Reports  
FATF Standards  
NCCT Reports  
Methods & Trends

### Other documents

About the FATF

Key Topics

News & Events

Resources & Links

Publications & Documents > Other Documents >

## Other documents

1 2 | **3** | 4 | next > last >>

### [Guidance for Money Service Businesses - Risk-Based Approach](#)

pdf,673Kb,English | [View long abstract](#)

03-Jul-2009

The Guidance aims to set out the key elements of an effective risk-based approach and identifies the types of issues that both public authorities and financial institutions may wish to consider when applying a risk-based approach to combating money laundering and terrorist financing.

### [RBA Guidance for Casinos](#)

pdf,270Kb,English | [View long abstract](#)

28-Oct-2008

In October 2008, the FATF adopted Guidance on the Risk-Based Approach (RBA) to combating Money Laundering and Terrorist Financing for casinos. This Guidance was developed by the FATF in close consultation ...

#### Also available:

- [L'approche basée sur le risque pour les casinos \(document en anglais uniquement\) . pdf.](#) (French)

### [RBA Guidance for Legal Professionals](#)

pdf,293Kb,English | [View long abstract](#)

28-Oct-2008

In October 2008, the FATF adopted Guidance on the Risk-Based Approach (RBA) to Combating Money Laundering and Terrorist Financing for Legal Professionals. This Guidance was developed by the FATF in close ...

#### Also available:

## Quick Links

40 Recommendations

9 Special Recommendations

Methodology

Handbook for countries and assessors

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Site Map

## FATF Annual Report



### Highlights from the past year

The Annual Report provides an overview of the work carried out by the FATF during 2008-2009 and highlights the key outcomes that have been achieved during this year.

## FATF Newsletter: April 2009



- [L'approche basée sur le risque pour les professions légales \(document disponible en anglais uniquement\) , pdf. \\_ \(French\)](#)

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### **Mutual Evaluation - Hong Kong, China**

English | [View long abstract](#)

21-Jul-2008

The Financial Action Task Force (FATF) has completed an assessment of the implementation of anti-money laundering and counter-terrorist financing (AML/CFT) standards in Hong Kong, China.

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### **Mutual Evaluation of the Russian Federation**

English | [View long abstract](#)

20-Jun-2008

The Financial Action Task Force (FATF), the Eurasian Group (EAG) and Moneyval have jointly assessed the anti-money laundering and counter-terrorist financing measures of the Russian Federation for compliance with the FATF standards.

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### **RBA Guidance for Trust and Companies Service Providers (TCSPs)**

pdf,251Kb,English | [View long abstract](#)

17-Jun-2008

This Guidance on the Risk-Based Approach to combating Money Laundering and Terrorist Financing was developed by the FATF in close consultation with representatives of the trust and company service providers ...

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### **RBA Guidance for Accountants**

pdf,259Kb,English | [View long abstract](#)

17-Jun-2008

This Guidance on the Risk-Based Approach to combating Money Laundering and Terrorist Financing was developed by the FATF in close consultation with representatives of the trust and company service providers ...

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### **RBA Guidance for Real Estate Agents**

pdf,234Kb,English | [View long abstract](#)

17-Jun-2008

This Guidance on the Risk-Based Approach to combating Money Laundering and Terrorist Financing was developed by the FATF in close consultation with representatives of the real estate industry. The Guidance ...

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### **RBA Guidance for Dealers in Precious Metal and Stones**

#### **New Zealand - Report**

#### **Other Mutual Evaluation reports**



#### **Money Laundering and Terrorist Financing in the Securities Sector**

#### **FATF-XXI Calendar of Events**

Key events for July 2009 to June 2010.



#### **Keep informed**

RSS feed for the FATF: The latest news from FATF!



## Is the Oct. 2008 FATF Lawyer Guidance an example of Transformative Law?

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- My impression: US attys know less about the FATF than other attys
- Will this change with US implementation?
  - Kevin Shepherd is involved in these efforts
- In my view, this is one of many influential international developments
- We know very little about this new kind of “law making”



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## U.S. Government and FATF

[< BACK](#)

The Financial Action Task Force (FATF) is an international policy-making and standard-setting body dedicated to combating money laundering and terrorist financing. Created by the G-7 in 1989 in response to a growing concern about money laundering, the FATF's mission is to monitor members' progress in implementing necessary measures, review money laundering and terrorist financing techniques and counter-measures, and promote the adoption and implementation of appropriate measures globally.

Members of the TFI staff chair the U.S. delegation to the FATF, and it has been an important organization resource in centralizing efforts to combat money laundering and terrorist financing. The delegation, which also includes members of the Departments of State and Justice, the National Security Council, and federal financial regulators, develops U.S. positions, represent the U.S. at FATF meetings, and implement actions domestically to meet the U.S. commitment to the FATF.

### [Financial Action Task Force \(FATF\)](#)

# **VOLUNTARY GOOD PRACTICES GUIDANCE FOR LAWYERS TO DETECT AND COMBAT MONEY LAUNDERING AND TERRORIST FINANCING**

A collaborative effort of representatives of the American Bar Association (“ABA”) Task Force on Gatekeeper Regulation and the Profession, the ABA Section of Real Property, Trust and Estate Law, the ABA Section of International Law, the ABA Section of Business Law, the ABA Section of Taxation, the ABA Criminal Justice Section, the American College of Trust and Estate Counsel, the American College of Real Estate Lawyers, the American College of Mortgage Attorneys, and the American College of Commercial Finance Lawyers.

These organizations have not necessarily formally endorsed or approved this paper, and this Guidance should not be viewed as representing the policy of any of these organizations.

*[Insert date]*



## To Read More About It:

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- Financial Action Task Force (FATF)  
<http://www.fatf-gafi.org>
- FATF Risk-Based Approach Guidance for Legal Professionals (Oct. 2008),  
<http://www.fatf-gafi.org/dataoecd/5/58/41584211.pdf>
- U.S. Treasury & FATF,  
[http://treas.gov/offices/enforcement/usg\\_and\\_fatf.shtml](http://treas.gov/offices/enforcement/usg_and_fatf.shtml)  
[http://treas.gov/offices/enforcement/money\\_laundering.shtml](http://treas.gov/offices/enforcement/money_laundering.shtml)
- ABA Task Force on Gatekeeper Regulation and the Profession [includes many useful links],  
<http://www.abanet.org/crimjust/taskforce/home.html>
- ABA, Resolution#104 Regarding the FATF Gatekeeper Regulation (Feb. 2003),  
<http://www.abanet.org/leadership/recommendations03/104.pdf>
- ABA Resolution #300 (August 2008),  
[http://www.abavideonews.org/ABA531/pdf/hod\\_resolutions/300.pdf](http://www.abavideonews.org/ABA531/pdf/hod_resolutions/300.pdf)



# To Read More About It – Part 2:

## **Bar Association Resolutions and Guidance:**

- Joint statement by the international legal profession to the FATF (April 2003),  
[http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/signed\\_statement\\_0301\\_1183723072.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/signed_statement_0301_1183723072.pdf)
- Fed. L. Soc. Canada, Model “Know Your Client” Rule,  
[http://www.flsc.ca/en/pdf/Federation\\_Model\\_Rule\\_080327.pdf](http://www.flsc.ca/en/pdf/Federation_Model_Rule_080327.pdf)
- UK Money Laundering and “Know Your Client” Rules,  
<http://www.lawsociety.org.uk/productsandservices/practicenotes/aml/453.article>
- EU Money Laundering Directives & other EU initiatives,  
[http://www.ccbe.eu/index.php?id=94&id\\_comite=20&L=0](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/initiatives/aml-counter-terrorism-reforms.cfm>