

A global issue

The 2012 Financial Action Task Force (FATF) Recommendations set new guidelines for the information that legal entities, including corporations, should hold and maintain about themselves. These recommendations are already filtering into new regulations across the globe, with significant consequences for all corporate treasurers.

Globalisation and the greater focus on accessing and managing cash amid an ever-increasing volume of regulations have led to the responsibilities of the corporate treasurer increasing exponentially.

More and more boards are relying on corporate treasury teams to understand and interpret trading regulations, such as the European Market Infrastructure Regulation and the Dodd-Frank Act.

With the FATF Recommendations, this scope could extend to regulations governing anti-money laundering as well – making these yet another set of regulations that corporate treasurers need to juggle.

Key points of the 2012 FATF Recommendations

One consequence of the 2012 FATF Recommendations for corporate treasurers is that organisations need to maintain and make available to a registry, operated by the authorities in a particular country, all the basic information set out below.

1. The organisation's name and proof of incorporation, as well as details of its legal form and status, the address of its registered office, its

WHY DO THE FATF RECOMMENDATIONS MATTER TO CORPORATE TREASURERS ACROSS THE PLANET? NEIL JEANS EXPLAINS



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- basic regulating powers (for example, memorandum and articles of association), and a list of its directors; and
2. A register of shareholders or members, which contains the names of the shareholders and members, the number of shares held by each shareholder, and details of the categories of shares (including the nature of the associated voting rights).

Developments across the world

Corporate treasurers need to know what impact the FATF Recommendations will have

in different regions, since they might need to interpret what they mean for their organisation at an HQ and/or regional level.

Europe

The Fourth Money Laundering Directive (4MLD), which largely mirrors the 2012 FATF Recommendations, has passed its final legislative hurdle and will become law across EU member states in two years, following a vote in the European Parliament.

This directive has consequences for all

organisations within the EU. The regulated sector (ie financial institutions) will be required to place greater emphasis on effectively identifying and mitigating risk, and there are key requirements around holding legal entity identity data, including beneficial ownership for companies.

Article 29 of the 4MLD incorporates the guidance in the FATF Recommendations as follows:

- Member states shall ensure that corporate or legal entities established within their territory obtain and hold adequate, accurate and current information on their beneficial ownership.
- Member states shall ensure that the necessary information about a legal entity can be accessed in a timely manner by competent authorities and by 'obliged entities' (entities covered by the anti-money-laundering legislation and regulation, for example, banks and financial institutions).

These requirements are aimed at legal entities domiciled within EU member states.

Australia

Australia has been one of the first countries to move its national law into alignment with the FATF Recommendations. The Australian Transaction Reports and Analysis Centre amended its anti-money laundering/combatting the financing of terrorism rules in June 2014 to include, *inter alia*, the

collection, monitoring and maintenance of:

- Information about beneficial owners; and
- Details of the management and organisational structure of an entity (including names and positions held).

These requirements extend to all legal entities and effectively mean that they must maintain their beneficial ownership information and make it available when required.

US

In the US, the Financial Crimes Enforcement Network's (FinCEN's) proposed rules document indicates a move towards more stringent customer due diligence requirements, including more information about beneficial ownership.

Although the document does not imply that legislation is imminent, it could be argued that FinCEN is moving in the direction of requiring legal entities to hold and maintain beneficial ownership information.

Rest of the world

Other countries are also moving to amend their

since they will be obligated, by law, to collect, verify, maintain, store and deliver relevant, up-to-date information about themselves on an ongoing basis.

The onus is on corporates to provide up-to-date information and to alert their financial institution to any relevant changes as they occur. These requirements have significant consequences for corporate treasurers, since it is likely that a large part of the responsibility to comply with them will fall on their already-burdened shoulders.

Moreover, each country will transpose the recommendations into its own national law, which could lead to banks and financial institutions interpreting them differently, with many erring on the side of caution and requesting more information than is strictly necessary.

With no consistent legislative 'standard', organisations will need to provide different sets of information for each financial institution that they do business with, leading to frustration and a significant duplication of effort.

There is also the concern over how corporate legal

financial institutions and corporates, will need to understand the impact of additional regulations. For the FATF Recommendations, the onus will be on corporates to gather and maintain all necessary information about their organisations and, furthermore, to keep their financial institutions updated. This task will be both time-consuming and repetitive, delaying the pace of business and taking the focus away from other priorities.

This is a truly global issue. Those regions where there is currently no legal requirement for this enhanced information gathering and reporting can expect to be regulated in due course.

Corporate treasurers must weigh up the advantages of being early adopters of these expected regulations against the risk of the proposed legislation changing. Early adoption does offer many benefits: last-minute compliance projects can be difficult to implement if the requirements turn out to be more complex than expected and, furthermore, early adopters are often afforded the opportunity

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legislation in ways already seen in Europe, Australia and the US. It is clear that information about beneficial ownership is high on the agenda in many countries around the globe as a result of the FATF changes, as well as tax transparency and corruption initiatives at an intergovernmental level.

What is the impact for corporate treasurers?

The proposals and developments outlined above will have significant consequences for corporates,

entity information will be stored and made available to the correct individual and/or organisation. The current methods of delivering highly confidential information via email or post are vulnerable to interception. Furthermore, organisations have no control over who can access their confidential information once it has been delivered.

Conclusion

As the complexity and number of regulations continues to grow, all stakeholders, including

to influence the design of new compliance solutions.

Late adopters run the risk of professional advisers being fully booked in the run-up to a compliance deadline.

The consequences of non-compliance are well documented and include hefty fines and, often, severe reputational damage. In order to stay ahead of the regulatory curve, it would be prudent for corporate treasurers to view these expected changes as a catalyst to amend current processes and put procedures in place now to collate,

ABOUT THE FATF

The Financial Action Task Force (FATF) is an intergovernmental organisation that was established in July 1989 as a G7 initiative to develop policies to combat money laundering.

The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

These standards are set through the task force's recommendations. The FATF also monitors the progress of its members in implementing necessary measures in response to the recommendations. There are 34 member jurisdictions and two regional organisations within the FATF.

verify and maintain their confidential information.

As the FATF Recommendations continue to filter into new regulations that will govern the daily duties of compliance officials across the globe, it is time for forward thinking and efficiency to take centre stage. ♦

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