

FIU Operational Effectiveness – Findings and Observations from the Asian Development Bank Perspective

Abstract

Purpose – This paper examines the specific findings on the level of technical compliance and operational effectiveness of the national financial intelligence units (FIUs) in 55 members of the Asian Development Bank under the mutual evaluations carried out by the Financial Action Task Force and its regional bodies (also referred to as FATF-style regional bodies) in connection with the current international standard for combating money laundering and terrorism financing (i.e. the FATF Recommendations). It also provides three observations for enhancing the use of financial information and intelligence.

Design/methodology/approach – Review of published reports on country mutual evaluations from the Financial Action Task Force and its regional bodies.

Findings – A majority of the FIUs from these 55 members of the Asian Development Bank were rated around the “mid-range” under the methodology used for the mutual evaluations (i.e. “compliant and substantially effective”, “largely compliant and substantially effective”, “compliant and moderately effective” and “largely compliant and moderately effective”). Observations were also provided on cross-cutting areas for enhancing the use of financial information and intelligence.

Originality/value – FIU operations are key to combating money laundering and terrorism financing, and this examination of the level of technical compliance with the international standard and related operational effectiveness provides an useful account of current developments in this space and suggestions for further actions by relevant national authorities and provision of country technical assistance and support by donor partners.

Keywords – Combating money laundering and terrorism financing, FATF, FIU.

Paper type – General review.

1. Introduction

A key element in the global fight against money laundering and terrorism financing is the assessment and mutual evaluation of countries’ level of compliance with the international standard – the Financial Action Task Force Recommendations (FATF Recommendations)¹. Equally important is the publication and transparent disclosure of the evaluation reports and country ratings.

In connection with the current FATF Recommendations, approximately 126 country mutual evaluations have been completed by FATF and its regional bodies by January 2024.² Delivered as a keynote address at the Cambridge International Symposium on Economic Crime on 4 September 2023, this paper is focused on the published reports of 55 members of the Asian Development Bank (ADB).³ And taking into account the notion of integrity as the overarching theme for the 40th anniversary of the symposium, it examines the specific findings on the technical compliance and operational effectiveness of the national financial intelligence units (FIUs) in these ADB

members under Recommendation 29 and Immediate Outcome 6 of the FATF Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems (FATF Methodology)⁴. The paper will also share three observations for enhancing the use of financial information and intelligence.

2. FIU Assessments

Based on the FATF Methodology, for each of the 40 FATF Recommendations, countries are rated “compliant”, “largely compliant”, “partially compliant” or “non-compliant” for their level of technical compliance. They are also rated “high”, “substantial”, “moderate” or “low” for their level of effectiveness for each of the 11 Immediate Outcomes.

In relative terms, countries are more likely to attain a higher level of technical compliance for the FATF Recommendations. Such as through establishing a legal framework that meets the requirements of the international standard. This is compared with a higher degree of effectiveness given the practical challenges of achieving operational outcomes. Such as in the actual prosecution and conviction of money laundering.

When the international standard is considered in connection with the FIUs in the 55 ADB members with published reports. And these members range from developing member countries (DMCs) across Asia and the Pacific, such as Bangladesh and Fiji, to non-regional members, such as the UK and the US. A few of these members were rated at the top end of the spectrum, and a number of the DMCs require further work in improving their handling and application of financial information and intelligence.

Moreover, 39 of the 55 ADB members – or 71% of the total number of FIUs in these countries – were rated around what could be considered the midrange – “compliant and substantially effective”, “largely compliant and substantially effective”, “compliant and moderately effective” and “largely compliant and moderately effective”.

What it means is that these members demonstrate that firstly, the FIUs are properly established under national legal and regulatory frameworks. Secondly, they are able to receive cash and suspicious transaction reporting from a broad range of financial institutions and other reporting entities. Thirdly, they are able to analyze such information and share reports and additional information with law enforcement agencies for investigation and further action. Moreover – given the integrity theme for the symposium – such FIUs have systems in place to safeguard the confidentiality of the information they hold. They are also operationally independent in the use – and avoidance of misuse – of such confidential information.

In other words, these FIUs “do the basics well”.

3. Furthering Policy Objectives

To further advance policy objectives in the FATF Recommendations – and the important United Nations instruments⁵ that provide the foundation for the international standard – this paper has the following three observations.

Firstly, a cross-cutting observation from the reports is that whilst confidential reports and additional information from the FIUs are used by national law enforcement agencies for their investigation of predicate offences, such as fraud and tax evasion. There is less use of such information for money laundering investigations, including when the predicate offences were committed abroad and proceeds of crime being laundered domestically (which is an important money laundering risk and vulnerability for both major financial capitals and developing countries). And less parallel financial investigations.

It suggests that the current systems in these jurisdictions need to go beyond the pursuit of traditional crimes. It means addressing money laundering on a standalone basis – and not just self-laundering by those who had committed crimes – and going after the proceeds of crime.

A good example may be Spain where the published mutual evaluation report indicates that: *“Spain demonstrates many of the characteristics of an effective system, particularly in relation to its ability and success in investigating and prosecuting ML at all levels, especially cases involving major proceeds-generating offences. The authorities regularly pursue ML as a standalone offence or in conjunction with the predicate offence, third party ML (including by lawyers who are professional money launderers), self-laundering and the laundering of both domestic and foreign predicates. It is standard procedure to undertake a parallel financial investigation, including in cases where the associated predicate offences occurred outside Spain.”*⁶

Secondly, also a cross-cutting observation, is that the use of confidential information from the FIUs can be enhanced by systematic and secured information sharing amongst the financial institutions, regulators and law enforcement agencies. It is sometime referred to as “financial information sharing partnerships”. This is different from confidential information sharing between the FIU and other FIUs, for example, or amongst regulators.

The idea is to involve representatives from key reporting entities (such as major banks), the FIU, the financial regulator and law enforcement agencies. And have a structured arrangement for information exchange amongst these major players for money laundering and other investigation. It can also help improve the nexus between regulatory supervision and law enforcement priorities. A useful analysis on lessons and good practices (using approaches in the UK, the US, Australia, Hong Kong, Singapore and Canada) is the paper entitled *“The Role of Financial Information-Sharing Partnership in the Disruption of Financial Crime”* from the Royal United Services Institute for Defence and Security Studies.⁷

For example, the study looked at the Fintel Alliance in Australia, which is led by AUSTRAC, one of the highly effective FIUs: *“The Fintel Alliance consists of: the Operations Hub at the AUSTRAC premises in Sydney and Melbourne, where industry, FIU and other government analysts are co-located and work collaboratively on investigation cases.... There were seventeen inaugural AUSTRAC partners, including AUSTRAC as the supervisor and FIU, six banks, a major digital money transmitter, a money service bureau and multiple federal and state law enforcement agencies..... Employees of all the organizations in the Fintel Alliance work alongside each other in AUSTRAC premises, with private sector participants formally seconded to the FIU and vetted through the Australian government’s security clearance system.....”*⁸

Thirdly, an important dimension in the evolving global context is virtual assets and virtual assets service providers. Notwithstanding regulatory efforts in major jurisdictions in recent years, the area remains quite complex given the technologies involved with the products and transactions (which are also fast moving and technologically dynamic) – and even basic legal and jurisdictional questions.

FATF has been proactive with the revision of Recommendation 15 in 2018 to target virtual assets and virtual asset service providers. And the adoption of the related Interpretative Note in 2019.⁹ Since then, it has carried out implementation reviews of Recommendation 15 every 12 months and the latest report was issued in June 2023.¹⁰ These reviews and reports provide helpful information on the regulation of virtual assets and their service providers in the FATF space. They also provide important insights into the challenges that the financial services industry, regulators and law enforcement agencies grapple with. From basic customer due diligence and understanding of “crypto elements” in transactions - to “crypto transactions” themselves.

More specifically, the June 2023 report indicates that based on 98 mutual evaluations carried out using the revised Recommendation 15, most jurisdictions (73 out of 98 jurisdictions or around 75% of the jurisdictions evaluated) are only “partially compliant” or “non-compliant” with the FATF requirements. It indicates that: *“Countries continue to struggle with several fundamental requirements, including conducting a risk assessment, developing a regime for VASPs (i.e. registering/licensing or prohibiting VASPs) and implementing the Travel Rule..... Many jurisdictions seemingly do not know where to start when it comes to regulating the VA sector for AML/CFT. For example, while the authorities may be aware of the FATF requirement to carry out a risk assessment, they may not know what information, data or methodology to use for this analysis. This is particularly the case for low capacity jurisdictions and/or those with shortcomings in general AML/CFT regulation and supervision.”*¹¹ These issues also compound the complexities in financial information and FIU work involving virtual assets and virtual assets service providers.

In parallel, FATF has established its Virtual Assets Contact Group to support compliance with the issuance of guidance and Q&A documents, training and outreach. Authorities should continue to pay attention to FATF materials in this evolving space and seek technical assistance (from multilateral or bilateral donors, including the International Monetary Fund¹², World Bank¹³ and ADB¹⁴), as appropriate, through the coordination provided via the FATF-styled regional bodies^{15,16}.

¹ [FATF Recommendations \(fatf-gafi.org\)](https://www.fatf-gafi.org/)

² [Mutual Evaluations \(fatf-gafi.org\)](https://www.fatf-gafi.org/)

³ ADB is a multilateral development bank that is committed to achieving a prosperous, inclusive, resilient and sustainable Asia and the Pacific whilst sustaining its efforts to eradicate extreme poverty. Established in 1966, it is owned by 68 members, including 49 from the region. See [About ADB | Asian Development Bank](#) For a comprehensive treatment of multilateral development banks, including the World Bank, see A Sureda, ‘The Law

Applicable to the Activities of International Development Banks' in *Recueil Des Cours - Collected Courses of the Hague Academy of International Law* (Martinus Nijhoff Publishers 2004).

⁴ [FATF Methodology for assessing compliance with the FATF Recommendations and the effectiveness of AML/CFT systems \(fatf-gafi.org\)](#)

⁵ The international legal framework comprises United Nations conventions, namely the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the International Convention on the Suppression of the Financing of Terrorism (1999), the Convention against Transnational Organized Crime (2000) and the Convention against Corruption (2003) as well as United Nations Security Council resolutions (adopted pursuant to Chapter VII of the United Nations Charter) on targeted financial sanctions related to terrorism and terrorist financing (namely SC Res 1267 [1999] and its successor resolutions, and SC Res 1373 [2001]) and targeted financial sanctions related to prevention and disruption of the financing of proliferation of weapons of mass destruction (namely, SC Res 1718 [2006], SC Res 1874 [2009], SC Res 2087 [2013], SC Res 2094 [2013], SC Res 2270 [2016], SC Res 2321 [2016] and SC Res 2356 [2017] and their successor resolutions). See the Interpretative Notes for Recommendations 3, 5, 6 and 7 in the FATF Methodology. See also C Png, "International Legal Sources I – the United Nations Conventions" and "International Legal Sources II – the United Nations Security Council Resolutions" in W Blair, R Brent and T Grant (eds) *Banks and Financial Crime – The International Law of Tainted Money* (2nd Edn, Oxford University Press 2017), pages 15 to 32 and pages 33 to 58, respectively.

⁶ [MER Spain.indb \(fatf-gafi.org\)](#), page 15. Conclusion of the recent FATF plenary in October 2023 will also lead to relevant revisions of the FATF Recommendations in support of asset recovery and non-conviction-based confiscation, enabling countries to more effectively freeze, seize and confiscate criminal proceeds both domestically and through international cooperation. See [Outcomes FATF Plenary, 25-27 October 2023 \(fatf-gafi.org\)](#)

⁷ [201710_rusi_the_role_of_fisps_in_the_disruption_of_crime_maxwell_artingstall_web_4.2.pdf](#).

⁸ [201710_rusi_the_role_of_fisps_in_the_disruption_of_crime_maxwell_artingstall_web_4.2.pdf](#), page 16.

⁹ See the Interpretative Note for Recommendation 15 in the FATF Methodology.

¹⁰ [Virtual Assets: Targeted Update on Implementation of the FATF Standards \(fatf-gafi.org\)](#)

¹¹ [Virtual Assets: Targeted Update on Implementation of the FATF Standards \(fatf-gafi.org\)](#), page 10.

¹² [The Fight Against Money Laundering and Terrorism Financing \(imf.org\)](#)

¹³ [Financial Market Integrity \(worldbank.org\)](#)

¹⁴ [Law and Policy Reform Program: Effective Legal Systems for Sustainable Development \(adb.org\)](#) For an example of an ADB technical assistance program, see C Png, M DeFeo and T Hicks, "Design and Implementation of a Capacity Development Program – Experience with Combating Money Laundering and Financing of Terrorism in Mongolia" (2015) Volume 18, *Journal of Money Laundering Control*, pages 488 to 495.

¹⁵ The FATF-styled regional bodies are the Asia/Pacific Group on Money Laundering (APG), the Caribbean Financial Action Task Force (CFATF), the Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL), the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG), the Eurasian Group (EAG), the Financial Action Task Force of Latin America (GAFILAT), the Intergovernmental Action Group Against Money Laundering in West Africa (GIABA), the Middle-East and North Africa Financial Action Task Force (MENAFATF) and the Task Force on Money Laundering in Central Africa (GABAC).

¹⁶ The views expressed in this paper are those of the author and do not necessarily reflect the views and policies of the Asian Development Bank, or its Board of Governors, or the governments they represent. The author wishes to express his gratitude for the research assistance of Gerrmai Mondragon from the Office of the General Counsel of the Asian Development Bank. The author also wishes to express his sincere appreciation to Professor Barry Rider for the very kind invitation to deliver a keynote address at the 40th anniversary of the Cambridge International Symposium on Economic Crime at Jesus College, Cambridge.