2: Equivalent jurisdictions

This guidance is issued to assist firms by setting out how they might approach their assessment of other jurisdictions, to determine whether they are 'equivalent'. Although it is not formal guidance that has been given Ministerial approval, it has been discussed with HM Treasury and reflects their input.

The guidance discusses jurisdictions where there may be a presumption of equivalence, and those where such a presumption may not be appropriate without further investigation. It then discusses issues that a firm should consider in all cases when coming to a judgement on whether a particular jurisdiction is, in its view, equivalent.

2.1 What is an "equivalent jurisdiction" and why does it matter?

The 3rd European Council Directive on prevention of the use of the financial system for the purpose of money laundering and terrorist financing (the money laundering directive), whilst setting out (in articles 6-9) the obligation on firms to carry out specific customer due diligence (CDD) measures, allows firms (article 11) to carry out simplified due diligence (SDD) in respect of other firms which are subject to the provisions of the directive, and to rely (article 16) on other firms that are subject to the provisions of the directive to carry out CDD measures on their behalf. The money laundering directive also extends these derogations to firms in third countries, in those jurisdictions where they are subject to legal obligations that are 'equivalent' to those laid down in the directive, and where they are supervised for compliance with those obligations.

The Money Laundering Regulations 2007 (the 2007 Regulations) implement the provisions of the money laundering directive into UK law. The 2007 Regulations provide (Regulation 13) that firms may apply SDD where the customer is itself a credit or financial institution which is subject to the requirements of the money laundering directive, or is situated in a non-EEA state which imposes requirements equivalent to those laid down in the money laundering directive. The Regulations also permit (Regulation 17) reliance on firms which carry on business in a non-EEA state which is subject to requirements equivalent to those laid down in the money laundering directive, and which are supervised for compliance with those requirements, to carry out CDD on the relying firm's behalf.

It should be noted that the basis for the exemption in the directive and the Regulations is focused on the provisions of the legislation in a particular jurisdiction, rather than what actually happens in practice (although firms have to be supervised for compliance with the relevant legislation). This applies to both EU Member States and non-EEA states which are "equivalent jurisdictions".

Countries that meet the provisions in Regulations 13 and 17 are described as "equivalent jurisdictions". UK firms therefore need to determine whether a particular jurisdiction is 'equivalent', in order that it may take advantage of the SDD derogation, and/or to determine whether they may rely, for the purposes of carrying out CDD measures, on firms situated in a non-EEA state.

However, 'equivalence' only provides an exemption from the application of CDD measures, in respect of customer identification. It does not exempt the firm from carrying out ongoing monitoring of the business relationship with the customer, nor from the need for such other procedures (such as monitoring) as may be necessary to enable a firm to fulfil its responsibilities under the Proceeds of Crime Act 2002.

Although the judgement on equivalence is one to be made by each firm in the light of the particular circumstances, senior management is accountable for this judgement – either to its regulator, or, if necessary, to a court. It is therefore important that the reasons for concluding that a particular jurisdiction is equivalent (other than those in respect of which a presumption of equivalence may be made) are documented at the time the decision is made, and that it is made on relevant and up to date data or information.

2.2 Categories of country

(a) Countries for which equivalence may be presumed

Jurisdictions where a presumption of equivalence may be made are:

- EU/EEA member states, through the implementation of the money laundering directive
- Countries on a list of equivalent jurisdictions issued by the EU, or by HMT

EU/EEA member states

Member States of the EU/EEA benefit de jure from mutual recognition through the implementation of the money laundering directive.

All Member States of the EU are required to enact legislation and financial sector procedures in accordance with the money laundering directive. In addition, EU Member States that are part of the Financial Action Task Force (FATF) have committed themselves to implementing the Forty Recommendations, and the Nine Special Recommendations to Combat Terrorist Financing.

All EEA countries have undertaken to implement the money laundering directive, and some are also FATF member countries.

EU members of FATF:

Austria	Ireland
Belgium	Italy
Denmark	Luxembourg
Finland	Netherlands
France	Portugal
Germany	Spain
Greece	Sweden

Other EU member states:

Bulgaria	Lithuania
Cyprus	Malta
Czech Republic	Poland
Estonia	Romania
Hungary	Slovakia
Latvia	Slovenia

EEA states:

Iceland - Member of FATF
Liechtenstein
Norway - Member of FATF

Gibraltar is a British Overseas Territory within Europe. It is part of the European Union and is directly subject to the requirements of the money laundering directive, which it has implemented. It therefore has the same equivalence status as an EU member state.

Although firms may initially presume equivalence, significant variations may exist in the precise measures (and in the timing of their introduction) that have been taken to transpose the money laundering directive (and its predecessors) into national laws and regulations. Moreover, the standards of compliance monitoring in respect of credit and financial institutions will also vary. Where firms have substantive information which indicates that a presumption of equivalence cannot be sustained, either in general or for particular products, they will need to consider whether their procedures should be enhanced to take account of this information.

The status of implementation of the money laundering directive across the EU is available at http://ec.europa.eu/internal_market/company/docs/official/080522web_en.pdf

EU agreed list

Member states participating in the EU Committee on the Prevention of Money Laundering and Terrorist Financing have agreed a list of equivalent third countries, for the purposes of the relevant parts of the money laundering directive. The list is a voluntary, non-binding measure that nevertheless represents the common understanding of Member States. The text of the statement on equivalence and the list of equivalent jurisdictions are available at http://ec.europa.eu/internal_market/company/docs/financial-crime/3rd-country-equivalence-list_en.pdf.

The list also includes certain **French overseas territories** (Mayotte, New Caledonia, French Polynesia, Saint Pierre and Miquelon and Wallis and Futuna) and Aruba, Curacao, Sint Maarten, Bonaire, Sint Eustatius and Saba. Those overseas territories are not members of the EU/EEA but are part of the membership of France and the Kingdom of the Netherlands of the FATF.

The **UK Crown Dependencies** (Jersey, Guernsey, Isle of Man) may also be considered as equivalent by Member States.

Firms should note that inclusion on the EU list does not override the need for firms to continue to operate risk-based procedures when dealing with customers based in an equivalent jurisdiction.

(b) Countries for which equivalence should not be presumed

It would not normally be appropriate to make a presumption of equivalence in respect of other countries without further investigation, notwithstanding that they might be members of other AML/CTF-related bodies.

FATF members

All FATF members (those which are not EU/EEA member states/countries are listed below) undertake to implement the FATF anti-money laundering and counter-terrorism Recommendations as part of their membership obligations.

However, unlike the transposition of the money laundering directive by EU Member States, implementation cannot be mandatory, and all members will approach their obligations in different ways, and under different timetables. Only those countries listed above under the EU agreed list may be presumed to be equivalent. The others are as follows:

Argentina
China
New Zealand
Turkey

Information on the effectiveness of implementation in these jurisdictions may be obtained through scrutiny of Mutual Evaluation reports, which are published on the FATF website.

Gulf Co-operation Council

The Gulf Co-operation Council (GCC) is in the unique position of being a member of FATF but with non-FATF countries as its members. However, whilst the GCC countries - Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates - have all undergone FATF-style mutual evaluations, few of these reports are publicly available. Moreover, few GCC countries have yet enacted legislation that contains equivalent provisions to the Money Laundering Directive, and so there is unevenness in the position of relevant regulation across GCC member countries. Individual GCC member countries should therefore by assessed in the same way as for other non-EU/FATF jurisdictions.

None of the GCC members is included on the EU agreed lists, so there can be no presumption of equivalence.

Other jurisdictions

A majority of countries and territories do not fall within the lists of countries that can be presumed to be “equivalent jurisdictions". This does not necessarily mean that the AML/CTF legislation, and standards of due diligence, in those countries are lower than those in "equivalent jurisdictions". However, standards vary significantly, and firms will need to carry out their own assessment of particular countries. In addition to a firm's own knowledge and experience of the country concerned, particular attention should be paid to any FATF-style or IMF/World Bank evaluations that have been undertaken.

As a result of due diligence carried out, therefore, jurisdictions may be added to those on the EU agreed list, for the purposes of determining those jurisdictions which, in the firm’s judgement, are equivalent, for the purposes of the SDD derogation, and/or determining whether firms may rely, for the purposes of carrying out CDD measures, on other firms situated in such a jurisdiction.

2.3 Factors to be taken into account when assessing other jurisdictions

Factors include:

- Membership of groups that only admit those meeting a certain benchmark
- Contextual factors – political stability; level of (endemic) corruption etc
- Evidence of relevant (public) criticism of a jurisdiction, including HMT/FATF advisory notices
- Independent and public assessment of the jurisdiction’s overall AML regime
- Need for any assessment to be recent
- Implementation standards (inc quality and effectiveness of supervision)
- Incidence of trade with the jurisdiction – need to be proportionate especially where very small

Membership of an international or regional ‘group’

There are a number of international and regional ‘groups’ of jurisdictions that admit to membership only those jurisdictions that have demonstrated a commitment to the fight against money laundering and terrorist financing, and which have an appropriate legal and regulatory regime to back up this commitment.

Contextual factors

Such factors as the political stability of a jurisdiction, and where it stands in tables of corruption are relevant to whether it is likely that a jurisdiction will be 'equivalent'. It will, however, seldom be easy for firms to make their own assessments of such matters, and it is likely that they will have to rely on external agencies for such evidence – whether prepared for general consumption, or specifically for the firm. Where the firm looks to publicly available evidence, it will be important that it has some knowledge of the criteria that were used in making the assessment; the firm cannot rely solely on the fact that such a list has been independently prepared, even if by a respected third party agency.

Evidence of relevant (public) criticism

The FATF from time to time issues statements on its concerns about the lack of comprehensive AML/CFT systems in a number of jurisdictions (see section 2.4 below). When constructing their internal procedures, therefore, financial sector firms should have regard to the need for additional monitoring procedures for transactions from any country that is listed on these statements of concern. Additional monitoring procedures will also be required in respect of correspondent relationships with financial institutions from such countries.

Other, commercial agencies also produce reports and lists of jurisdictions, entities and individuals that are involved, or that are alleged to be involved, in activities that cast doubt on their integrity in the AML/CTF area. Such reports lists can provide some useful and relevant evidence – which may or may not be conclusive – on whether or not a particular jurisdiction is likely to be equivalent.

Mutual evaluation reports

Particular attention should be paid to assessments that have been undertaken by standard setting bodies such as FATF, and by international financial institutions such as the IMF.

FATF

FATF member countries monitor their own progress in the fight against money laundering and terrorist financing through regular mutual evaluation by their peers. In 1998, FATF extended the concept of mutual evaluation beyond its own membership through its endorsement of FATF-style mutual evaluation programmes of a number of regional groups which contain non-FATF members. The groups undertaking FATF-style mutual evaluations are

- the Offshore Group of Banking Supervisors (OGBS) see www.ogbs.net
- the Caribbean Financial Action Task Force (CFATF) see www.cfatf.org
- the Asia/Pacific Group on Money Laundering (APG) see www.apgml.org
- MONEYVAL, covering the Council of Europe countries which are not members of FATF see www.coe.int/moneyval
- the Financial Action Task Force on Money Laundering in South America (GAFISUD) see www.gafisud.org
- the Middle East and North Africa Financial Action Task Force (MENAFATF) see www.menafatf.org
- the Eurasian Group (EAG) see www.eurasiangroup.org,
- the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) see www.esaamlg.org
- the Intergovernmental Action Group against Money-Laundering in Africa (GIABA) see www.giabasn.org

Firms should bear in mind that mutual evaluation reports are at a 'point in time', and should be interpreted as such. Although follow up actions are usually reviewed after two years, there can be quite long intervals between evaluation reports in respect of a particular jurisdiction. Even at the point an evaluation is carried out there can be changes in train to the jurisdiction's AML/CTF regime, but these will not be reflected in the evaluation report. There can also be subsequent changes to the regime (whether to respond to criticisms by the evaluators or otherwise) which firms should seek to understand and to factor into their assessment of whether the jurisdiction is equivalent.

In assessing the conclusions of a mutual evaluation report, firms may find it difficult to give appropriate weighting to findings and conclusions in respect of the jurisdiction's compliance with particular Recommendations. For the purposes of assessing equivalence, compliance (or otherwise) with certain Recommendations may have more relevance than others. The extent to which a jurisdiction complies with the following Recommendations may be particularly relevant:

Legal framework:
Recommendation 1
Special Recommendation II
Measures to be taken by firms:
Recommendations 4, 5, 6, 9, 10, 11, and 13,
Special Recommendation IV
Supervisory regime:
Recommendations 17, 23, 29 and 30
International co-operation:
Recommendation 40

Summaries of FATF and FATF-style evaluations are published in FATF Annual Reports and can be accessed at www.fatf-gafi.org. However, mutual evaluation reports prepared by some FATF-style regional bodies may not be carried out fully to FATF standards, and firms should bear this in mind if a decisions on whether a jurisdiction is equivalent is based on such reports.

IMF/World bank

As part of their financial stability assessments of countries and territories, the IMF and the World Bank have agreed with FATF a detailed methodology for assessing compliance with AML/CTF standards, using the FATF Recommendations as the base. A number of countries have already undergone IMF/World Bank assessments in addition to those carried out by FATF, and some of the results can be accessed at www.imf.org. Where IMF/World Bank assessments relate to FATF members, the assessments are formally adopted by the FATF and appear on the FATF website.

Implementation standards (including effectiveness of supervision)

Information on the extent and quality of supervision of AML/CTF standards may be obtained from the extent to which a jurisdiction complies with Recommendations 17, 23, 29 and 30.

Incidence of trade with the jurisdiction

In respect of any particular jurisdiction, the level and extent of due diligence that needs to be carried out in making a judgement on equivalence will be influenced by the volume and size of the firm's business with that jurisdiction in relation to the firm's overall business.

2.4 UK prohibition notices and advisory notices

Prohibition notices

As at December 2011, no prohibition notices have been issued by HM Treasury under Regulation 18 of the 2007 Regulations.

Advisory notices

HM Treasury

HM Treasury issues press notices in which it expresses the UK's full support of the work of the FATF on jurisdictions of concern. The HM Treasury press notices are available at http://www.hm-treasury.gov.uk/press

The FATF issues periodic announcements about its concerns regarding the lack of comprehensive AML/CFT systems in various jurisdictions.

The FATF maintains a *Public Statement* which lists jurisdictions of concern in three categories:

1. Jurisdictions subject to a FATF call on its members and other jurisdictions to apply countermeasures to protect the international financial system from the ongoing and substantial money laundering and terrorist financing (ML/TF) risks emanating from the jurisdiction.

2. Jurisdictions with strategic AML/CFT deficiencies that have not committed to an action plan developed with the FATF to address key deficiencies. The FATF calls on its members to consider the risks arising from the deficiencies associated with each jurisdiction, as described below.

3. Jurisdictions previously publicly identified by the FATF as having strategic AML/CFT deficiencies, which remain to be addressed.

The FATF also maintains a statement *Improving Global AML/CFT Compliance: On-going Process*, which lists jurisdictions identified as having strategic AML/CFT deficiencies for which they have developed an action plan with the FATF. While the situations differ among jurisdictions, each has provided a written high-level political commitment to address the identified deficiencies. The FATF will closely monitor the implementation of these action plans and encourages its members to consider the information set out in the statement.

The latest versions of these FATF Statements are available at http://www.fatf-gafi.org.

FSA

The FSA has set out how it expects firms to use information contained in the FATF Public Statements:

> "The FSA expects authorised firms to establish and maintain systems and controls to counter the risk that they might be used to further financial crime. All firms must also comply with their legal obligations under the Money Laundering Regulations 2007. We would therefore expect all firms to actively consider the risks associated with transactions and business relationships linked to jurisdictions included within these statements. Policies and procedures must be adapted where necessary to reflect this.
>
> "We also expect firms supervised by the FSA for money laundering purposes to consider the impact of these statements on their policies and procedures in relation to simplified due diligence under section 13 and reliance under section 17 of the Money Laundering Regulations 2007".