

MEASURING BANGLADESH'S COMPLIANCE WITH GLOBAL ANTI MONEY LAUNDERING (AML) STANDARD

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ABSTRACT

Like any other international standard, global Anti Money Laundering norms are also implemented through the bureaucratic apparatus of a jurisdiction. If the domestic mechanisms on criminal justice system, financial system regulation and transnational cooperation are based on weaker strategic platform, the anti money laundering regime may remain dysfunctional. It is argued that, along with material resource and right political will, relevant experience is also essential to make a system work.

I. INTRODUCTION

Asia/Pacific Group on Money Laundering (APG) conducted third mutual evaluation of Bangladesh, between 11 and 21 October 2015, to assess the level of compliances with global Anti Money Laundering (AML) standards. While we are waiting for this report yet to be published, this may be interesting to revisit the level of AML compliance existed during the second mutual evaluation, conducted almost a decade ago, in 2006. In their second mutual evaluation, APG assessed Bangladesh's level of compliance with global AML standards, identified a number of key challenges Bangladesh AML legal regime was facing and provided recommendations on how certain aspects of the regime could be strengthened. This study summarises the APG's second mutual evaluation report and makes a brief critical assessment of the initiatives of Bangladesh, taken in the subsequent years in order to enhance the level of compliance with global AML standards. Besides, an assessment of the legislative and strategic initiatives, as well as the actions to ensure enhanced cooperation with foreign authorities and jurisdictions will also be included. This investigation will assist us to evaluate the actions taken, expected outcome and presume what impact they might have on the third mutual evaluation report. APG follows the same methodology for the assessment of its member jurisdictions as done by Financial Action Task Force (FATF). The foundation of FATF by the G-7 Summit in 1989¹ was probably the most important action taken against the

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offence of money laundering. Its forty recommendations against money laundering offence are now worldwide endorsed AML standards.² These recommendations are a complete set of AML procedures that summarize both a legislative and strategic framework against money laundering and related offences at the domestic level and offer basic principles *vis-à-vis* international co-operation. Although Bangladesh is not a member of FATF, yet, under strict international obligation to comply with its recommendations as a member of APG— an FATF style regional body. The article argues that lack of resources and political willingness are not the only challenges Bangladesh facing in complying with global AML standards. Often bureaucratic procedures are unreasonably rigid due to some established cultural norms. These make government decision making process lengthy and complex, something unsuitable for the type of business an Anti Money Laundering reporting system is involved in.

II. AML REGIME IN BANGLADESH: THE ISSUES

As the global AML standard setter FATF has three main tasks. It monitors member jurisdictions' level of compliance with its recommendations, review global money laundering trends, techniques and counter-measures and promote its standards in non-member jurisdictions³ through eight FATF style regular bodies or associate members across the world, including APG.⁴ Associate members generally 'tailor their own AML recommendations to suit their local environment⁵ and evaluate their members against FATF recommendations. Since, Bangladesh is a member of APG, they are under international obligation to comply with these recommendations. Besides, the executive boards of the International Monetary Fund and the World Bank have also accepted these recommendations as the global AML standard and cooperate in the mutual evaluation process.⁶ Failure to comply with this standard may trigger a series of actions against a non-complying jurisdiction, for example, obligation to submit regular progress reports, suspension of membership and even black-listing.⁷

¹ FATF, "History of the FATF" (2012), at <<http://www.fatf-gafi.org/pages/aboutus/historyofthefatf/>>. Last visited May 24, 2016.

² Graham, T., Bell E., and Elliott, N. *Money Laundering*, London, 2003, at p. 30.

³ *ibid.*

⁴ Jackie J., "Is the Global Financial System AML/CFT Prepared?" 15 (1) (2008) *Journal of Financial Crime*, pp. 7-21 at p. 11.

⁵ *ibid* at p. 10.

⁶ Jensen, N., and Png, C., "Implementation of the FATF 40+9 Recommendations: A Perspective from Developing Countries" 14 (2) (2011) *Journal of Money Laundering Control*, pp. 110-120, at p.111.

⁷ *supra* note 2.

The APG in their 2009 mutual evaluation report identified a number of issues with regard to the AML regime of Bangladesh. The following sections of this article draws on the relevant part of that report and are presented here with a minimum of critical analysis. It may further be noted that the data used here was officially published in the second evaluation, which was adopted by the APG's plenary on 8 July 2009.⁸

Beginning in 1992, the FATF mutual evaluation system is regarded as one of its corner-stones and a significantly successful initiative. It is a comprehensive and objective approach to the assessment of the level of compliance of the jurisdictions with the FATF Recommendations.⁹ As Sansonetti has observed, 'This rigorous scrutiny through mutual evaluation, public disclosure and its associated peer pressure has contributed significantly to the development of AML regimes around the world'.¹⁰ In general, this practice contributes in at least in two ways; first, it assesses the extent to which a certain member has implemented international AML standard, and, secondly, it identifies some areas of concern where the member's performance falls short of global standard.

This may be noted here that highly industrialised nations developed the FATF recommendations and the methodology to evaluate the level of compliance with these recommendations that fit the context of their country and economy. Hence, many of these recommendations 'are of doubtful relevance to developing economies where even basic banking services are unavailable to many',¹¹ and may not be actually suitable for them. This assertion is even supported by FATF itself. In 2008 they published the guidance on capacity building for mutual evaluation and implementation of the FATF standards within low capacity countries¹² and officially recognised the special circumstances that persist in developing countries. However, global AML

⁸ See generally Asia Pacific Group on Money Laundering (APGML), "Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism, Bangladesh" (8 July 2009), at <<http://www.apgml.org/members-and-observers/members/member-documents.aspx?m=060e4260-2ffd-4403-8594-6e4e8dc4b218>>. Last visited May 20, 2016.

⁹ Sansonetti, R., "The Mutual Evaluation Process: A Methodology of Increasing Importance at International Level", 7 (3) (2000) *Journal of Financial Crime*, pp. 218-226, at p. 218.

¹⁰ *supra* note 6 at p.111.

¹¹ Broome, J., "Laundering the proceeds of crime: a global overview", in Rose, G., (ed.), *Following the Procedure of Environmental Crime, Forests, Fish and Filthy Lucre*, London, 2014, pp. 49-70, at p. 58.

¹² *ibid.*