



OAS-CICAD JUDGES AND PROSECUTORS TRAINING

Implementation of FATF's 40 Recommendations in the Region and challenges for the upcoming round of mutual evaluations

Diana Firth Novelo

Deputy Executive Director

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FATF RECOMMENDATIONS & THE CFATF

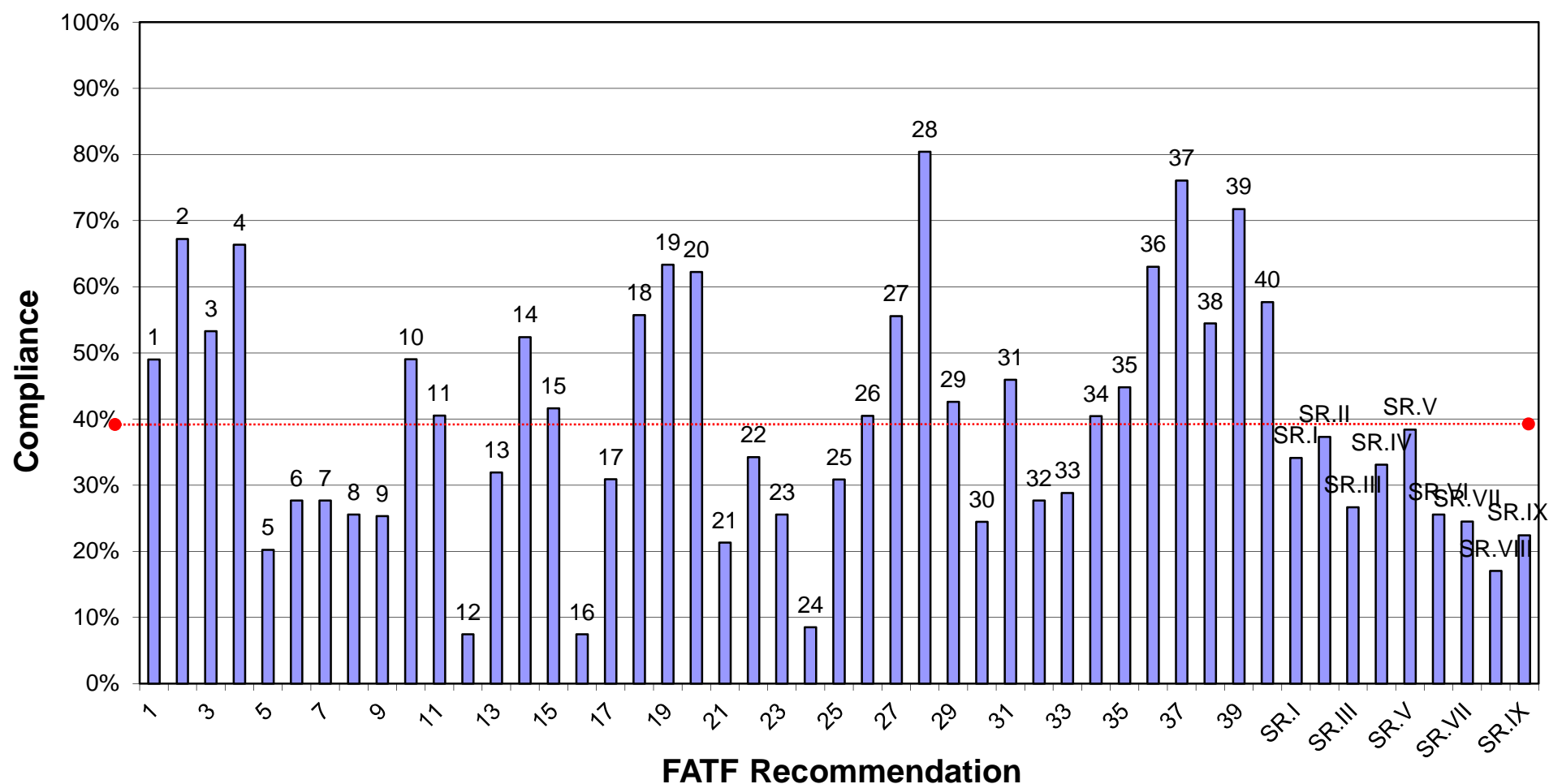
- Before visualizing the future, it is worth reflecting on the past.
- 27 Members, 40 + 9 Recommendations
- AML/CFT Pillars: Recommendations 1, 3, 5, 13, 23, 26, 31, 36 & 40, Special Recommendations II, IV and DNFBPs



MUTUAL EVALUATION & FOLLOW-UP PROCESS

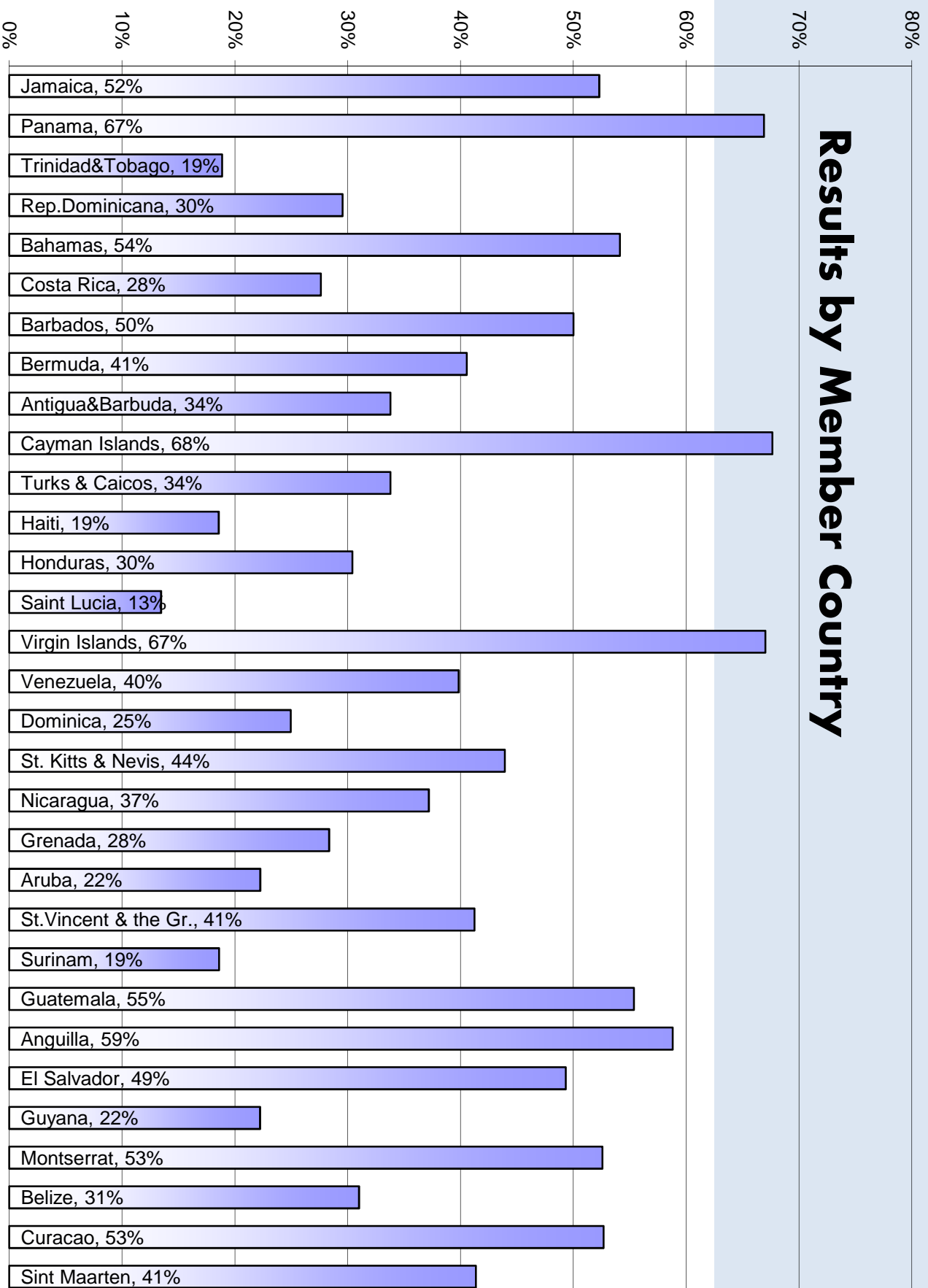
- Analysis of the AML/CFT regime of the assessed country and level of compliance with FATF Recommendations and effective implementation.
- Mutual Evaluation Reports prepared by assessors which come from countries within the region and are approved by Members of the Plenary.
- Deficiencies or shortcomings and recommendations. Best practices (fourth round).

MUTUAL EVALUATION RESULTS



Numbers presented herein relate to the rating obtained by each Member country at the time of its Mutual Evaluation, for details on progress and current state, please refer to the Follow-Up Reports available in the CFATF Website

Results by Member Country



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WHERE ARE THEY/ WE NOW?

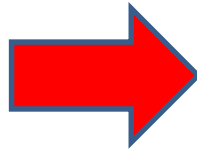
- After the Mutual Evaluation, both in the prior round and in the fourth round countries undergo a follow-up process to ensure deficiencies are adequately addressed.
- It is important to understand how legislative and other type of actions at all government/nation levels can have an impact.
- Mechanism is based on *peer pressure* (i.e. letters, sanctions).

WHERE ARE THEY/ WE NOW?

- Exited the regular follow-up process (Aruba in FATF) and:
 - Bermuda
 - Venezuela
 - Dominica
 - El Salvador
 - Grenada
 - Guatemala
 - Jamaica
 - St. Kitts and Nevis
 - St. Lucia

RECOMMENDATION 1 (R. 3)

Foundational, need for countries to criminalize money laundering on the basis of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (The Vienna Convention) and the United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention).



CHALLENGES



- Need to demonstrate effectiveness: inv. & conviction rate
- List of predicate offenses fail to match Designated Categories of Offences (i.e. solved with catch all provisions, Jamaica). Need to prove predicate offence...
- Relatively “new” in the criminal arena: smuggling of migrants, human trafficking, insider trading. Some countries (i.e. SVG) working on a bill to criminalize migrant smuggling.

WHO HAS THE MONEY?

Taxi driver jailed for money laundering

- "The true origins of the cash, be it drug trafficking or theft, may never be known."
- The cash seized in this investigation has been forfeited to the Crown under Proceeds of Crime legislation and a confiscation of assets is being sought.

WHO HAS THE MONEY?

Dominican flight attendant was on Monday fined EC\$10,000 to be paid forthwith or spend 9 months in jail in connection with two money laundering charges.

- Thirty-year-old Sherita Kernelle Newton, an employee of regional carrier LIAT, was charged with bringing criminal property into St. Vincent and the Grenadines...

SPECIAL RECOMMENDATION II (R.5)

Foundational, need for countries to criminalize Terrorist Financing, in line with the Terrorist Financing Convention. Also a Predicate Offense. Same problems as ML.



THIRD ROUND CHALLENGES



- Essential Criteria not in legislation, regulation or other enforceable means.
- Operational Independence of FIUs. Quality of STR/SARs.
- Lack of Statistics; failure to assess the statistics at a policy level for dealing with AML/CFT.
- Point of contact unclear. No national coordinating agency for dealing with AML/CFT.

LINKAGES BETWEEN TF, ML, AND ORGANIZED CRIME

From the terrorist group's point of view:

1. Access to major financial resources
2. Independence from State patronage
3. Economic power substituting popular support
4. Access to new resources (e.g.: document forgery)
5. Easier border movement
6. Higher recruitment potential
7. Access to assets laundering nets

From the organized criminal networks' point of view:

1. Military terrorist skills and protection
2. Political destabilization = favourable environment for illicit activities
3. Diversion of security forces
4. Potential of higher level of intimidation

TERRORISM FINANCING Vs. MONEY LAUNDERING

- Debilitating financial structures, cutting resources.
- Strong financial analysis in jurisdictions.
- Though specifics of TF cannot be ignored, where for instance, understanding the “motive” may become more relevant to trace, understand their strategy.

SOURCES OF FUNDING



- Countries
- Financial Institutions
- Merchandising
- Drug Trafficking
- Extortion, etc.
- **Non-Profit Organizations (FATF Best Practices Paper issued June 2013 and Typologies Report issued June 2014).**

SOURCES OF FUNDING

Case Study 36

Diversion of Funds by Actors External to NPOs

Transfer Phase

In response to a humanitarian disaster, a large international NPO was providing aid by way of cash payments to beneficiaries in areas controlled by a terrorist organisation. The NPO delivered the cash payments through a local MSB.

An examination of the humanitarian relief programme, carried out by one of the NPO's partner organisations on its behalf, raised concerns. The examination revealed that in certain instances, the MSB was deducting a 'tax' to be passed on to a listed terrorist organisation. In other instances, the beneficiaries of the charitable funds were being 'taxed' by representatives of the terrorist organisation themselves following the receipt of the financial aid.

The examination also found that there was a general understanding and acceptance that a portion of charitable funds would be diverted for terrorist purposes and that this was common practice amongst NPOs and related organisations working in the area.


Following a joint investigation by the national NPO regulator, the national FIU and law enforcement, the NPO was advised of its responsibilities with regards to reporting such incidents, and was required to provide training for its staff in order to better safeguard against similar future incidents.



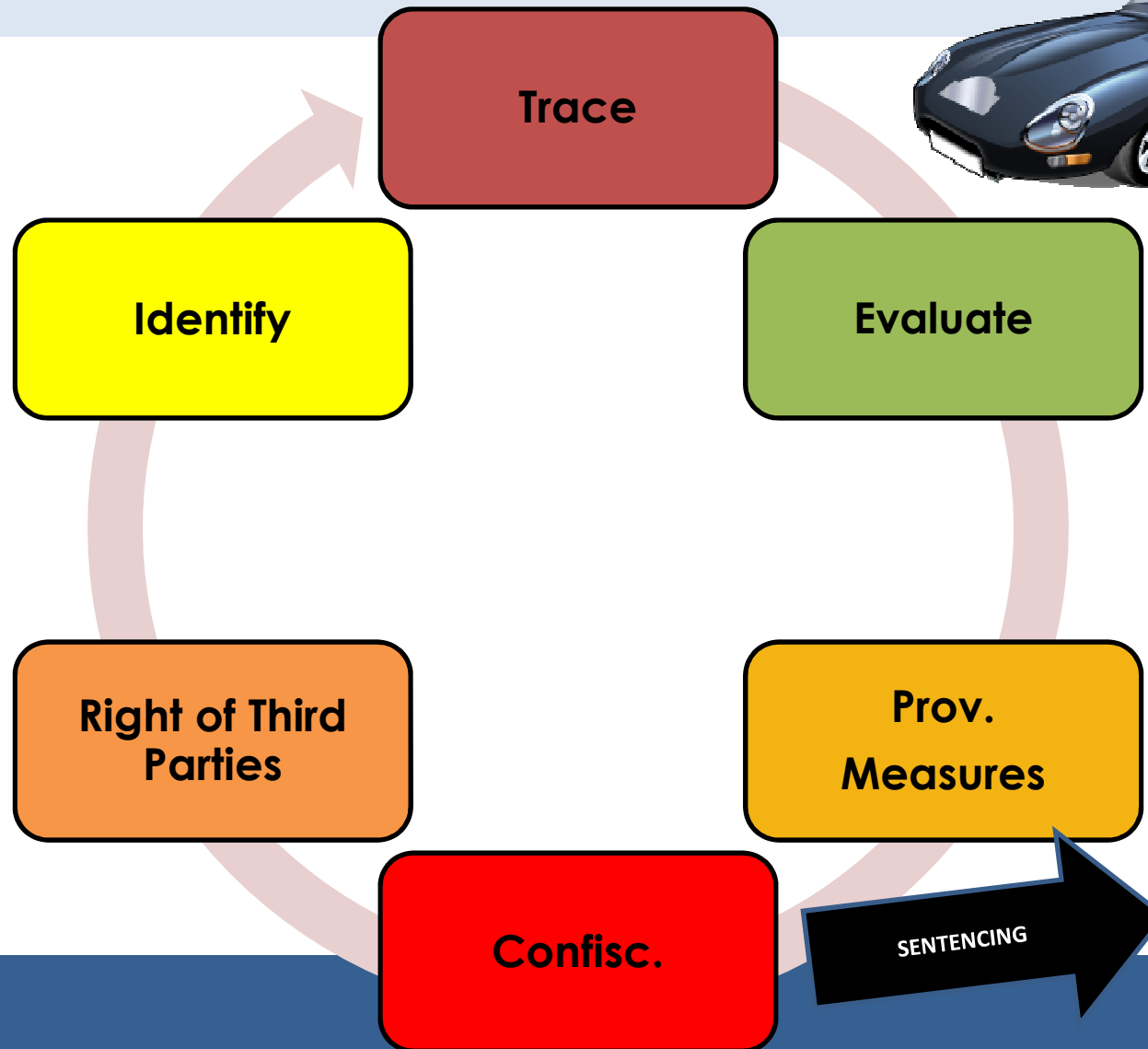
RECOMMENDATION 3 (R.4)

GO FOR PROCEEDS OF CRIME!

Countries should adopt measures to enable their competent authorities to confiscate property laundered, proceeds of money laundering or its predicate offenses.



RECOMMENDATION 3 (R.4)



Confisc.

SENTENCING

CHALLENGES



- *Need to demonstrate effectiveness, actual confiscated assets*
- TF not criminalized, ergo no provisions
- No provisions to be able to confiscate property of corresponding value

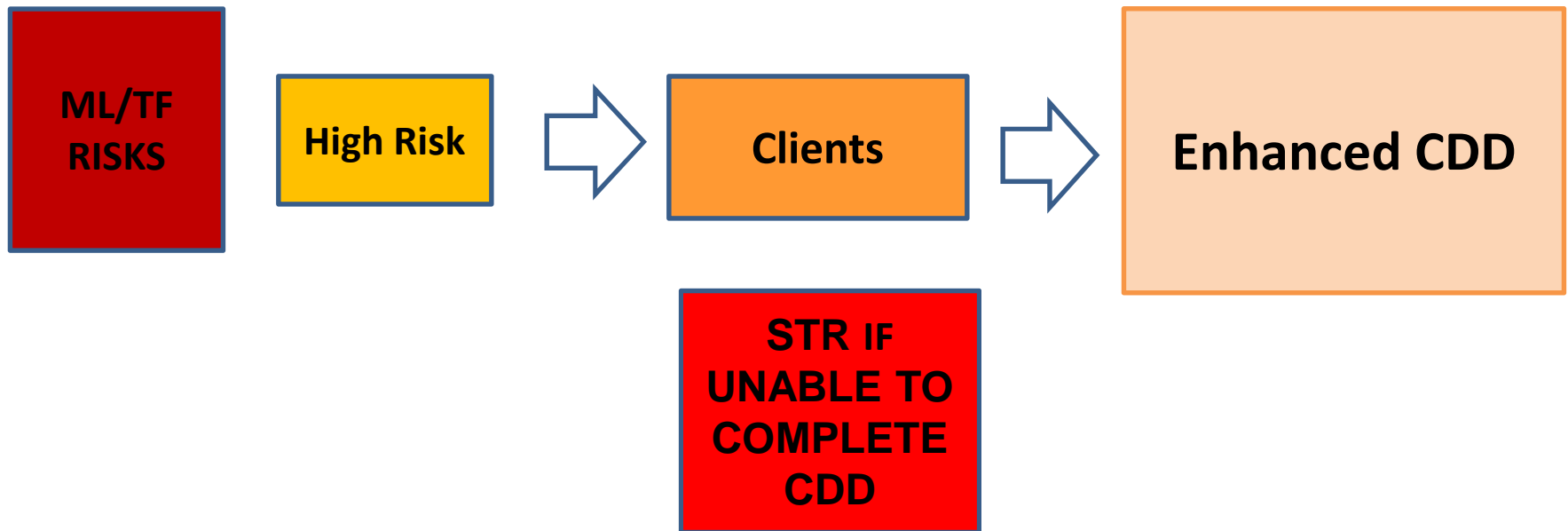
RECOMMENDATION 5 (R.10)

Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names. They should also undertake customer due diligence measures, including identifying and verifying identity of their customers in certain given circumstances.

How does this requirement link to what we have seen so far under Recommendation 1 (now R.3)?

RECOMMENDATION 5 (R.10)

Customer Due Diligence (CDD)



CHALLENGES



- Essential Criteria not in Legislation
- TF not criminalized
- Lack of provisions regarding information updating (inability to have real picture); need for Ongoing Due Diligence; Purpose and intended nature of business relationship

RECOMMENDATION 13 AND SPECIAL RECOMMENDATION IV (R.20)

Financial institutions should be required by law or regulation to report to the FIU, when it suspects or has reasonable grounds to suspect that funds are the proceeds or criminal activity.

Minimum Requirement: apply to funds proceeds of all required predicate offences and obligation has to be a direct mandatory requirement; indirect reporting is not accepted.

CHALLENGES



- Essential Criteria not in Legislation
- TF not criminalized, ergo no statute to report
- No explicit provisions to report attempted transactions, regardless of relation to tax matters

RECOMMENDATION 23 (R. 26)

IMPACT OF OTHER
RECOMMENDATIONS

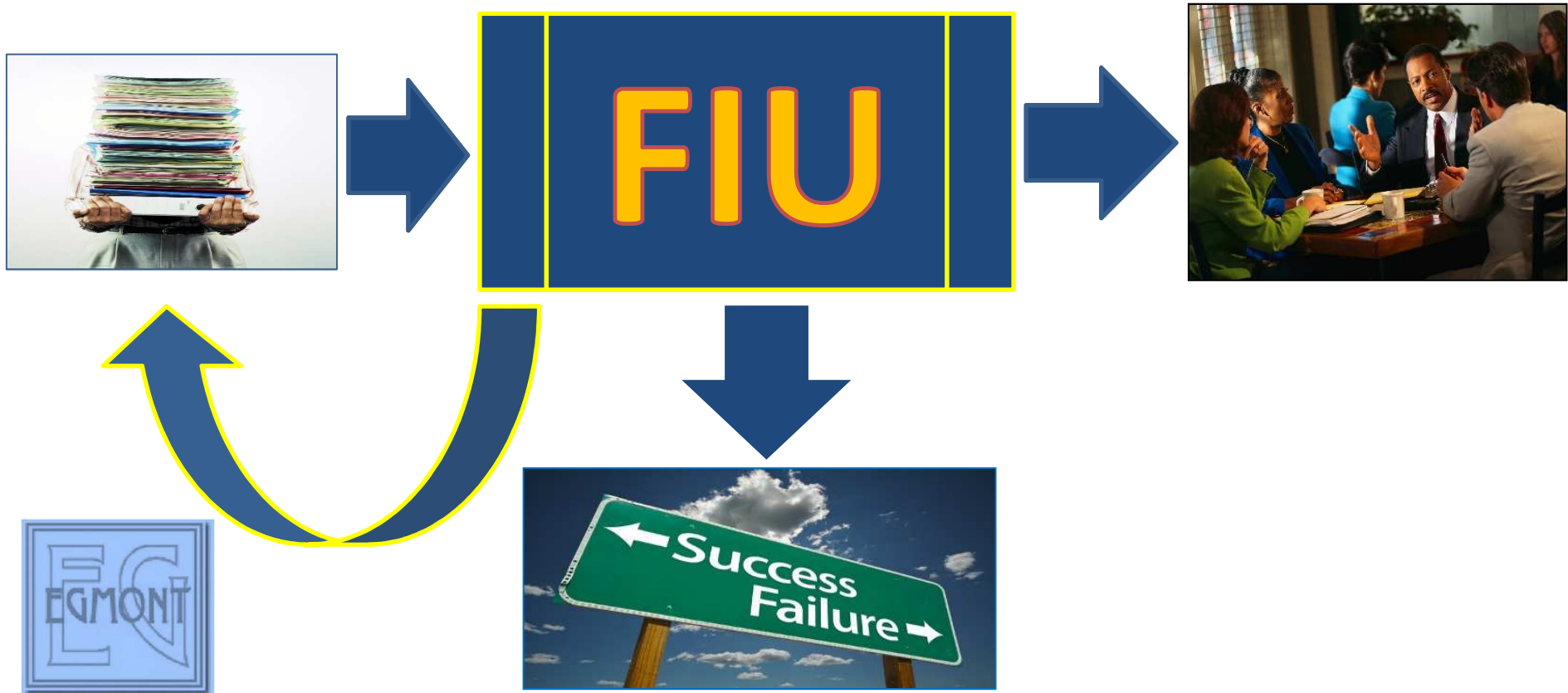
ADEQUATE REGULATION
AND SUPERVISION OF
FINANCIAL INSTITUTIONS
(GLOSSARY)

FIT AND PROPER
REQUIREMENTS
SERVE AS A GATEKEEPER

LICENSES

MANUALS, STATISTICS,
FEEDBACK

RECOMMENDATION 26 (R.29)



CHALLENGES



- Operational Independence of FIUs
- Young FIUs
- Resources, Resources, Resources for both
Recommendations, Authorities, Institutions

RECOMMENDATIONS 31, 36 & 40 (R.2, R.37 AND R. 40)

Domestic & International Cooperation and Coordination

✓ Role of NAMLCs

✓ Participants

✓ Set of Rules, Policy Making

RECOMMENDATIONS 31, 36 & 40 (R.2, R.37, R.40)

Tools and Steps

✓ Review existing agreements, new ones,
widest range of international cooperation

✓ Track Requests, statistics

✓ Quality of Response

CHALLENGES



- Domestic Law
- Deficiencies in other Recs. (Rec. 1)
- Point of contact unclear
- Lack of Statistics

FOURTH ROUND OF ASSESSMENTS

- New standards....back to 40!
- New Methodology: **Technical Compliance:** Do you have the legal requirement?
- **Effectiveness:** *“The extent to which an outcome is being achieved, whether the key objectives of an AML/CFT System in line with FATF standards are being achieved”.*

NEW FATF STANDARDS

- The FATF Recommendations set out minimum requirements for measures that countries should implement in the fight against ML & FT.
- Some criticisms of the 2003 Recommendations:
 - Insufficiently flexible “one-size fits all” approach;
 - Lack of clarity about how to achieve some of the Recommendations.
- Review started in 2009; as a limited, focused exercise to clarify and update the Standards and address new threats, and respond to implementation problems.



MAIN CHANGES

- High-level policy principles largely unchanged; a number of new requirements introduced.
- Most of the changes are technical in nature.
- Considerable expansion of the text of the Standards in order to clarify concepts and obligations.
- A new structure:
 - From 40+9 Recommendations and Special Recommendations to 40 Recommendations (9 SRs on terrorist financing merged into revised 40 general Recommendations);
 - More “logical” order with 7 new sections.

FOURTH ROUND OF ASSESSMENTS

- Methodology amended to fit the New Standards and with two elements as discussed to avoid the “one size fits all” approach.
- CFATF Procedures to execute the Methodology took FATF procedures as a base and also the Universal Procedures that were approved at the Feb. FATF 2014 Plenary. Approved May 2014.

FOURTH ROUND OF ASSESSMENTS

- Preparations for the Fourth Round and training have been done in coordination with the FATF, participation of FATF Experts in Assessors' Training.
- To date, CFATF has conducted FATF Standards training, Assessors' training (two in English; one Spanish) and Pre-Assessment training.
- National Risk Assessment (NRA) workshops done to assist countries understand their AML/CFT risks.

FOURTH ROUND OF ASSESSMENTS

TRAINING & TECHNICAL ASSISTANCE

- Training portfolio built to adapt to new Standards and Methodology: Standards Training, **Judges and Prosecutors Training**, Pre-Assessment Training, Assessors' Training, National Risk Assessment Workshops.
- Technical assistance available upon request, but only as funding can be secured.



THANK YOU!

Questions and Comments

Diana Firth
Deputy Executive Director
diana.firth@cfatf.org
<http://www.cfatf-gafic.org>