



Law and Enforceable Means

CFATF Secretariat Research Desk

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Law and Enforceable Means: Background

In the 3rd Round of mutual evaluations:

- ✓ Some basic obligations of Recs. 5, 10 and 13 had to be set out in “law or regulation” while other more detailed requirements of these and other Recommendations could be outlined either by “law” or “regulation” or “**Other enforceable means (OEM)**”.
- ✓ The distinction between “regulation” and “other enforceable means” (OEM) raised interpretation issues.



Law and Enforceable Means: Background

Note to Assessors on “OEM” in 2004 Methodology sought to clarify that:

- ✓ There must be a document or mechanism that sets out or underpins clearly stated requirements which are understood as such.
- ✓ The document/mechanism must be issued by a competent authority or a Self-regulatory organization (SRO) (now a Self-regulatory body (SRB)).
- ✓ There must be effective, proportionate and dissuasive sanctions for non-compliance.



Rationale for the distinction “regulation” and “other enforceable means”?

- ✓ Fundamental requirements should be set out in higher level legislation or similarly equivalent mechanisms:
 - To demonstrate political commitment
 - For stability of the rules
 - To ensure FATF requirements are transposed to mandatory and enforceable requirements with sanctions for non-compliance.



Legal Basis of Requirements on Financial Institutions and DNFBPs

“Legal basis of requirements on financial institutions, DNFBPs and VASPs”

- ✓ Fundamental requirements for financial institutions, DNFBPs and VASPs should be introduced either:
 - In Law (specific requirements of Rec. 10 – Customer Due Diligence; Rec.11 - Record Keeping, Rec.20 - Reporting of Suspicious Transactions) or for all other cases, in law or:
 - Enforceable means



Law refers to:

Any legislation issued or approved through a parliamentary process or;

Other means equivalent to a parliamentary process as provided for under a country's constitutional framework

- Particularly relevant for countries that do not have a Parliamentary process

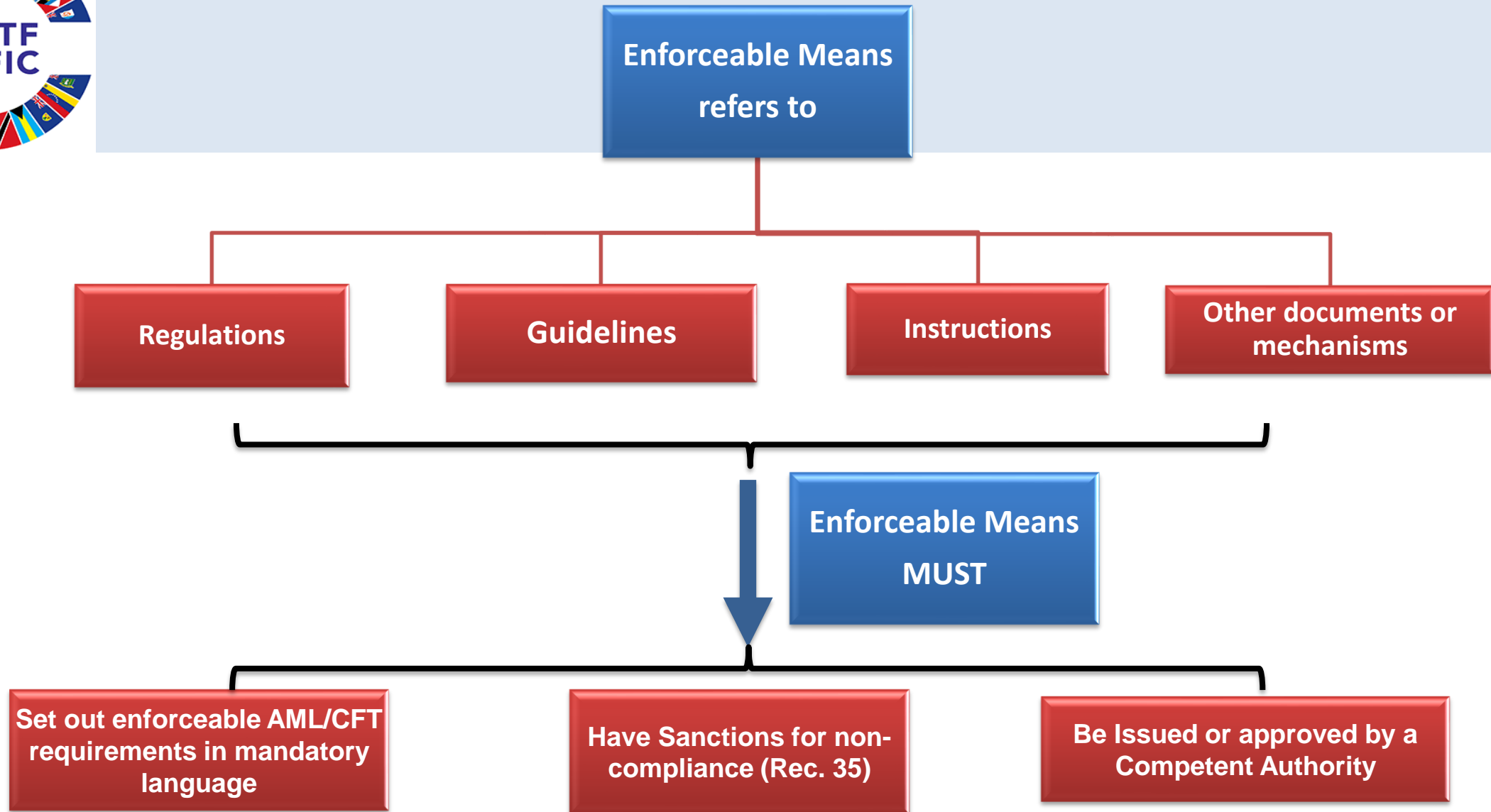
Imposes mandatory requirements with sanctions for non-compliance

- Sanctions for non-compliance should be effective, proportionate and dissuasive (Rec. 35)

Encompasses judicial decisions that impose relevant requirements, and which are binding and authoritative in all parts of the country

- Relevant to common law countries.

- Not applicable in judicial systems where decisions are not "authoritative and binding in all parts of the country".





Enforceable Means

- ✓ An “enforceable means” should:
 - Create (mandatory) obligations addressing the FATF requirements;
 - Be clearly stated through a document or mechanisms; and
 - Understood by the relevant financial institutions and DNBFPs as mandatory.
- ✓ There must also be clear requirements for sanctions for non-compliance
 - Does not need to be in the same document as long as there are clear links.
- ✓ Note that only competent authorities (as defined) can issue or approve “enforceable means”.