

# INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION

## The FATF Recommendations

### 7. Targeted financial sanctions related to proliferation \*

Countries should implement targeted financial sanctions to comply with United Nations Security Council resolutions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. These resolutions require countries to freeze without delay the funds or other assets of, and to ensure that no funds and other assets are made available, directly or indirectly, to or for the benefit of, any person or entity designated by, or under the authority of, the United Nations Security Council under Chapter VII of the Charter of the United Nations.

## INTERPRETIVE NOTE TO RECOMMENDATION 7 (TARGETED FINANCIAL SANCTIONS RELATED TO PROLIFERATION)

### A. OBJECTIVE

1. Recommendation 7 requires countries to implement targeted financial sanctions<sup>10</sup> to comply with United Nations Security Council resolutions that require countries to freeze, without delay, the funds or other assets of, and to ensure that no funds and other assets are made available to, and for the benefit of, any person<sup>11</sup> or entity designated by the United Nations Security Council under Chapter VII of the Charter of the United Nations, pursuant to Security Council resolutions that relate to the prevention and disruption of the financing of proliferation of weapons of mass destruction.<sup>12</sup>
2. It should be stressed that none of the requirements in Recommendation 7 is intended to replace other measures or obligations that may already be in place for dealing with funds or other assets in the context of a criminal, civil or administrative investigation or proceeding, as is required by international treaties or Security Council resolutions relating to weapons of mass destruction non-proliferation.<sup>13</sup> The focus of Recommendation 7 is on preventive measures that are necessary and unique in the context of stopping the flow of funds or other assets to proliferators or proliferation; and the use of funds or other assets by proliferators or proliferation, as required by the United Nations Security Council (the Security Council).

### B. DESIGNATIONS

3. Designations are made by the Security Council in annexes to the relevant resolutions, or by the Security Council Committees established pursuant to these resolutions. There is no specific obligation upon United Nations Member States to submit proposals for designations

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<sup>10</sup> Recommendation 7 is focused on targeted financial sanctions. However, it should be noted that the relevant United Nations Security Council Resolutions are much broader and prescribe other types of sanctions (such as travel bans) and other types of financial provisions (such as activity-based financial prohibitions and vigilance provisions). With respect to other types of financial provisions, the FATF has issued non-binding guidance, which jurisdictions are encouraged to consider in their implementation of the relevant UNSCRs. With respect to targeted financial sanctions related to the financing of proliferation of weapons of mass destruction, the FATF has also issued non-binding guidance, which jurisdictions are encouraged to consider in their implementation of the relevant UNSCRs.

<sup>11</sup> Natural or legal person.

<sup>12</sup> Recommendation 7 is applicable to all current Security Council resolutions applying targeted financial sanctions relating to the financing of proliferation of weapons of mass destruction, any future successor resolutions, and any future Security Council resolutions which impose targeted financial sanctions in the context of the financing of proliferation of weapons of mass destruction. At the time of issuance of this Recommendation, (February 2012), the Security Council resolutions applying targeted financial sanctions relating to the financing of proliferation of weapons of mass destruction are: resolutions 1718 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1874 (2009), and 1929 (2010).

<sup>13</sup> Based on requirements set, for instance, in the *Nuclear Non-Proliferation Treaty*, the *Biological and Toxin Weapons Convention*, the *Chemical Weapons Convention*, and Security Council resolution 1540 (2004). Those obligations exist separately and apart from the obligations set forth in Recommendation 7 and its interpretive note.

to the relevant Security Council Committees. However, in practice, the Committees primarily depend upon requests for designation by Member States. Security Council resolutions 1718 (2006) and 1737 (2006) provide that the relevant Committees shall promulgate guidelines as may be necessary to facilitate the implementation of the measures imposed by these resolutions.

4. Countries could consider establishing the authority and effective procedures or mechanisms to propose persons and entities to the Security Council for designation in accordance with relevant Security Council resolutions which impose targeted financial sanctions in the context of the financing of proliferation of weapons of mass destruction. In this regard, countries could consider the following elements:
  - (a) identifying a competent authority(ies), either executive or judicial, as having responsibility for:
    - (i) proposing to the 1718 Sanctions Committee, for designation as appropriate, persons or entities that meet the specific criteria for designation as set forth in resolution 1718 (2006) and its successor resolutions<sup>14</sup>, if that authority decides to do so and believes that it has sufficient evidence to support the designation criteria (see Section E for the specific designation criteria associated with relevant Security Council resolutions); and
    - (ii) proposing to the 1737 Sanctions Committee, for designation as appropriate, persons or entities that meet the criteria for designation as set forth in resolution 1737 (2006) and its successor resolutions<sup>15</sup>, if that authority decides to do so and believes that it has sufficient evidence to support the designation criteria (see Section E for the specific designation criteria associated with relevant Security Council resolutions).
  - (b) having a mechanism(s) for identifying targets for designation, based on the designation criteria set out in resolutions 1718 (2006), 1737 (2006), and their successor resolutions (see Section E for the specific designation criteria of relevant Security Council resolutions). Such procedures should ensure the determination, according to applicable (supra-)national principles, whether reasonable grounds or a reasonable basis exists to propose a designation.
  - (c) having appropriate legal authority, and procedures or mechanisms, to collect or solicit as much information as possible from all relevant sources to identify persons and entities that, based on reasonable grounds, or a reasonable basis to suspect or believe, meet the criteria for designation in the relevant Security Council resolutions.

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<sup>14</sup> Recommendation 7 is applicable to all current and future successor resolutions to resolution 1718 (2006). At the time of issuance of this Interpretive Note, (February 2012), the successor resolutions to resolution 1718 (2006) are: resolution 1874 (2009).

<sup>15</sup> Recommendation 7 is applicable to all current and future successor resolutions to S/RES/1737 (2006). At the time of issuance of this Interpretive Note, (February 2012), the successor resolutions to resolution 1737 (2006) are: resolution 1747 (2007), resolution 1803 (2008), and resolution 1929 (2010).

- (d) when deciding whether or not to propose a designation, taking into account the criteria in Section E of this interpretive note. For proposals of designations, the competent authority of each country will apply the legal standard of its own legal system, taking into consideration human rights, respect for the rule of law, and in recognition of the rights of innocent third parties.
- (e) when proposing names to the 1718 Sanctions Committee, pursuant to resolution 1718 (2006) and its successor resolutions, or to the 1737 Sanctions Committee, pursuant to resolution 1737 (2006) and its successor resolutions, providing as much detail as possible on:
  - (i) the proposed name, in particular, sufficient identifying information to allow for the accurate and positive identification of persons and entities; and
  - (ii) specific information supporting a determination that the person or entity meets the relevant criteria for designation (see Section E for the specific designation criteria of relevant Security Council resolutions).
- (f) having procedures to be able, where necessary, to operate *ex parte* against a person or entity who has been identified and whose proposal for designation is being considered.

### C. FREEZING AND PROHIBITING DEALING IN FUNDS OR OTHER ASSETS OF DESIGNATED PERSONS AND ENTITIES

- 5. There is an obligation for countries to implement targeted financial sanctions without delay against persons and entities designated:
  - (a) in the case of resolution 1718 (2006) and its successor resolutions, by the Security Council in annexes to the relevant resolutions, or by the 1718 Sanctions Committee of the Security Council; and
  - (b) in the case of resolution 1737 (2006) and its successor resolutions, by the Security Council in annexes to the relevant resolutions, or by the 1737 Sanctions Committee of the Security Council,

when these Committees are acting under the authority of Chapter VII of the Charter of the United Nations.

- 6. Countries should establish the necessary legal authority and identify competent domestic authorities responsible for implementing and enforcing targeted financial sanctions, in accordance with the following standards and procedures:
  - (a) Countries<sup>16</sup> should require all natural and legal persons within the country to freeze, without delay and without prior notice, the funds or other assets of designated

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<sup>16</sup> In the case of the European Union (EU), which is considered a supra-national jurisdiction under Recommendation 7 by the FATF, the assets of designated persons and entities are frozen under EU regulations (as amended). EU member states may have to take additional measures to implement the freeze, and all natural and legal persons within the EU have to respect the freeze and not make funds available to designated persons and entities.

persons and entities. This obligation should extend to: all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular act, plot or threat of proliferation; those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; and the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities, as well as funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities.

- (b) Countries should ensure that any funds or other assets are prevented from being made available by their nationals or by any persons or entities within their territories, to or for the benefit of designated persons or entities unless licensed, authorised or otherwise notified in accordance with the relevant Security Council resolutions (see Section E below).
- (c) Countries should have mechanisms for communicating designations to financial institutions and DNFBPs immediately upon taking such action, and providing clear guidance, particularly to financial institutions and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations in taking action under freezing mechanisms.
- (d) Countries should require financial institutions and DNFBPs<sup>17</sup> to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements of the relevant Security Council resolutions, including attempted transactions, and ensure that such information is effectively utilised by competent authorities.
- (e) Countries should adopt effective measures which protect the rights of *bona fide* third parties acting in good faith when implementing the obligations under Recommendation 7.
- (f) Countries should adopt appropriate measures for monitoring, and ensuring compliance by, financial institutions and DNFBPs with the relevant laws or enforceable means governing the obligations under Recommendation 7. Failure to comply with such laws, or enforceable means should be subject to civil, administrative or criminal sanctions.

#### **D DE-LISTING, UNFREEZING AND PROVIDING ACCESS TO FROZEN FUNDS OR OTHER ASSETS**

7. Countries should develop and implement publicly known procedures to submit de-listing requests to the Security Council in the case of designated persons and entities, that, in the view of the country, do not or no longer meet the criteria for designation. Once the relevant Sanctions Committee has de-listed the person or entity, the obligation to freeze no longer exists. Such procedures and criteria should be in accordance with any applicable guidelines or procedures adopted by the Security Council pursuant to resolution 1730 (2006) and any successor resolutions, including those of the Focal Point mechanism established under that

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<sup>17</sup> Security Council resolutions apply to all natural and legal persons within the country.

resolution. Countries should enable listed persons and entities to petition a request for delisting at the Focal Point for de-listing established pursuant to resolution 1730 (2006), or should inform designated persons or entities to petition the Focal Point directly.

8. For persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism (i.e., a false positive), countries should develop and implement publicly known procedures to unfreeze the funds or other assets of such persons or entities in a timely manner, upon verification that the person or entity involved is not a designated person or entity.
9. Where countries have determined that the exemption conditions set out in resolution 1718 (2006) and resolution 1737 (2006) are met, countries should authorise access to funds or other assets in accordance with the procedures set out therein.
10. Countries should permit the addition to the accounts frozen pursuant to resolution 1718 (2006) or resolution 1737 (2006) of interests or other earnings due on those accounts or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of this resolution, provided that any such interest, other earnings and payments continue to be subject to these provisions and are frozen.
11. Freezing action taken pursuant to resolution 1737 (2006) shall not prevent a designated person or entity from making any payment due under a contract entered into prior to the listing of such person or entity, provided that:
  - (a) the relevant countries have determined that the contract is not related to any of the prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokering or services referred to in the relevant Security Council resolution;
  - (b) the relevant countries have determined that the payment is not directly or indirectly received by a person or entity designated pursuant to resolution 1737 (2006); and
  - (c) the relevant countries have submitted prior notification to the 1737 Sanctions Committee of the intention to make or receive such payments or to authorise, where appropriate, the unfreezing of funds, other financial assets or economic resources for this purpose, ten working days prior to such authorisation.<sup>18</sup>
12. Countries should have mechanisms for communicating de-listings and unfreezings to the financial sector and the DNFbps immediately upon taking such action, and providing adequate guidance, particularly to financial institutions and other persons or entities, including DNFbps, that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action.

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<sup>18</sup> In cases where the designated person or entity is a financial institution, jurisdictions should consider the FATF guidance issued as an annex to *The Implementation of Financial Provisions of United Nations Security Council Resolutions to Counter the Proliferation of Weapons of Mass Destruction*, adopted in September 2007.

## E. UNITED NATIONS DESIGNATION CRITERIA

13. The criteria for designation as specified in the relevant United Nations Security Council resolution are:

(a) **Resolution 1718 (2006):**

- (i) Any person or entity engaged in the Democratic People's Republic of Korea (DPRK)'s nuclear-related, other WMD-related and ballistic missile-related programs;
- (ii) any person or entity providing support for DPRK's nuclear-related, other WMD-related and ballistic missile-related programs, including through illicit means;
- (iii) any person or entity acting on behalf of or at the direction of any person or entity designated under subsection 13(a)(i) or subsection 13(a)(ii)<sup>19</sup>; or
- (iv) any legal person or entity owned or controlled, directly or indirectly, by any person or entity designated under subsection 13(a)(i) or subsection 13(a)(ii)<sup>20</sup>.

(b) **Resolutions 1737 (2006), 1747 (2007), 1803 (2008) and 1929 (2010):**

- (i) any person or entity engaged in Iran's proliferation sensitive nuclear activities or the development of nuclear weapon delivery systems;
- (ii) any person or entity directly associated with or providing support for Iran's proliferation sensitive nuclear activities or the development of nuclear weapon delivery systems;
- (iii) any person or entity acting on behalf or at a direction of any person or entity in subsection 13(b)(i) and/or subsection 13(b)(ii), or by entities owned or controlled by them;
- (iv) any person or entity acting on behalf or at the direction of the individuals and entities of the Islamic Revolutionary Guard Corps designated pursuant to S/RES/1929 (2010);
- (v) any entity owned or controlled, including through illicit means, by the individuals and entities of the Islamic Revolutionary Guard Corps designated pursuant to S/RES/1929 (2010)<sup>21</sup>;
- (vi) any person or entity acting on behalf or at the direction of the entities of the Islamic Republic of Iran Shipping Lines (IRISL) designated pursuant to S/RES/1929 (2010);

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<sup>19</sup> The funds or assets of these persons or entities are frozen regardless of whether they are specifically identified by the Committee.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

- (vii) entities owned or controlled, including through illicit means, by the entities of the Islamic Republic of Iran Shipping Lines (IRISL) designated pursuant to S/RES/1929 (2010); or
- (viii) any person or entity determined by the United Nations Security Council or the Committee to have assisted designated persons or entities in evading sanction of, or in violating the provisions of, S/RES/1737 (2006), S/RES/1747 (2007), S/RES/1803 (2008), or S/RES/1929 (2010).