

**GUIDANCE NOTES FOR THE
SPECIAL RECOMMENDATIONS ON TERRORIST FINANCING
AND THE SELF-ASSESSMENT QUESTIONNAIRE**

Introduction

1. The Eight Special Recommendations on terrorist financing were adopted by the FATF in October 2001. Immediately following their adoption, the FATF undertook to assess the level of implementation of the Special Recommendations through a self-assessment exercise. A self-assessment questionnaire on terrorist financing (SAQTF) was developed with a series of questions for each Special Recommendation. The questions were designed to elicit details that would help determine whether a particular jurisdiction has in fact implemented a particular Special Recommendation.

2. Since the adoption of the Special Recommendations, the FATF has had little time to develop interpretations based on the experience of implementing these measures. Upon completion of the initial phase of this exercise by FATF members, it was therefore decided that additional guidance would be drafted and published to assist non-FATF members in understanding some of the concepts contained in the Special Recommendations on terrorist financing and to clarify certain parts of the SAQTF. This document therefore contains additional clarification of the Eight Special Recommendations and the SAQTF.

3. It should be emphasised at the start that the information presented here is meant primarily to serve as a guide to jurisdictions attempting to fill in and submit the SAQTF. For this reason, this information should not be considered exhaustive or definitive. Any questions on particular interpretations or implications of the Special Recommendations should be directed to the FATF Secretariat at Contact@fatf-gafi.org.

SR I: Ratification and implementation of UN instruments

4. This Recommendation contains six elements:

- Jurisdictions should ratify and fully implement the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism, and
- Jurisdictions should implement five UN Security Council Resolutions: S/RES/1267(1999), S/RES/1269(1999), S/RES/1333(2000), S/RES/1373(2001) and S/RES/1390(2001).

5. For the purposes of this Special Recommendation, *ratification* means having carried out any necessary national legislative or executive procedures to approve the UN Convention **and** having delivered appropriate ratification instruments to the United Nations. *Implementation* as used here means having put measures in place to bring the requirements indicated in the UN Convention and UNSC Resolutions into effect. The measures may be established by law, regulation, directive, decree, or any other appropriate legislative or executive act according to national law.

6. The UN Convention was open for signature from 10 January 2000 to 31 December 2001, and upon signature is subject to ratification, acceptance or approval. Ratification, acceptance or approval instruments must be deposited with the Secretary-General of the United Nations in New York. Those countries that have not signed the Convention may accede to it (see Article 25 of the Convention). The full text of the UN Convention may be consulted at <http://untreaty.un.org/English/Terrorism.asp>. As of 19 March 2002, 132 countries have signed, and 24 have deposited ratification instruments. On 10 March 2002, the UN Convention reached the minimum number of ratifications (22) stipulated as

necessary for it to come into effect. The effective date of the Convention is 10 April 2002. The web page containing information on the status of the Convention is located on the UN website at http://untreaty.un.org/ENGLISH/status/Chapter_xviii/treaty11.asp. For general information about UN treaties, see <http://untreaty.un.org/english/guide.asp> and the *Treaty Handbook* of the UN Office of Legal Affairs at <http://untreaty.un.org/English/TreatyHandbook/hbframeset.htm>. The texts of the relevant UN Security Council Resolutions may be consulted on the UN website at <http://www.un.org/documents/scres.htm>.

SR II: Criminalising the financing of terrorism and associated money laundering

7. This Recommendation contains two elements:

- Jurisdictions should criminalise “the financing of terrorism, of terrorist acts and of terrorist organisations”; and
- Jurisdictions should establish terrorist financing offences as predicate offences for money laundering.

8. In implementing SR II, jurisdictions must either establish specific criminal offences for terrorist financing activities, or they must be able to cite existing criminal offences that may be directly applied to such cases. The terms *financing of terrorism* or *financing of terrorist acts* refer to the activities described in the UN Convention (Article 2) and S/RES/1373(2001), paragraph 1b (see the UN website at <http://www.un.org/documents/scres.htm> for text of this Resolution). It should be noted that each jurisdiction should also ensure that terrorist financing offences apply as predicate offences even when carried out in another State. This corollary interpretation of SR II is then consistent with FATF Recommendation 4.

9. FATF Recommendation 4 already calls for jurisdictions to designate “serious offences” as predicates for the offence of money laundering. SR II builds on Recommendation 4 by requiring that, given the gravity of terrorist financing offences, terrorism financing offences should be specifically included among the predicates for money laundering. For the full text of the FATF Forty Recommendations, along with their Interpretative Notes, see the FATF website at http://www.fatf-gafi.org/40Reccs_en.htm.

10. Finally, as in general with other predicates for money laundering, jurisdictions should ensure that terrorist financing offences are predicate offences even if they are committed in a jurisdiction different from the one in which the money laundering offence is being applied.

SR III: Freezing and confiscating terrorist assets

11. This Recommendation contains three major elements:

- Jurisdictions should have the authority to *freeze* funds or assets of (a) terrorists and terrorist organisations and (b) those who finance terrorist acts or terrorist organisations;
- They should have the authority to *seize* (a) the proceeds of terrorism or of terrorist acts, (b) the property used in terrorism, in terrorist acts or by terrorist organisations and (c) property intended or allocated for use in terrorism, in terrorist acts or by terrorist organisations; and
- They should have the authority to *confiscate* (a) the proceeds of terrorism or of terrorist acts, (b) the property used in terrorism, in terrorist acts or by terrorist organisations and (c) property intended or allocated for use in terrorism, in terrorist acts or by terrorist organisations.

12. The term *measures*, as used in SR III, refers to explicit (legislative or regulatory) provisions or “executive powers”¹ that permit the three types of action. As with the preceding Recommendation, it is not necessary that the texts authorising these powers mention terrorist financing in particular. However, jurisdictions with already existing laws must be able to cite specific provisions that permit them to freeze, to seize or to confiscate terrorist related funds and assets within the national legal/judicial context.

13. The definitions of the concepts of freezing, seizure and confiscation vary from one jurisdiction to another. For the purposes of general guidance, the following descriptions of these terms are provided:

14. *Freezing*: In the context of this Recommendation, a competent government or judicial authority must be able to freeze, to block or to restrain specific funds or assets and thus prevent them from being moved or disposed of. The assets/funds remain the property of the original owner and may continue to be administered by the financial institution or other management arrangement designated by the owner.

15. *Seizure*: As with freezing, competent government or judicial authorities must be able to take action or to issue an order that allows them to take control of specified funds or assets. The assets/funds remain the property of the original owner, although the competent authority will often take over possession, administration or management of the assets/funds.

16. *Confiscation (or forfeiture)*: Confiscation or forfeiture takes place when competent government or judicial authorities order that the ownership of specified funds or assets be transferred to the State. In this case, the original owner loses all rights to the property. Confiscation or forfeiture orders are usually linked to a criminal conviction and a court decision whereby the property is determined to have been derived from or intended for use in a violation of the law.

17. With regard to freezing in the context of SR III, the terms *terrorists*, *those who finance terrorism* and *terrorist organisations* refer to individuals and entities identified pursuant to S/RES/1267 (1999) and S/RES/1390 (2002), as well as to any other individuals and entities designated as such by individual national governments.

SR IV: Reporting suspicious transactions related to terrorism

18. This Recommendation contains two major elements:

- Jurisdictions should establish a requirement for making a report to competent authorities when there is a *suspicion* that funds are linked to terrorist financing; or
- Jurisdictions should establish a requirement for making a report to competent authorities when there are *reasonable grounds to suspect* that funds are linked to terrorist financing.

19. For SR IV, the term *financial institutions* refers to both banks **and** non-bank financial institutions (NBFIs). In the context of assessing implementation of FATF Recommendations, NBFIs include, as a minimum, the following types of financial services: bureaux de change, stockbrokers, insurance companies and money remittance/transfer services. This definition of *financial institutions* is also understood to apply to SR IV in order to be consistent with the interpretation of the FATF Forty Recommendations. With regard specifically to SR IV, if other types of professions, businesses or business activities currently fall under anti-money laundering reporting obligations, jurisdictions should also extend terrorist financing reporting requirements to those entities or activities.

¹ The term executive powers means those powers emanating from the executive branch of government (as opposed to legislative or judicial powers). An example might be an order or decree made by the head of state or government.

20.. The term *competent authority*, for the purposes of SR IV, is understood to be either the jurisdiction's financial intelligence unit (FIU) or another central authority that has been designated by the jurisdiction for receiving disclosures related to money laundering.

21. With regard to the terms *suspect* and *have reasonable grounds to suspect*, the distinction is being made between levels of mental certainty that could form the basis for reporting a transaction. The first term – that is, a requirement to report to competent authorities when a financial institution suspects that funds are derived from or intended for use in terrorist activity – is a subjective standard and transposes the reporting obligation called for in FATF Recommendation 15 to SR IV. The requirement to report transactions when there are reasonable grounds to suspect that the funds are derived from or intended for use in terrorist activity is an objective standard, which is consistent with the intent of Recommendation 15 although somewhat broader. In the context of SR IV, jurisdictions should establish a reporting obligation that may be based either on suspicion or on having reasonable grounds to suspect.

SR V: International Co-operation

22. This Recommendation contains five elements:

- Jurisdictions should permit the exchange of information regarding terrorist financing with other jurisdictions through *mutual legal assistance mechanisms*;
- Jurisdictions should permit the exchange of information regarding terrorist financing with other jurisdictions by means *other than through mutual legal assistance mechanisms*;
- Jurisdictions should have specific measures to permit the denial of “safe haven” to individuals involved in terrorist financing;
- Jurisdictions should have procedures that permit the extradition of individuals involved in terrorist financing; and
- Jurisdictions should have provisions or procedures to ensure that “claims of political motivation are not recognised as a ground for refusing requests to extradite persons alleged to be involved in terrorist financing”.

23. To obtain a clear picture of the situation in each jurisdiction through the self-assessment process, an artificial distinction has been made for some questions in the SAQTF between international co-operation through *mutual legal assistance mechanisms* on the one hand and information exchange through means *other than through mutual legal assistance*.

24. For the purposes of SR V, the term *mutual legal assistance* means the power to provide a full range of both non-coercive legal assistance, including the taking of evidence, the production of documents for investigation or as evidence, the search and seizure of documents or things relevant to criminal proceedings or to a criminal investigation, the ability to enforce a foreign restraint, seizure, forfeiture or confiscation order in a criminal matter. In this instance, *mutual legal assistance* would also include information exchange through rogatory commissions (that is, from the judicial authorities in one jurisdiction to those in another).

25. Exchange of information by means *other than through mutual legal assistance* includes any arrangement other than those described in the preceding paragraph. Under this category should be included exchanges that take place between FIUs or other agencies that communicate bilaterally on the basis of memoranda of understanding (MOUs), exchanges of letters, etc.

26. With regard to the last three elements of SR V, these concepts should be understood as referred to in the relevant UN documents. These are S/RES/1373 (2001), paragraph 2c (for denial of safe haven); the UN Convention, Article 11 (for extradition); and the UN Convention, Article 14 (for

rejection of claims of political motivation as related to extradition). The text of the UN Convention may be consulted at <http://untreaty.un.org/English/Terrorism.asp>; the text of S/RES/1373 (2001) may be accessed at <http://www.un.org/documents/scres.htm>.

27. The term *civil enforcement* as used in SR V is intended to refer only to the type of investigations, inquiries or procedures conducted by regulatory or administrative authorities that have been empowered in certain jurisdictions to carry out such activities in relation to terrorist financing. *Civil enforcement is not meant to include civil procedures and related actions as understood in civil law jurisdictions.*

SR VI: Alternative Remittance

28. This Recommendation consists of three major elements:

- Jurisdictions should require licensing **or** registration of persons or legal entities providing money/value transmission services, including through informal systems or networks;
- Jurisdictions should ensure that money/value transmission services, including informal systems or networks, are subject to FATF Recommendations 10-12 and 15; and
- Jurisdictions should be able to impose sanctions on money/value transmission services, including informal systems or networks, that fail to obtain a license/register and that fail to comply with relevant FATF Recommendations.

29. Money or value transfer systems have shown themselves vulnerable to misuse for money laundering or terrorist financing purposes. The intention of SR VI is to ensure that jurisdictions impose anti-money laundering and counter-terrorist financing measures on all forms of money/value transfer systems. To obtain a clear picture of the situation in each jurisdiction through the self-assessment process, an artificial distinction has been made between formal and informal transfer systems in some questions.

30. The term *money remittance or transfer service* refers to a financial service – often provided by a distinct category of non-bank financial institutions – whereby funds are moved for individuals or entities through a dedicated network or through the regulated banking system. For the purposes of assessing compliance with the FATF Recommendations, money remitter/transfer services are included as a distinct category of NBFIs and are thus considered part of the regulated financial sector. Nevertheless, such services are used in some laundering or terrorist financing operations, often as part of a larger alternate remittance or underground banking scheme.

31. The term *informal money or value transfer system* also refers to a financial service whereby funds or value are moved from one geographic location to another. However, in some jurisdictions, these informal systems have traditionally operated outside the regulated financial sector in contrast to the “formal” money remittance/transfer services described in the preceding paragraph. Some examples of informal systems include the parallel banking system found in the Americas (often referred to as the “Black Market Peso Exchange”), the *hawala* or *hundi* system of South Asia, and the Chinese or East Asian systems. For more information on this topic, see the FATF-XI Typologies Report (3 February 2000), available through the FATF website at http://www.fatf-gafi.org/FATDocs_en.htm#Trends, or the Asia Pacific Group Report on Underground Banking and Alternate Remittance Systems (18 October 2001), available through the APG website at http://www.apgml.org/content/typologies_reports.jsp.

32. Where *licensing* or *registration* are indicated in the questionnaire, either licensing **or** registration is considered sufficient to meet the requirements of the Recommendation. *Licensing* in this Recommendation means a requirement to obtain permission from a designated government authority in order to operate a money/value transmission service. *Registration* in this

Recommendation means a requirement to register or declare the existence of a money/value transmission service in order for the business to operate. It should be noted that the logical consequence of the requirements of SR VI is that jurisdictions should designate a licensing **or** registration authority and an authority to ensure compliance with FATF Recommendations for money/value transmission services, including informal systems or networks. This corollary interpretation of SR VI (i.e., the need for designation of competent authorities) is consistent with FATF Recommendation 26.

33. The reference to “all FATF Recommendations that apply to banks and non-bank financial institutions” includes as a minimum Recommendations 10, 11, 12, and 15. Other applicable Recommendations include Recommendations 13, 14, 16-21 and 26-29. The full text of these and all other FATF Recommendations may be consulted on the FATF website (http://www.fatf-gafi.org/40Recs_en.htm).

SR VII: Wire transfers

34. This Recommendation consists of three elements:

- Jurisdictions should require financial institutions to include originator information on funds transfers sent within or from the jurisdiction;
- Jurisdictions should require financial institutions to retain information on the originator of funds transfers, including at each stage of the transfer process; and
- Jurisdictions should require financial institutions to examine more closely or to monitor funds transfers when complete originator information is not available.

35. For the purposes of SR VII, three categories of financial institution are specifically concerned (banks, bureaux de change and money remittance/transfer services), although other financial services (for example, stockbrokers, insurance companies, etc.) may be subject to such requirements in certain jurisdictions.

36. The list of types of *accurate and meaningful* originator information indicated in the Special Recommendation (that is, name, address and account number) is not intended to be exhaustive. In some instances – in the case of an occasional customer, for example – there may not be an account number. In certain jurisdictions, a national identity number or a date and place of birth could also be designated as required originator information.

37. The term *enhanced scrutiny* for the purposes of SR VII means examining the transaction in more detail in order to determine whether certain aspects related to the transaction could make it suspicious (origin in a country known to provide safe haven to terrorists or terrorist organisations, for example) and thus warrant eventual reporting to the competent authority.

SR VIII: Non-profit organisations

38. The intent of SR VIII is to ensure that legal entities (juridical persons), other relevant legal arrangements, and in particular *non-profit organisations* may not be used by terrorists as a cover for or a means of facilitating the financing of their activities. This Recommendation consists of two elements:

- Jurisdictions should review the legal regime of entities, in particular non-profit organisations, to prevent their misuse for terrorist financing purposes; and

- With respect specifically to non-profit organisations, jurisdictions should ensure that such entities may not be used to disguise or facilitate terrorist financing activities, to escape asset freezing measures or to conceal diversions of legitimate funds to terrorist organisations.

39. As stated above, the intent of SR VIII is to ensure that legal entities, other relevant legal arrangements, and *non-profit organisations* may not be misused by terrorists. Legal entities have a variety of forms that differ from one jurisdiction to another. The degree to which a particular type of entity may be vulnerable to misuse in terrorist financing may also vary from one jurisdiction to another. For this reason, a selection of types of legal entities and other legal arrangements has been presented in the SAQTF in an attempt to obtain a clear picture of the situation in individual jurisdictions. The selection is based on types of entities that have been observed as being involved in money laundering and/or terrorist financing activities in the past. Individual categories may overlap, and in some instances, a jurisdiction may not have all the categories indicated in the SAQTF.

40. Similarly it should be pointed out that *non-profit organisations*, a particular focus of SR VIII, may exist in legal forms that vary from one jurisdiction to another. Again, the selection of entity types in the SAQTF has been made with the intention of permitting jurisdictions to find entities or arrangements that correspond to their individual situation. The term *non-profit organisation* can be generally understood to include those types of entities that are organised for charitable, religious, educational, social or fraternal purposes, or for the carrying out of other types of “good works”. In addition, the earnings of such entities or activities should normally not benefit any private shareholder or individual, and they may be restricted from direct or substantial involvement in political activities. In many jurisdictions, non-profit organisations are exempt from fiscal obligations.

41. In the SAQTF, the term *offshore companies* refers to what are usually established as limited liability juridical persons in certain jurisdictions and which often fall under a separate or privileged regulatory regime. Such entities may be used to own and operate businesses (a shell or holding company), issue shares or bonds, or raise capital in other manners. They are generally exempt from local taxes or subject to a preferential rate and may be prohibited from doing business in the jurisdiction in which they are incorporated. The International Business Corporation (IBC) is an example of such an entity. In the SAQTF, jurisdictions should only respond to relevant offshore questions if they have an offshore sector within their jurisdiction.

42. The SAQTF also includes a category “Trusts and/or foundations” under SR VIII. *Trusts* are legal arrangements available in certain jurisdictions. Although they are not strictly speaking legal entities, they are used as a means for holding or transmitting assets and may, as with certain legal entities, be misused as a means for hiding or disguising true ownership of an asset. The term *foundations* refers primarily to “private foundations or establishments” that exist in some civil law jurisdictions and which may engage in commercial and/or non-profit activities. Some examples of these include *Stiftung*, *stichting*, *Anstalt*, etc.

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