

Chapter IX

Combating the Financing of Terrorism

A. Ratification and Implementation of United Nations Instruments

B. Criminalizing the Financing of Terrorism and Associated Money Laundering

C. Freezing and Confiscating Terrorist Assets

D. Reporting Suspicious Transactions Related to Terrorism

E. International Cooperation

F. Alternative Remittance Systems

G. Wire Transfers

H. Non-Profit Organizations

I. Self-Assessment Questionnaire on Terrorist Financing

The terrorist attacks on the United States on September 11, 2001, increased the importance of preventing, detecting and suppressing the financing of terrorism and terrorist acts in the international community. In October of 2001, the Financial Action Task Force on Money Laundering (FATF) expanded its mission beyond money laundering to also focus on the world-wide effort to combat the financing of terrorism (CFT).

To achieve these goals, FATF adopted eight *Special Recommendations on Terrorist Financing (Special Recommendations)*¹ at the same that it amended its mission. Like its earlier efforts, *The Forty Recommendations on Money Laundering (The Forty Recommendations)*,² the recommendations are not suggestions, but rather mandates for action by every country, not just

1. *Special Recommendations*, http://www1.oecd.org/fatf/SrecaTF_en.htm. The *Special Recommendations* are reprinted in Annex V of this Reference Guide.

2. *The Forty Recommendations*, http://www1.oecd.org/fatf/40Recs_en.htm. The *Forty Recommendations* are reprinted in Annex IV of this Reference Guide.

Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism

FATF members, if that country is to be viewed as complying with international standards in combating the financing of terrorism (CFT). Moreover, FATF specifically invites all countries to adopt the Special Recommendations and participate in its self-assessment exercise.³ Implementation of these Special Recommendations, together with *The Forty Recommendations* on money laundering, set out the basic framework to detect, prevent and suppress terrorist financing and terrorist acts.

The *Special Recommendations* are relatively new. Thus, there is little experience with interpreting and implementing them, although they are not difficult concepts. As a result, FATF also adopted Guidance Notes to help explain the *Special Recommendations*.⁴

A. Ratification and Implementation of United Nations Instruments

FATF's first recommendation⁵ provides that "each country is to take immediate steps to ratify and to implement fully the *United Nations Convention for the Suppression of the Financing of Terrorism* (1999)."⁶ This part of the recommendation is self explanatory. As with other ratified conventions, the basic issue is whether, and to what extent, a country has fully implemented its requirements. This issue is compounded by the fact that many fewer countries have ratified this *Convention than the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1988) (*Vienna Convention*).⁷

The second part of the first recommendation requires each country to implement fully United Nations (UN) Security Council Resolutions:⁸

-
3. See Annex VI: Self-Assessment Questionnaire on Terrorist Financing, http://www1.oecd.org/fatf/pdf/SAQTF03_en.doc.
 4. See FATF, Guidance Notes for the Special Recommendations on Terrorist Financing (Guidance Notes) and the Self-Assessment Questionnaire, http://www1.oecd.org/fatf/pdf/TF-SAGUIDE20020327_en.pdf.
 5. *Special Recommendations*, Spec. Rec. I.
 6. <http://www.un.org/law/cod/finterr.htm>.
 7. <http://www.incb.org/e/conv/1988/>.
 8. FATF, Guidance Notes.

Combating the Financing of Terrorism

- S/RES/1267 (1999)⁹
- S/RES/1269 (1999)¹⁰
- S/RES/1333 (2000)¹¹
- S/RES/1373 (2001)¹²
- S/RES/1390 (2001)¹³

Implementation means that a country has all appropriate and necessary measures in place to bring the requirements of the UN Convention and the UN Security Council Resolutions into effect.¹⁴ These necessary measures may be accomplished by law, regulation, directive, decree or another appropriate legislative or executive action according to the country's constitutional and legal framework.¹⁵

Of the five UN Security Council Resolutions, the one that is the most important for FATF compliance purposes is Resolution 1373.¹⁶ This Resolution obligates all UN member countries to:

- criminalize actions to finance terrorism;
- deny all forms of support for terrorist groups;
- suppress the provision of safe haven or support for terrorists, including freezing funds or assets of persons, organizations or entities involved in terrorist acts;
- prohibit active or passive assistance to terrorist; and
- cooperate with other countries in criminal investigations and sharing information about planned terrorist acts.¹⁷

9. <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N99/300/44/PDF/N9930044.pdf?OpenElement>.

10. <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N99/303/92/PDF/N9930392.pdf?OpenElement>.

11. <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N00/806/62/PDF/N0080662.pdf?OpenElement>.

12. <http://www.un.org/Docs/sc/committees/1373/res1373e.pdf>.

13. <http://ods-dds-ny.un.org/doc/UNDOC/GEN/n02/216/02/PDF/N0221602.pdf?OpenElement>.

14. FATF, Guidance Notes, Paragraph 5.

15. *Id.*

16. *Special Recommendations*, Spec. Rec. I.

17. S/RES/1371 (2001), <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N01/552/01/PDF/N0155201.pdf?OpenElement>.

Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism

B. Criminalizing the Financing of Terrorism and Associated Money Laundering

The second recommendation contains two elements, which require each country to:

- criminalize the financing of terrorism, terrorist acts and terrorist organizations; and
- establish terrorist offenses as predicate offenses of money laundering.¹⁸

A country can satisfy this second recommendation either by establishing new laws making specific offenses for terrorists financing activities, or by demonstrating how existing criminal offenses can be applied to terrorists financing activities.¹⁹ In addition, terrorist financing offenses should constitute money laundering offenses, even when carried out in another country.²⁰

C. Freezing and Confiscating Terrorist Assets

Under the third CFT recommendation, each country should implement measures to freeze the “funds or other assets of terrorists, those who finance terrorism and terrorist organizations in accordance with the UN resolutions,” discussed above.²¹ Furthermore, each country should take appropriate action to authorize competent authorities within the country “to seize and confiscate property that the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organizations.”²²

In this recommendation, there are three basic concepts that may have different meanings in different countries: freezing, seizure and confiscation (or forfeiture). “Freezing” means that a competent authority within a country has the authorization to block or restrain specific funds or assets and, thereby, prevent those funds or assets from being moved or otherwise dispersed.²³ The “frozen” funds or assets remain the property of the owner and

18. *Special Recommendations*, Spec. Rec. II.

19. FATF, Guidance Notes, at Paragraph 8.

20. *Id.*, at Paragraph 10.

21. *Special Recommendations*, Spec. Rec. III.

22. *Id.*

23. FATF, Guidance Notes, at Paragraph 14.

Combating the Financing of Terrorism

remain under the administration of the financial institution (or other entity) and under the control of existing management. The goal of freezing assets is to eliminate control over the assets by the owner so that the assets cannot be used for any prohibited purpose.

“Seizure” means that the competent government authority has the authorization to take control of the specified funds or assets.²⁴ Under seizing, the assets or funds remain the property of the original owner, but possession, administration and management of the assets is taken over by the relevant competent authority. “Confiscation” or “forfeiture” means that the competent authority has authorization to transfer ownership of the specified funds or assets to the country itself.²⁵ Confiscation usually occurs when there is a criminal conviction or judicial decision that determined that the assets to funds were derived from criminal activity, or were intended to be used in violation of law.

D. Reporting Suspicious Transactions Related to Terrorism

Financial institutions, that “suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations” should report promptly their suspicious to the competent authorities.²⁶

Under this fourth recommendation, the term financial institutions refers to both banks and nonbank financial institutions, consistent with the country’s implementation of *The Forty Recommendations*.²⁷ At a minimum, financial institutions should include banks, bureaux de change, stockbrokers, insurance companies and money remittance/transmitter services.²⁸ Also consistent with *The Forty Recommendations*, other types of professions, businesses and business activities that are subject to the country’s anti-money laundering (AML) laws should be covered by this reporting requirement. The

24. *Id.*, at Paragraph 15.

25. *Id.*, Guidance Notes, at Paragraph 16.

26. *Special Recommendations*, Spec. Rec. IV.

27. FATF, Guidance Notes, at Paragraph 19.

28. *Id.*

Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism

important point here is consistency in the definition of financial institutions between a county's AML and CFT laws.

This recommendation involves reporting under two alternative circumstances: when there is a "suspicion" that funds are linked to terrorist financing; and when there are "reasonable grounds to suspect" that funds are linked to terrorist financing. The distinction between the two is the certainty that forms the standard for the required reporting of a transaction.²⁹ The "suspect" standard is a subjective standard and is the same as that used in FATF's AML recommendations.³⁰ The "reasonable grounds to suspect" standard is consistent with the AML recommendation, but is somewhat broader than the pure "suspect" standards and, thereby, requires reporting under a broader set of circumstances.

Countries can satisfy this reporting requirement based upon either the "suspicion" or "having reasonable grounds to suspect" standard.³¹

E. International Cooperation

The fifth CFT recommendation, provides that each country should afford another country, through mutual legal assistance mechanism or other mechanisms, "the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organizations."³² Each country should also take all appropriate measures to assure that it does not provide safe havens for individuals charged with financing terrorism, terrorist acts or terrorist organizations, and should have procedures in place to extradite such persons, if possible.³³

The first part of this measure mandates the exchange of information through mutual legal assistance mechanisms or means other than mutual legal assistance. "Mutual legal assistance" means the authority to provide a full range

29. FATF, Guidance Notes, at Paragraph 21.

30. *The Forty Recommendations*, Rec. 15, which provides: "If financial institutions suspect that funds stem from a criminal activity," they should promptly report their suspicions.

31. FATF, Guidance Notes, at Paragraph 21.

32. *Special Recommendations*, Spec. Rec. V.

33. *Id.*

Combating the Financing of Terrorism

of legal assistance, including the taking of evidence; the search and seizure of documents or items relevant to criminal proceedings or criminal investigations; and the ability to enforce a foreign restraint, seizure, confiscation or forfeiture order in a criminal matter.³⁴ Exchange of information by means “other than through mutual legal assistance” means any other arrangement, including exchange occurring through financial intelligence units (FIUs) or other governmental agencies units that exchange information bilaterally pursuant to memoranda of understanding (MOUs), exchange of letter or otherwise.³⁵

The second part of this measure concerns the concepts of “safe haven” and “extradition.” These terms have the same meanings as the terms “safe haven,”³⁶ as used in UN Security Resolution 1373,³⁷ and “extradite,”³⁸ as used in the *UN International Convention for the Suppression of the Financing of Terrorism*.³⁹ With regard to extradition, countries should assure that “claims of political motivation are not recognized as a ground for refusing requests to extradite persons alleged to be involved in terrorist financing.”⁴⁰ This concept and phrasing are from the *UN Convention on Suppression of the Financing of Terrorism*.⁴¹

F. Alternative Remittance Systems

Each country should take actions to ensure that individuals and legal entities that provide for “the transmission of money or value, including transmission through an informal money value transfer system or network” are licensed or registered and subject to the same standards, i.e. *The Forty Recommendations*, that apply to banks.⁴² In addition, those that perform such services illegally should be subject to administrative, civil or criminal sanctions.⁴³

34. FATF, Guidance Notes, at Paragraph 24.

35. *Id.*, at Paragraph 25.

36. *Id.*, at Paragraph 26.

37. UN Security Resolution 1373 (2001), at paragraph 2 (c).

38. *Id.*

39. UN Convention of Suppression of the Financing of Terrorism, at Article 11, http://www.untreaty.un.org/ENGLISH/Status/Chapter_xviii/treaty11.asp.

40. FATF, Guidance Notes, at Paragraph 26.

41. Article 14.

42. *Special Recommendations*, Spec. Rec. VI.

43. *Id.*

Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism

Formal money remittance or transfer services are often provided by a distinct category of non-bank financial institutions (NBFIs), through which funds are moved on behalf of individuals or legal entities through a dedicated network or through the regulated banking system. For purposes of determining compliance with the FATF *Forty Recommendations*, these money transmitters are included as a covered NBFI and considered subject to the regulated financial sector.⁴⁴

The “informal money or value transfer system” refers to a type of financial service through which funds or value are moved from one geographic location to another through informal and unsupervised networks or mechanisms.⁴⁵ In many jurisdictions, these informal systems have traditionally operated outside the regulated financial sector, as described above. Such informal systems include the Black Market Peso Exchange, *hundi* or *Hawala* systems.⁴⁶

The goal of Special Recommendation VI is to assure that countries impose AML and CFT requirements on all forms of money/value transfer systems.⁴⁷ Thus, at a minimum, a country should ensure that all money and value transmission services, including informal ones, are subject to specific FATF and international standards.⁴⁸ Furthermore, a corollary requirement of this special recommendation is that a competent authority be designated to license or register all such informal money/value transmission services and to require these entities to have adequate programs to guard against money laundering and terrorist financing.⁴⁹ Such a requirement is consistent with *The Forty Recommendations*.⁵⁰

44. *The Forty Recommendations*, Rec. 8.

45. FATF, Guidance Notes, at Paragraph 31.

46. For a thorough discussion on this subject, see Bank/Fund paper on this issue (See Chapter X, Analysis of the Hawala System). See also, FATF-XI Typologies Report (2000) (www.fatf-gafi.org/fatfdocs_en.html#Trends), Asia Pacific Group Report on Underground Banking and Alternative Remittance Systems (2001). http://www.apgml.org/content/typologies_reports.jsp.

47. FATF, Guidance Notes, at Paragraph 29.

48. *The Forty Recommendations*, Recs. 10,11,12 and 15.

49. FATF, Guidance Notes, at Paragraph 32.

50. *The Forty Recommendations*, Rec. 26.

G. Wire Transfers

Each country should take appropriate actions to require covered financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on fund transfers and related messages that are sent, and further require that the information should remain with the transfer or related message throughout the payment chain.⁵¹ In addition, such financial institutions should conduct enhanced scrutiny of, and monitor of suspicious activity of, funds transfers that do not contain complete originator information.⁵²

The recommendation appears to be rather straightforward, although there have been issues with its interpretation. First, although the wording of the recommendation implies that it would apply to all covered financial institutions, the guidance notes provide that there are three categories of financial institutions of concern: (1) banks, (2) bureaux de change, and (3) money remitters or transfer services.⁵³ Stockbrokers and insurance companies may be subject to this recommendation in certain jurisdictions, although no further clarification is currently provided.⁵⁴

A proposed interpretative note has been issued with regard to Special Recommendation VII.⁵⁵ It would expand the definition of financial institution and provide more specific information about which transfers are to be covered and what information should be maintained for each type of transfer. The interpretative note also proposes to permit exemptions from these requirements for certain types of transfers.⁵⁶ Thus, a country should consult the FATF website in order to obtain the latest information relating to the implementation of this recommendation.

51. *Special Recommendations*, Spec. Rec. VII.

52. *Id.*

53. FATF, Guidance Notes, at Paragraph 35.

54. *Id.*

55. Public Consultation on a Proposed Interpretative Note to Special Recommendation VII: Wire Transfers (11 October 2002) at http://www1.oecd.org/fatf/pdf/INSR7-Consult_en.pdf.

56. *Id.*

Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism

H. Non-Profit Organizations

Each country should review the adequacy of its laws and regulations regarding non-profit organizations, in order to determine whether they can be used for terrorist financing purposes.⁵⁷ In particular, a country should ensure that its non-profit organizations cannot be misused:

- by terrorist organizing posing as legitimate ones;
- to exploit legitimate entities as conduits for terrorist financing, including to avoid asset freezing measures; and
- to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.⁵⁸

The goal of this recommendation is to prevent non-profit organizations (i.e., those organized for charitable, religious, educational, social or fraternal purposes), as well as other legal entities and arrangements, from being misused by terrorist.⁵⁹ In this regard, the recommendation is rather general because the different entities categorized as non-profit organizations take various legal forms and the nature of their operations varies from jurisdiction to jurisdiction.⁶⁰

In an effort not to require adherence to a rigid set of rules that may be of little or no meaning in certain jurisdictions, this measure consists of general guidance and goals to be achieved, rather than specific requirements. Also, in an effort to help countries protect their non-profit institutions from abuse, FATF has issued a set of international best practices entitled, *Combating the Abuse of Non-Profit Organizations*.⁶¹

57. *Special Recommendations*, Spec. Rec. VIII.

58. *Id.*

59. FATF, Guidance Notes, at Paragraph 39.

60. *Id.*

61. http://www.fatf-gafi.org/pdf/SR8-NPO_en.pdf (11 October 2002).

Combating the Financing of Terrorism

I. Self-Assessment Questionnaire on Terrorist Financing

In order to focus on issues of interpretation and implementation with regard to the *Special Recommendations*, FATF issued a Self Assessment Questionnaire on Terrorist Financing (SAQFT).⁶² The SAQFT was initially used only by FATF members. Upon completion of the initial assessment of the SAQFT, FATF determined to issue guidance notes on the Special Recommendations and the SAQFT.⁶³ The SAQFT is also available on the FATF website and may be used by any country for its own assessment purposes.

62. http://www1.oecd.org/fatf/pdf/SAQTF03_en.doc.

63. See FATF, Guidance Notes, see http://www1.oecd.org/fatf/pdf/TF-SAGUIDE20020327_en.pdf.

