



Department of the Treasury Financial Crimes Enforcement Network

Advisory

FIN-2011-A015

Issued: November 15, 2011

Subject: Guidance to Financial Institutions Based on the Financial Action Task Force Public Statement on Anti-Money Laundering and Counter-Terrorist Financing Risks.

1. Countermeasures: Iran and Democratic People's Republic of Korea (DPRK).
2. Enhanced Due Diligence: Cuba; Bolivia; Ethiopia; Kenya; Myanmar; Nigeria; São Tomé and Príncipe; Sri Lanka; Syria, and Turkey.

The Financial Crimes Enforcement Network (FinCEN) is issuing this advisory to inform banks and other financial institutions operating in the United States of the risks of money laundering and financing of terrorism associated with jurisdictions identified by the Financial Action Task Force (FATF)¹ on October 28, 2011, as having deficiencies in their anti-money laundering and counter-terrorist financing (AML/CFT) regimes and that have either not made sufficient progress in addressing these deficiencies, not provided a political commitment to address AML/CFT deficiencies, or are subject to FATF's call for countermeasures.² Also, FinCEN is issuing a complementary advisory today, FIN-2011-A014,³ which addresses a separate but related FATF document identifying jurisdictions with strategic AML/CFT deficiencies, for which each jurisdiction has provided a high-level political commitment to address.

The FATF public statement comes in response to the G-20 leaders' call for the FATF to reinvigorate its process for assessing countries' compliance with international AML/CFT standards and to publicly identify high risk jurisdictions.⁴ Also, in June and November 2010, the G-20 leaders called for FATF to issue regular updates on jurisdictions with strategic deficiencies.⁵ Specifically, the FATF's International Cooperation Review Group (ICRG) is tasked with leading this process to identify and examine uncooperative jurisdictions and jurisdictions that are failing to implement effective AML/CFT systems. At the October 2011 FATF Plenary, the FATF adopted the recommendations of the ICRG and publicly

¹ The FATF is a 36-member inter-governmental policy-making body whose purpose is to establish international standards and develop and promote policies, both at national and international levels, to combat money laundering and terrorist financing. See www.fatf-gafi.org. The United States is a member of the FATF. See also, previous FATF statements of October 11, 2007; February 28, 2008; June 20, 2008; October 16, 2008; February 27, 2009; June 29, 2009; October 16, 2009; February 22, 2010; June 28, 2010; October 22, 2010, February 25, 2011, June 2011, and October 2011. All of FATF's public statements are available, at http://www.fatf-gafi.org/findDocument/0_3354_en_32250379_32236992_1_33632055_1_1_1,00.html.

² The FATF issued two documents: (i) a public statement, http://www.fatf-gafi.org/document/55/0,3746,en_32250379_32236992_48966519_1_1_1,00.html; and (ii) a publication entitled " Improving Global AML/CFT Compliance: on-going process," at http://www.fatf-gafi.org/document/42/0,3746,en_32250379_32236992_48966698_1_1_1,00.html.

³ http://www.fincen.gov/statutes_regs/guidance/html/FIN-2011-A014.html

⁴ See "Declaration on Strengthening the Financial System: London Summit, April 2, 2009," at <http://www.londonsummit.gov.uk/resources/en/PDF/annex-strengthening-fin-sysm> and "Leaders' Statement: The Pittsburgh Summit, September 24 - 25, 2009," at <http://www.pittsburghsummit.gov/mediacenter/129639.htm>.

⁵ See "The G-20 Toronto Summit Declaration, June 26-27, 2010," at http://www.g20.org/Documents/g20_declaration_en.pdf and "The G-20 Seoul Summit Leaders' Declaration, November 11-12, 2010," at http://www.g20.org/Documents/2010/11/seoulsummit_declaration.pdf.

identified jurisdictions with strategic AML/CFT deficiencies. The FATF public statement, which is reprinted below and can be found on the FATF website, cites specific concerns regarding each of the jurisdictions and calls for action on the part of FATF's members. This is an important step in our collective efforts to protect the international financial system from abuse.

The countries on this advisory have changed since FinCEN's Advisory, dated July 13, 2011. In particular, FATF now urges all jurisdictions to consider the risks arising from the AML/CFT deficiencies in Nigeria and São Tomé and Príncipe, in addition to the countries FATF previously included in this category in June 2011 (i.e., Cuba; Bolivia; Ethiopia; Kenya; Myanmar; Sri Lanka; Syria, and Turkey).

FATF Public Statement - 28 October 2011⁶

The Financial Action Task Force (FATF) is the global standard setting body for anti-money laundering and combating the financing of terrorism (AML/CFT). In order to protect the international financial system from ML/FT risks and to encourage greater compliance with the AML/CFT standards, the FATF identified jurisdictions that have strategic deficiencies and works with them to address those deficiencies that pose a risk to the international financial system.

[Chart omitted]

1. Jurisdictions subject to a FATF call on its members and other jurisdictions to apply counter-measures to protect the international financial system from the ongoing and substantial money laundering and terrorist financing (ML/TF) risks emanating from the jurisdictions.

Iran

The FATF, with a renewed urgency, is particularly and exceptionally concerned about Iran's failure to address the risk of terrorist financing and the serious threat this poses to the integrity of the international financial system, despite Iran's engagement with the FATF.

The FATF reaffirms its call on members and urges all jurisdictions to advise their financial institutions to give special attention to business relationships and transactions with Iran, including Iranian companies and financial institutions. In addition to enhanced scrutiny, the FATF reaffirms its 25 February 2009 call on its members and urges all jurisdictions to apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism (ML/FT) risks emanating from Iran. FATF continues to urge jurisdictions to protect against correspondent relationships being used to bypass or evade counter-measures and risk mitigation practices and to take into account ML/FT risks when considering requests by Iranian financial institutions to open branches and subsidiaries in their jurisdiction. Due to the continuing terrorist financing threat emanating from Iran, jurisdictions should consider the steps already taken and possible additional safeguards or strengthen existing ones.

⁶The text makes reference to the relevant FSRBs with whom FATF will continue to work to address the deficiencies identified. These FSRBs include: Caribbean Financial Action Task Force (CFATF); the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL); Financial Action Task Force of South America Against Money Laundering (GAFISUD); Asia/Pacific Group on Money Laundering (APG); Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG); Middle East & North Africa Financial Action Task Force (MENAFATF); Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG); and Intergovernmental Anti-Money Laundering Group in Africa (GIABA).

The FATF urges Iran to immediately and meaningfully address its AML/CFT deficiencies, in particular by criminalising terrorist financing and effectively implementing suspicious transactions reporting (STR) requirements. If Iran fails to take concrete steps to improve its CFT regime, the FATF will consider calling on its members and urging all jurisdictions to strengthen counter-measures in February 2012.

Democratic People's Republic of Korea (DPRK)

The FATF remains concerned by the DPRK's failure to address the significant deficiencies in its anti-money laundering and combating the financing of terrorism (AML/CFT) regime and the serious threat this poses to the integrity of the international financial system. The FATF urges the DPRK to immediately and meaningfully address its AML/CFT deficiencies.

The FATF reaffirms its call on its members and urges all jurisdictions to advise their financial institutions to give special attention to business relationships and transactions with the DPRK, including DPRK companies and financial institutions. In addition to enhanced scrutiny, the FATF further calls on its members and urges all jurisdictions to apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism (ML/FT) risks emanating from the DPRK. Jurisdictions should also protect against correspondent relationships being used to bypass or evade counter-measures and risk mitigation practices, and take into account ML/FT risks when considering requests by DPRK financial institutions to open branches and subsidiaries in their jurisdiction.

The FATF remains prepared to engage directly in assisting the DPRK to address its AML/CFT deficiencies, including through the FATF Secretariat.

2. Jurisdictions with strategic AML/CFT deficiencies that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies. The FATF calls on its members to consider the risks arising from the deficiencies associated with each jurisdiction, as described below.

Cuba

Cuba has not committed to the AML/CFT international standards, nor has it constructively engaged with the FATF. The FATF has identified Cuba as having strategic AML/CFT deficiencies that pose a risk to the international financial system. The FATF urges Cuba to develop an AML/CFT regime in line with international standards, and is ready to work with the Cuban authorities to this end.

Bolivia

Bolivia has taken steps towards improving its AML/CFT regime, including by enacting new CFT legislation. However, despite Bolivia's high-level political commitment to work with the FATF and GAFISUD to address its strategic AML/CFT deficiencies, Bolivia has not made sufficient progress in implementing its action plan, and certain strategic AML/CFT deficiencies remain. Bolivia should work on addressing these

deficiencies including by: (1) ensuring adequate criminalisation of money laundering (Recommendation 1); (2) adequately criminalising terrorist financing (Special Recommendation II); (3) establishing and implementing an adequate legal framework for identifying and freezing terrorist assets (Special Recommendation III); and (4) establishing a fully operational and effective Financial Intelligence Unit (Recommendation 26). The FATF encourages Bolivia to address its remaining deficiencies and continue the process of implementing its action plan.

Ethiopia

Despite Ethiopia's high-level political commitment to work with the FATF to address its strategic AML/CFT deficiencies, Ethiopia has not made sufficient progress in implementing its action plan, and certain strategic AML/CFT deficiencies remain. Ethiopia should work on addressing these deficiencies, including by: (1) adequately criminalising money laundering and terrorist financing (Recommendation 1 and Special Recommendation II); (2) establishing and implementing an adequate legal framework and procedures to identify and freeze terrorist assets (Special Recommendation III); (3) ensuring a fully operational and effectively functioning Financial Intelligence Unit (Recommendation 26); (4) raising awareness of AML/CFT issues within the law enforcement community (Recommendation 27); and (5) implementing effective, proportionate and dissuasive sanctions in order to deal with natural or legal persons that do not comply with the national AML/CFT requirements (Recommendation 17). The FATF encourages Ethiopia to address its remaining deficiencies and continue the process of implementing its action plan.

Kenya

Despite Kenya's high-level political commitment to work with the FATF and ESAAMLG to address its strategic AML/CFT deficiencies, Kenya has not made sufficient progress in implementing its action plan, and certain strategic AML/CFT deficiencies remain. Kenya should work on addressing these deficiencies, including by: (1) adequately criminalising terrorist financing (Special Recommendation II); (2) ensuring a fully operational and effectively functioning Financial Intelligence Unit (Recommendation 26); (3) establishing and implementing an adequate legal framework for identifying and freezing terrorist assets (Special Recommendation III); (4) raising awareness of AML/CFT issues within the law enforcement community (Recommendation 27); and (5) implementing effective, proportionate and dissuasive sanctions in order to deal with natural or legal persons that do not comply with the national AML/CFT requirements (Recommendation 17). The FATF encourages Kenya to address its remaining deficiencies and continue the process of implementing its action plan, including by implementing the AML legislation and setting up its FIU.

Myanmar

Despite Myanmar's high-level political commitment to work with the FATF and APG to address its strategic AML/CFT deficiencies, Myanmar has not made sufficient progress in implementing its action plan, and certain strategic AML/CFT deficiencies remain. Myanmar should work on addressing these deficiencies, including by: (1) adequately criminalising terrorist financing (Special Recommendation II); (2) establishing and implementing adequate procedures to identify and freeze terrorist assets (Special

Recommendation III); (3) further strengthening the extradition framework in relation to terrorist financing (Recommendation 35 and Special Recommendation I); (4) ensuring a fully operational and effectively functioning Financial Intelligence Unit (Recommendation 26); (5) enhancing financial transparency (Recommendation 4); and (6) strengthening customer due diligence measures (Recommendation 5). The FATF encourages Myanmar to address its remaining deficiencies and continue the process of implementing its action plan.

Nigeria

Nigeria has taken steps towards improving its AML/CFT regime, including by enacting AML/CFT legislation. However, despite Nigeria's high-level political commitment to work with the FATF and GIABA to address its strategic AML/CFT deficiencies, Nigeria has not made sufficient progress in implementing its action plan, and certain strategic deficiencies remain. Nigeria should work on addressing these deficiencies, including by: (1) adequately criminalising money laundering and terrorist financing (Recommendation 1 and Special Recommendation II); (2) implementing adequate procedures to identify and freeze terrorist assets (Special Recommendation III); (3) ensuring that relevant laws or regulations address deficiencies in customer due diligence requirements and that they apply to all financial institutions (Recommendation 5); and (4) continuing to improve the overall supervisory framework for AML/CFT (Recommendation 23). The FATF encourages Nigeria to address its remaining deficiencies and continue the process of implementing its action plan.

São Tomé and Príncipe

Despite São Tomé and Príncipe's high-level political commitment to work with the FATF to address its strategic AML/CFT deficiencies, São Tomé and Príncipe has not made sufficient progress in implementing its action plan, and certain strategic deficiencies remain. São Tomé and Príncipe should work on addressing these deficiencies, including by: (1) adequately criminalising money laundering and terrorist financing (Recommendation 1 and Special Recommendation II); (2) establishing a fully operational and effectively functioning Financial Intelligence Unit (Recommendation 26); (3) ensuring that financial institutions and DNFBPs are subject to adequate AML/CFT regulation and supervision, and that a competent authority or competent authorities have been designated to ensure compliance with AML/CFT requirements (Recommendations 23, 24 and 29); (4) implementing effective, proportionate and dissuasive sanctions in order to deal with natural or legal persons that do not comply with the national AML/CFT requirements (Recommendation 17); and (5) taking the necessary action to gain membership of GIABA. The FATF encourages São Tomé and Príncipe to address its remaining deficiencies and continue the process of implementing its action plan.

Sri Lanka

Sri Lanka has taken steps towards improving its AML/CFT regime, including by enacting AML/CFT amendments. However, despite Sri Lanka's high-level political commitment to work with the FATF and APG to address its strategic AML/CFT deficiencies, Sri Lanka has not made sufficient progress in implementing its action plan, and certain strategic AML/CFT deficiencies remain. Sri Lanka should work on addressing these

deficiencies, including by: (1) adequately criminalising terrorist financing and addressing the remaining deficiencies with regard to the criminalisation of money laundering (Special Recommendation II and Recommendation 1); and (2) establishing and implementing adequate procedures to identify and freeze terrorist assets (Special Recommendation III). The FATF encourages Sri Lanka to address its remaining deficiencies and continue the process of implementing its action plan, including by continuing to work on its AML/CFT legislation.

Syria

Syria has taken significant steps towards improving its AML/CFT regime, including by improving the legal arrangements for freezing terrorist assets. However, despite Syria's high-level political commitment to work with the FATF and MENAFATF to address its strategic AML/CFT deficiencies, Syria has not made sufficient progress in implementing its action plan, and certain strategic AML/CFT deficiencies remain. Syria should work on addressing its deficiencies, including by: (1) adopting adequate measures to implement and enforce the 1999 International Convention for the Suppression of Financing of Terrorism (Special Recommendation I); (2) implementing adequate procedures for identifying and freezing terrorist assets (Special Recommendation III); (3) ensuring that financial institutions are aware of and comply with their obligations to file suspicious transaction reports in relation to ML and FT (Recommendation 13 and Special Recommendation IV); and (4) ensuring that appropriate laws and procedures are in place to provide mutual legal assistance (Recommendations 36-38, Special Recommendation V). The FATF encourages Syria to address its remaining deficiencies and continue the process of implementing its action plan.

Turkey

Turkey has taken steps towards improving its AML/CFT regime, including by submitting CFT legislation to Parliament. Despite Turkey's high-level political commitment to work with the FATF to address its strategic AML/CFT deficiencies, Turkey has not made sufficient progress in implementing its action plan, and certain strategic AML/CFT deficiencies remain. Turkey should work on addressing these deficiencies, including by: (1) adequately criminalising terrorist financing (Special Recommendation II); and (2) implementing an adequate legal framework for identifying and freezing terrorist assets (Special Recommendation III). The FATF encourages Turkey to address its remaining deficiencies and continue the process of implementing its action plan.

FinCEN Guidance

A. Jurisdictions in the above FATF Statement Section 1 are subject to the FATF's call for countermeasures. Currently, Iran and the DPRK are the only jurisdictions within Section 1. U.S. financial institutions should continue to consult existing FinCEN and Treasury guidance on engaging in financial transactions with Iran⁷ and the DPRK.⁸

⁷ U.S. financial institutions are subject to a broad range of restrictions and prohibitions with respect to Iran due to a number of illicit financing risks, including money laundering, terrorist financing, and WMD proliferation financing. Previous FinCEN guidance on the threat involving illicit Iranian activity remains in effect. This includes FIN-2010-A010, at http://www.fincen.gov/statutes_regs/guidance/html/FIN-2010-A010.html; FIN-2010-A008, at http://www.fincen.gov/statutes_regs/guidance/html/fin-2010-a008.html; FIN-2010-A002, at http://www.fincen.gov/statutes_regs/guidance/html/fin-2010-a002.html; FIN-2009-A007, at http://www.fincen.gov/statutes_regs/guidance/html/fin-2009-a007.html; FIN-2008-A002, at www.fincen.gov/statutes_regs/guidance/pdf/fin-2008-a002.pdf; and FIN-2007-A001, at http://www.fincen.gov/statutes_regs/guidance/pdf/guidance_fi_increasing_mlt_iranian.pdf. Further,

B. Jurisdictions in FATF Statement Section 2 have strategic AML/CFT deficiencies and have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF. Based on the FATF's adoption of the ICRG's findings, a decision by the FATF in which the United States concurs, FinCEN is advising U.S. financial institutions of their increased obligations under Section 312 of the USA PATRIOT ACT, 31 USC § 5318(i). Accordingly, U.S. financial institutions should apply enhanced due diligence, as described under implementing regulations 31 CFR § 1010.610(b) and (c) when maintaining correspondent accounts for foreign banks operating under a banking license issued by **Cuba; Bolivia; Ethiopia; Kenya; Myanmar; Nigeria; São Tomé and Príncipe; Sri Lanka; Syria,⁹ and Turkey.**

Enhanced due diligence is required for any correspondent account maintained for a foreign bank that operates under a banking license issued by a foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative to the group or organization concurs.¹⁰

As required under 31 CFR § 1010.610(b), covered financial institutions should ensure that their enhanced due diligence programs, which address correspondent accounts established, maintained, administered, or managed in the United States for a foreign bank, include, at a minimum, steps to: conduct enhanced scrutiny of such correspondent account to guard against money laundering and to identify and report any suspicious transactions, in accordance with applicable law and regulation;¹¹ determine whether the foreign bank for which the correspondent account is established or maintained in turn maintains correspondent accounts for other foreign banks that use the foreign correspondent account established or maintained by the covered financial institution and, if so, take reasonable steps to obtain information relevant to assess and mitigate money laundering risks associated with the foreign bank's correspondent accounts for other foreign banks, including, as appropriate, the identity of those foreign banks;¹² and determine, for any correspondent account established or maintained for a foreign bank whose shares are not publicly traded, the identity of each owner of the foreign bank and the nature and extent of each owner's ownership interest.¹³

financial institutions are reminded of the existing U.S. sanctions that are administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC) with respect to Iran and the Government of Iran, including but not limited to Iranian Government-owned banks and other entities, as well as Iranian entities that have been linked to terrorist activity and the proliferation of weapons of mass destruction. Information about these sanctions is available on OFAC's website <http://www.treasury.gov/offices/enforcement/ofac/>. In addition, financial institutions should be familiar with the financial provisions and prohibitions contained in United Nations Security Council Resolutions 1929 (June 2010), at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/396/79/PDF/N1039679.pdf?OpenElement>; 1803 (March 2008), at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/257/81/PDF/N0825781.pdf?OpenElement>; 1747 (March 2007), at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/281/40/PDF/N0728140.pdf?OpenElement>; and 1737 (December 2006), at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/681/42/PDF/N0668142.pdf?OpenElement>.

In particular, UNSC Resolutions 1929 and 1803 call on all states to exercise vigilance over activities of financial institutions in their territories with all banks domiciled in Iran and their branches and subsidiaries abroad. Also, the FATF has issued three sets of guidance, to assist States in implementing their financial obligations pursuant to United Nations Security Council Resolutions 1737, at <http://www.fatf-gafi.org/dataoecd/43/17/39494050.pdf>; 1747, at <http://www.fatf-gafi.org/dataoecd/23/16/39318680.pdf>; and 1803, at <http://www.fatf-gafi.org/dataoecd/47/41/41529339.pdf>, to address proliferation finance risks associated with Iran's proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems.

⁸ Previous FinCEN guidance on the DPRK remains in effect. This includes FinCEN Advisory – Issue 40, at http://www.fincen.gov/statutes_regs/guidance/pdf/advisory.pdf and FIN-2009-A002 at, http://www.fincen.gov/statutes_regs/guidance/html/fin-2009-a002.html.

⁹ Previous FinCEN guidance on Syria remains in effect. This includes FIN-2011-A010, at http://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2011-A010.pdf. Also, FinCEN's guidance on the Commercial Bank of Syria remains in effect; see FIN-2011-A013, at http://www.fincen.gov/statutes_regs/guidance/html/FIN-2011-A013.html.

¹⁰ In addition, enhanced due diligence is required for any correspondent account maintained for a foreign bank that operates under: an offshore banking license; or a banking license issued by a foreign country that has been designated by the Secretary as warranting special measures due to money laundering concerns. See 31 CFR § 1010.610(c).

¹¹ See 31 CFR § 1010.610(b)(1).

¹² See 31 CFR § 1010.610(b)(2).

¹³ See 31 CFR § 1010.610(b)(3).

Additionally, as required under 31 CFR § 1024.320, 31 CFR § 1025.320, 31 CFR § 1026.320, 31 CFR § 1020.320, 31 CFR § 1023.320, 31 CFR § 1022.320, 31 CFR § 1021.320, if a financial institution knows, suspects, or has reason to suspect that a transaction involves funds derived from illegal activity or that a customer has otherwise engaged in activities indicative of money laundering, terrorist financing, or other violation of federal law or regulation, the financial institution shall then file a Suspicious Activity Report.
