Financial Action Task Force | Groupe d'action financière

FATF Guidance Document

Guidance Paper

The Implementation of Activity-Based Financial Prohibitions of United Nations Security Council Resolution 1737

12 October 2007

Please note that this document refers to the FATF Recommendations as last updated and published in October 2004, and does not yet take into account the 2012 revision of the FATF Recommendations.

See www.fatf-gafi.org/recommendations for the 2012 FATF Recommendations, including the conversion table from the old Recommendation to the new FATF Recommendation.

GUIDANCE REGARDING THE IMPLEMENTATION OF ACTIVITY-BASED FINANCIAL PROHIBITIONS OF UNITED NATIONS SECURITY COUNCIL RESOLUTION 1737

I. INTRODUCTION

1. In June 2007, the FATF adopted guidance regarding the implementation of financial provisions of the United Nations Security Council Resolutions (UNSCRs) to counter the proliferation of weapons of mass destruction (WMD).[1] Among the financial provisions of the relevant UNSCRs are activity-based financial prohibitions, including those contained in paragraph 6 of S/RES/1737(2006).

2. The purpose of this additional guidance[2] is to assist jurisdictions in implementing the activity-based financial prohibitions in paragraph 6 of S/RES/1737(2006) by:

- Providing background information, definitions, and general principles that jurisdictions should consider when applying this guidance;

- Describing information that jurisdictions should encourage their financial institutions to consider for purposes of identifying high-risk customers and transactions that may be related to activities prohibited under paragraph 6 of S/RES/1737(2006);

- Describing enhanced scrutiny that jurisdictions should encourage their financial institutions to apply to such high-risk customers and transactions to promote compliance with paragraph 6 of S/RES/1737(2006); and

- Describing follow-up actions that jurisdictions should encourage their financial institutions to take to address concerns about high-risk customers or transactions that may be related to activities prohibited under paragraph 6 of S/RES/1737(2006).

3. This guidance is not binding and is not directly related to any of the Financial Action Task Force (FATF) 40 + 9 Recommendations, and therefore it is not considered in the FATF mutual evaluation or assessment process. It is intended solely to assist jurisdictions in developing guidance for financial institutions to facilitate implementation of the activity-based financial prohibitions contained in S/RES/1737(2006).

II. BACKGROUND, DEFINITIONS AND GENERAL PRINCIPLES

4. Paragraph 6 of S/RES/1737(2006) states: ". . . all States shall also take the necessary measures to prevent the provision to Iran of any technical assistance or training, financial assistance, investment, brokering or other services, and the transfer of financial resources or services, related to the supply, sale, transfer, manufacture or use of the prohibited items, materials, equipment, goods and technology specified in paragraphs 3 and 4 [of S/RES/1737(2006)]."

5. This guidance is intended to assist jurisdictions in providing guidance to financial institutions whose products and services could lead to their direct or indirect involvement in the provision to Iran of financial assistance, investment, brokering or other services, and the transfer of financial resources or services, related to the supply, sale, manufacture, transfer or use of prohibited items, materials, equipment, goods and technology specified in paragraph 3 and 4 of S/RES/1737(2006).

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[1] See *Guidance on implementing financial provisions of UNSC Resolutions to counter proliferation of weapons of mass destruction,* http://www.fatf-gafi.org/dataoecd/28/62/38902632.pdf (the June 2007 Proliferation Financing Guidance).

[2] This guidance follows up on the work that the FATF committed to undertaking pursuant to section III, paragraph 32 of the June 2007 Proliferation Financing Guidance.

6. For purposes of this FATF guidance, the following definitions apply and are provided for purposes of clarification:

(a) The phrase *activity-based financial prohibitions* refers to prohibitions in paragraph 6 of S/RES/1737(2006) on providing to Iran any financial services related to the supply, sale, transfer, manufacture or use of the prohibited items, materials, equipment, goods and technology specified in paragraphs 3 and 4 of S/RES/1737(2006).

(b) The phrase *high-risk customers and/or transactions* refers to those customers that may be involved with and/or transactions that may be related to activity-based financial prohibitions.

7. In applying this guidance, jurisdictions should consider the following general principles:

(a) Jurisdictions should implement this guidance according to their legal framework.

(b) Jurisdictions' efforts to implement activity-based financial prohibitions should complement, rather than duplicate, export control regimes or other existing WMD counter-proliferation controls.

(c) This guidance is not intended to expand the scope of prohibitions set forth in paragraph 6 of S/RES/1737(2006).

(d) As described in this guidance below, financial institutions can comply with activity-based financial prohibitions by identifying high-risk customers and transactions, applying enhanced scrutiny to such customers and transactions, and taking appropriate follow-up action to promote compliance with paragraph 6 of S/RES/1737(2006).

(e) Activity-based financial prohibitions may be implemented or complied with through the adaptation or expansion of existing financial mechanisms, controls or prohibitions, such as those with respect to certain items, materials, equipment, goods and technology, including those controlled for military or proliferation reasons.

(f) The identification of high-risk customers and/or transactions presents challenges for jurisdictions and financial institutions. Accordingly, as described in Section III of the guidance below, competent authorities should consider sharing with financial institutions information relating to risks associated with paragraph 6 of S/RES/1737(2006) to assist in identifying high-risk customers and transactions. Such information sharing should be subject to national legal authorities, including confidentiality requirements of international export control regimes, as well as appropriate investigative and intelligence gathering sensitivities of law enforcement and WMD counter-proliferation authorities.

(g) As described in Section III of the guidance below, financial institutions should generally manage and mitigate their risk of exposure to activity-based financial prohibitions by considering the following information in identifying high-risk customers and transactions: (i) relevant information provided by competent authorities; (ii) existing customer and transactional information currently collected by financial institutions, including through their customer due diligence programs and existing AML/CFT obligations; and (iii) determinants of risk specifically associated with S/RES/1737(2006). As described in Section IV of the guidance below, financial institutions should consider undertaking reasonable efforts to collect additional information related to identified high-risk customers and transactions and subject such high-risk customers and transactions to ongoing monitoring.

(h) A financial institution's ability to identify and mitigate risks associated with high-risk customers and transactions will depend in part on the nature of any particular transaction and the role of the financial institution in that transaction.

III. IDENTIFICATION OF HIGH-RISK CUSTOMERS AND TRANSACTIONS

8. Jurisdictions should encourage financial institutions to apply a risk-based approach to identify high-risk customers and transactions. Recognizing that information currently available to financial institutions may be insufficient to identify high-risk customers and transactions, competent authorities should work within their legal framework to provide additional relevant information to financial institutions, where appropriate and in accordance with applicable data protection laws. Examples of relevant information could include:

(a) Names of specific entities and individuals of proliferation concern and end users of particular concern regarding items, materials, equipment, goods and technology prohibited under S/RES/1737(2006), including lists provided by national export control authorities, where applicable;

(b) Available typologies of proliferation finance;[3]

(c) Available red flags of financial activity related to proliferation finance;

(d) Lists and/or characteristics of persons who have been granted or denied export licenses and associated transactional details (e.g. type of goods involved; export routes; methods of financing; and the rationale for denial); and

(e) Information relating to the diversion of items, materials, equipment, goods and technology prohibited under S/RES/1737(2006).

9. In addition to relevant information provided by competent authorities, jurisdictions should encourage financial institutions to consider and rely upon existing customer and transactional information that they currently collect, including through their customer due diligence programs and existing AML/CFT obligations, to identify high-risk customers and transactions. Jurisdictions should encourage financial institutions to consider among others the following determinants of risk specifically associated with S/RES/1737(2006) to assist in identifying high-risk customers and transactions: (i) customers and transactions associated with Iran; (ii) vehicles that particularly could be used to finance activity-based financial prohibitions, such as certain trade financing products and services; and (iii) customers involved with and/or transactions related to items, materials, equipment, goods and technology prohibited under S/RES/1737(2006).

10. Jurisdictions should also encourage their financial institutions to be aware of risks associated with the use of their correspondent relationships or similar banking relationships to provide financial services or products on behalf of high-risk customers or to otherwise engage in high-risk transactions.

IV. ENHANCED SCRUTINY OF HIGH-RISK CUSTOMERS AND TRANSACTIONS

11. Jurisdictions should encourage financial institutions to use a risk-based approach to apply enhanced scrutiny to high-risk customers and transactions to determine whether a transaction is prohibited. Such enhanced scrutiny may include the collection of additional information as described in paragraph 12 below, as well as ongoing monitoring as described in paragraph 13 below. If a financial institution has a reasonable basis to suspect or believe that a high-risk customer is involved with and/or a transaction is related to an activity-based financial prohibition, then the financial institution should take appropriate follow-up action as described in Section V of this guidance below.

12. Jurisdictions should encourage their financial institutions to collect additional information on high-risk customers and transactions in order to identify, and avoid engaging in, prohibited activities,

[3] The FATF is currently conducting a typologies study of WMD proliferation finance and anticipates publishing a typologies report on WMD proliferation finance in 2008.

and to enable follow-up actions. A financial institution's ability to collect such additional information may depend in part on whether the financial institution has a direct relationship with the customer, the mechanisms or instruments being used to finance the transaction,[4] and the financial institution's role in the financial transaction. Depending on these factors, a financial institution may or may not have access to additional information that may be useful in determining whether a high-risk customer is involved with and/or a transaction is related to an activity-based financial prohibition. Such additional information may include:

- details about the nature, end use or end user of the item;
- export control information, such as copies of export-control or other licenses issued by the national export control authorities, and end-user certification;
- in the case of a financial institution handling incoming wire transfers, information in accordance with Special Recommendation VII; and
- the purpose of the transaction.

13. Financial institutions should conduct on-going monitoring of high-risk customer account activity. Such monitoring should be conducted in accordance with the financial institution's assessment of risk associated with the account. Such monitoring should also ensure that the activity in the account is consistent with the documentation associated with the transactions in the account.

V. FOLLOW-UP ACTIONS

14. Jurisdictions should encourage financial institutions that either identify or cannot resolve concerns regarding high-risk customers and/or transactions to consider consulting with relevant competent authorities, as permitted by existing legal authorities.[5] Financial institutions may also consider additional steps such as terminating the relationship with the relevant customer or account or suspending the relevant transaction pending further investigation.

15. Jurisdictions should take appropriate steps to ensure that their financial institutions are aware of their obligations regarding activity-based financial prohibitions. Jurisdictions should continue to study measures to facilitate the effective implementation of paragraph 6 of S/RES/1737(2006), with a view to facilitating a harmonized and workable approach for financial institutions to prevent engaging in activity-based financial prohibitions.

16. Information provided by financial institutions relating to potential activity-based financial prohibitions should be shared internally with relevant counter-proliferation authorities, as appropriate and subject to jurisdictions' existing legal frameworks. Jurisdictions should also share such information with counterparts from relevant jurisdictions, as appropriate. Jurisdictions should establish controls and safeguards to ensure that any information exchanged by competent authorities is used only in an authorised manner, consistent with their obligations concerning privacy and data protection.

[4] Examples of mechanisms or instruments that could be used to finance activity-based financial prohibitions may include letters of credit, documentary collections, open accounts, loans and lines of credit, and wire transfers.

[5] This provision regarding consultation should not be interpreted as requiring financial institutions to file suspicious activity reports. Relevant competent authorities may include law enforcement or other counter-proliferation authorities, identified as appropriate and as permitted by the relevant jurisdiction.