

FATF



INTERNATIONAL BEST PRACTICES

TARGETED FINANCIAL
SANCTIONS RELATED
TO TERRORISM AND
TERRORIST FINANCING
(RECOMMENDATION 6)

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FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

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ACRONYMS

DNFBP	Designated Non-Financial Businesses and Profession
FIU	Financial Intelligence Unit
INR6	Interpretive Note to Recommendation 6
NPO	Non-Profit Organization
STR	Suspicious Transaction Report
UNSCR	United Nations Security Council Resolution

INTERNATIONAL BEST PRACTICES: TARGETED FINANCIAL SANCTION RELATED TO TERRORISM AND TERRORIST FINANCING (RECOMMENDATION 6)

INTRODUCTION

1. Recommendation 6 requires each country¹ to implement the targeted financial sanctions regimes to comply with the United Nations Security Council resolutions (UNSCRs or resolutions) relating to the prevention and suppression of terrorism and terrorist financing. Recommendation 6 is intended to assist countries in implementing the targeted financial sanctions² contained in the UNSCRs relating to the prevention and suppression of terrorism and terrorist financing – (i) UNSCR 1267(1999) and its successor resolutions (the Al-Qaida/Taliban sanctions regimes); (ii) UNSCR 1373(2001); and (iii) any future UNSCRs which impose targeted financial sanctions in the terrorist financing context. These resolutions require countries to freeze, without delay, the funds or other assets of, and to ensure that no funds or other assets are made available, directly or indirectly, to or for the benefit of, any person or entity either (i) designated³ by, or under the authority of, the United Nations Security Council (the Security Council) under Chapter VII of the Charter of the United Nations, including in accordance with the Al-Qaida/Taliban sanctions regimes⁴; or (ii) designated by that country or by a supra-national jurisdiction pursuant to UNSCR 1373. Such measures may be either judicial or administrative in nature.

¹ All references to *country* or *countries* apply equally to territories or jurisdictions.

² The term *targeted financial sanctions* means both asset freezing and prohibitions to prevent funds or other assets from being made available, directly or indirectly, for the benefit of designated persons and entities.

³ The term *designated person or entity* refers to: (i) for the Al-Qaida/Taliban sanctions regimes, (a) individual, groups, undertakings and entities designated by the Committee of the Security Council established pursuant to resolutions 1267(1999) and 1989(2011) (the 1267 Committee), as being individuals associated with Al-Qaida, or entities and other groups and undertakings associated with Al-Qaida (the Al-Qaida (1267/1989) sanctions regime), and (b) individuals, groups, undertakings and entities designated as the Taliban prior to the date of adoption of resolution 1988(2011), as well as other individuals, groups, undertakings and entities designated by the Committee of the Security Council established pursuant to resolution 1988(2011) (the 1988 Committee), as being associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan (the 1988 sanctions regime); and (ii) for resolution 1373(2001), any natural or legal person or entity designated by countries or a supra-national jurisdiction pursuant to resolution 1373(2001).

⁴ Recommendation 6 is applicable to all current and future successor resolutions to resolution 1267(1999), namely, those resolutions implementing the Al-Qaida (1267/1989) sanctions regime and those resolutions implementing the 1988 sanctions regime, and any future UNSCRs which impose targeted financial sanctions in the terrorist financing context. At the time of issuance of this best practices paper (June 2013), and in view of the split of the Al-Qaida/Taliban sanctions regime on 17 June 2011, the successor resolutions to resolution 1267 (1999) are: resolutions 1333(2000), 1363(2001), 1390(2002), 1452(2002), 1455(2003), 1526(2004), 1617(2005), 1735(2006), 1822(2008), 1904(2009), 1989(2011) and 2083 (2012), and all current and future successor resolutions to resolution 1988 (2011), including resolution 1730 (2006) and 2082 (2012).

2. The required elements of a targeted financial sanctions regime are identified in Recommendation 6 and its Interpretive Note (INR6). While Recommendation 6 will be assessed in the FATF mutual evaluation and assessment process, this paper, which supersedes the existing Best Practices Paper of October 2003, as revised in June 2009, sets out non-binding guidance based on updates in relevant UNSCRs and in response to challenges faced by countries in the implementation of the requirements of Recommendation 6.

3. Efforts to combat terrorist financing are greatly undermined if countries do not freeze the funds or other assets of designated persons⁵ and entities quickly and effectively. Nevertheless, in determining the limits of or fostering widespread support for an effective counter-terrorist financing regime, countries must respect human rights, respect the rule of law, allow due process, recognise and protect the rights of bona fide third parties. This Paper seeks to assist countries in developing and implementing targeted financial sanctions to prevent and suppress terrorist financing in accordance with the relevant UNSCRs and in a manner consistent with these fundamental principles, through a robust and transparent targeted financial sanctions regime.

IMPORTANCE OF AN EFFECTIVE FREEZING REGIME

4. Effective freezing regimes are critical to combating the financing of terrorism and, as a preventive tool, accomplish much more than freezing terrorist-related funds or other assets present at any particular time. Effective freezing regimes also combat terrorism by:

- a) Deterring non-designated persons or entities who might otherwise be willing to finance terrorist activity.
- b) Exposing terrorist financing “money trails” that may generate leads to previously unknown terrorist cells and financiers.
- c) Dismantling terrorist financing networks by encouraging designated persons or entities to disassociate themselves from terrorist activity and renounce their affiliation with terrorist groups.
- d) Terminating terrorist cash flows by shutting down the pipelines used to move terrorist related funds or other assets.
- e) Forcing terrorists to use more costly and higher risk means of financing their activities, which makes them more susceptible to detection and disruption.
- f) Fostering international co-operation and compliance with obligations under the Al-Qaida/Taliban sanctions regimes, and resolution 1373(2001).

⁵ Natural or legal.

I. CLEAR AUTHORITIES AND PROCEDURES FOR IDENTIFYING AND DESIGNATING PERSONS OR ENTITIES

A. DESIGNATIONS OF PERSONS AND ENTITIES

5. For designations under the Al-Qaida/Taliban sanctions regimes, Recommendation 6 requires countries to have the authority, and effective procedures or mechanisms, to identify and initiate proposals for designations of persons and entities targeted by the Al-Qaida/Taliban sanctions regimes, consistent with the obligations set out in the relevant UNSCRs⁶ and provide for appropriate safeguards for the rights of designated persons and entities (see Section II below). With respect to designations under resolution 1373(2001), Recommendation 6 requires countries to have the authority, and effective procedures or mechanisms, to identify and initiate designations of persons and entities pursuant to resolution 1373, consistent with the obligations set out in resolution 1373, and provide for appropriate safeguards for the rights of designated persons and entities.

6. The effective implementation of these measures requires institutional arrangements allowing for close co-ordination among financial, intelligence and law enforcement authorities and the incorporation of the measures into the country's broader counter-terrorism policy. Countries should also have in place procedures to protect all sources of information, including intelligence and closed-source materials, used in the designation of persons and entities as being subject to the asset freeze measures.

B. JUDICIAL OR ADMINISTRATIVE MEASURES NOT CONDITIONAL UPON THE EXISTENCE OF CRIMINAL PROCEEDINGS

7. The competent authority for initiating, or making proposals for, designations can be administrative or judicial. Under the Al-Qaida/Taliban sanctions regimes, the proposals by Member States for designations are determined by either the 1267 Committee or the 1988 Committee. For resolution 1373(2001), designations are made, at the national or supranational level, by a country or countries acting on their own motion, or at the request of another country, if the country receiving the request is satisfied, according to applicable legal principles for targeted financial sanctions, that a requested designation is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee meets the criteria for designation in resolution 1373(2001).⁷ Administrative procedures, for example, imply an *ex parte* decision by an officer of the executive based on information provided to that officer and published in an official document of record, such as a government gazette. The decision would be subject to the safeguards and review provisions of the country's administrative law. Judicial procedures, for example, imply a mechanism where the case for designation is put before a judicial authority for evaluation *ex parte* of the targeted person or entity and where the freezing action takes the form of an enforceable order issued by that authority. In both administrative procedures and judicial procedures, the freezing

⁶ The relevant Security Council resolutions do not require countries to identify persons or entities and submit these to the relevant United Nations Committees (*i.e.* the 1267 Committee or the 1988 Committee), but to have the authority and effective procedures and mechanisms in place to be able to do so.

⁷ See paragraph 3 of INR6 and the Section I. C *Evidentiary standards: reasonable grounds or basis* of this paper.

order should be of indeterminate duration unless the person or entity is removed as a consequence of successful challenge by an affected party or, where applicable, a country's periodical review of the designations.⁸

8. Measures to freeze terrorist funds or other assets may *complement* criminal proceedings against a designated person or entity, but are not *conditional* upon the existence of such proceedings. The measures serve as a preventive or disruptive tool when criminal proceedings are either not possible or not practical. This does not of course prevent freezing procedures as such forming a part of criminal procedures.

C. EVIDENTIARY STANDARDS: REASONABLE GROUNDS OR BASIS

9. For designations under resolution 1373(2001), the competent authority of each jurisdiction will apply the legal standards of its own legal system regarding the kind and quantum of evidence for the determination that "reasonable grounds" or "reasonable basis" exist for a decision to designate an individual or entity and thus initiate an action under a freezing mechanism. This is the case irrespective of whether the proposed designation has been put forward on the relevant jurisdiction's own motion or at the request of another jurisdiction.⁹

10. To enhance co-operation amongst countries and expedite the processing of foreign designation requests, competent authorities in all countries are encouraged to share amongst themselves information on how the legal standard for designation is applied within their country in line with the standard of "reasonable grounds" or "reasonable basis", with examples of the type and amount of information it will need to initiate action based upon a foreign designation request. This will enable the requesting country to tailor its request to meet the standards of the requested country.

D. IDENTIFYING INFORMATION

11. For the effective implementation of an asset freeze, robust identifying information is essential.¹⁰

12. At the extreme end of the scale, poor quality identifiers are an obstacle to the enforcement of an asset freeze. Single name identifiers in particular represent problems for enforcement.

13. Best efforts should therefore be made to ensure as much identifying information as possible is provided upon designation, and that such information be updated as more identifying data become available. Where operational imperatives allow, jurisdictions may consider postponing a

⁸ In case of the Al-Qaida/Taliban sanctions regimes, the requirement for freezing lasts for as long as the listed person or entity remains on either the Al-Qaida Sanctions List or the 1988 Sanctions List. However, even if the person or entity is removed from the Al-Qaida Sanctions List or the 1988 Sanctions List, countries may maintain targeted financial sanctions, including asset freeze and ongoing prohibitions, against persons or entities of concern, if they determine that they meet the designation criteria pursuant to obligations under resolution 1373.

⁹ See paragraph 4(d) of INR6.

¹⁰ Relevant identifier information may include, but is not limited to: alternate names and spelling, date of birth, place of birth, address, nationality, and identification or passport numbers.

designation in situations where there is insufficient identifying information, until further information is available.

E. AUTHORITIES TO IDENTIFY, DESIGNATE AND SANCTION

14. In order to implement the targeted financial sanctions regimes required under Recommendation 6, including initiating, or making proposals for, designations, there will be a need to engage with a range of authorities (for example, Foreign Affairs, Justice, Treasury, Finance, Central Bank, Interior or Public Safety) and agencies (for example, security, intelligence, law enforcement, Financial Intelligence Unit (FIU)).

15. Countries should have appropriate structures and procedures to ensure the effective implementation of the asset freeze mechanism. In this context, countries should, for example:

- a) Identify government agencies with the primary responsibilities for:
 - (i) Co-ordinating and, where necessary, promoting national implementation of the asset freeze obligations under resolution 1373(2001) and the Al-Qaida/Taliban sanctions regimes, and the requirements of Recommendation 6.
 - (ii) Ensuring that a process, comprising key government stakeholders is in place for appropriate co-ordination (both within a country and with other countries) and to provide strategic policy oversight and direction to promote the implementation process and overcome barriers to implementation.¹¹
- b) Clearly identify which authorities have responsibility for each aspect of the designation procedure under resolution 1373(2001) or the Al-Qaida/Taliban sanctions regimes¹² and for the subsequent imposition, enforcement and monitoring of the asset freeze, to prevent duplication of roles or regulation amongst agencies.¹³ In this regard, countries should ensure that there is a range of effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, available to deal with natural or legal persons that fail to comply with these requirements.

¹¹ Such a process could be achieved through existing co-ordination processes for related activities (such as broader anti-money laundering and countering the financing of terrorism (AML/CFT) co-ordination committees) or through a dedicated interagency process.

¹² Paragraph 18 of resolution 2082(2012) “Strongly urges Member States, when considering the proposal of a new designation, to consult with the Government of Afghanistan on the designation prior to submission to the [1988] Committee, to ensure coordination with the Government of Afghanistan’s peace and reconciliation efforts, and encourages all Member States considering the proposal of a new designation to seek advice from UNAMA [the United Nations Assistance Mission in Afghanistan], where appropriate”.

¹³ In this respect, it is to be noted that paragraph 8 of resolution 1904 (2009) encourages “Member States to appoint a national contact point concerning entries on the Consolidated List”. Countries could consider appointing a national contact point concerning entries on both the Al-Qaida Sanctions List and the 1988 Sanctions List, especially as there will be changes to the lists from time to time. The national contact point could also facilitate communication between the country and the UN Secretariat/Sanctions Committees (*i.e.* the 1267 Committee and the 1988 Committee)/Monitoring Team.

- c) Ensure Ministries and agencies involved share a common understanding of their mandates, roles and responsibilities in complying with the obligations of resolution 1373(2001) and the Al-Qaida/Taliban sanctions regimes, and the requirements of Recommendation 6 and undertake regular exchange of information in accordance with domestic law.
- d) Establish clear lines of communication among these Ministries and agencies (taking into due consideration the procedural requirements of the investigation process) to enable a more holistic view to be taken of the range of counter terrorist tools at the disposal of the country, and the appropriateness of their use in any given situation. For example:
 - (i) Among law enforcement intelligence, finance and home/internal Ministries and agencies to ensure that there is access to all the necessary information to identify targets for designation.
 - (ii) Among government Ministries and agencies in situations where a person subject to related criminal proceedings is designated (for example, on or shortly after arrest for terrorist offences, or for a period following successful prosecution for terrorist offences and pending potential forfeiture actions, or maintained during or after a term of imprisonment).¹⁴

F. IDENTIFYING TARGETS FOR DESIGNATION

16. The targeting process for designation should focus on those persons and entities that represent key elements of terrorist support networks in order to obtain maximum impact in preventing and suppressing acts of terrorism.¹⁵

G. USE OF INTELLIGENCE AND CLOSED SOURCE MATERIAL

17. Given the critical role intelligence plays in countering terrorist threats, key information supporting the designation of a person or entity under terrorist asset freezing measures may often be intelligence sourced.

18. On the basis of their respective legal systems, countries should consider strengthening legal authorities and mechanisms to permit the use and sharing of intelligence in building each case for designation, taking into account the necessity to implement or maintain the designation, or to provide sufficient evidence before an administrative body or court in case such a designation should be challenged.¹⁶

¹⁴ Paragraph 15 of resolution 2083(2012) encourages Member States and relevant international organizations and bodies to inform the 1267 Committee of any relevant court decisions and proceedings so that the 1267 Committee can consider them when it reviews a corresponding listing or updates a narrative summary of reasons for listing.

¹⁵ With respect to the Al-Qaida/Taliban sanctions regimes, the targeting process for designation must accommodate the listing criteria provided by the Security Council as set out under paragraphs 2, 3 and 5 of resolution 2083(2012), and paragraphs 2, 3 and 4 of resolution 2082(2012).

¹⁶ Paragraph 23 of resolution 2083 “Strongly urges Member States to provide all relevant information to the Ombudsperson, including providing any relevant confidential information, where appropriate, encourages Member States to provide relevant information in a timely manner, welcomes those

19. In relation to foreign designation requests, these mechanisms should be designed to enable a requesting country to provide the requested country with as much information as possible to assist the requested country in satisfying its own evidentiary standards for designation.
20. Subject to domestic law enforcement and security sensitive considerations, countries should also consider putting in place measures to strengthen the use of intelligence in court where necessary to defend designation decisions and to adequately protect sensitive information.
21. These mechanisms should respect the rights of a designated person or entity and due process concerns, according to domestic and international law.

H. MEANING OF “WITHOUT DELAY” IN THE CONTEXT OF DESIGNATIONS

22. In relation to Recommendation 6, the obligation referred to is to freeze without delay funds or other assets of designated persons and entities. The Glossary of the *FATF Recommendations* defines *without delay*, with respect to the Al-Qaida/Taliban sanctions regimes, as ideally, within a matter of hours of a designation by the United Nations Security Council or its relevant Sanctions Committee (e.g. the 1267 Committee, or the 1988 Committee). For the purposes of resolution 1373(2001), the term *without delay* means upon having reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, one who finances terrorism or a terrorist organisation.¹⁷ In both cases, the term *without delay* should be interpreted in the context of the need to prevent the flight or dissipation of funds or other assets which are linked to terrorists, terrorist organisations, and those who finance terrorism, and the need for global, concerted action to interdict and disrupt their flow swiftly.
23. In order to facilitate a freeze without delay, whenever possible, a country should aim to pre-notify countries if there is a high likelihood that the assets of a designated person or entity may be located there.

national arrangements entered into by Member States with the Office of the Ombudsperson to facilitate the sharing of confidential information, encourages Member States' further cooperation in this regard, and confirms that the Ombudsperson must comply with any confidentiality restrictions that are placed on such information by Member States providing it". See also the website of the Office of the Ombudsperson (<http://www.un.org/en/sc/ombudsperson/accessinfo.shtml>).

¹⁷ The exact criteria for designation under resolution 1373 are referenced in Section E of INR6.

II. DUE PROCESS: REVIEW, DE-LISTING AND UNFREEZING

A. NOTICE OF DESIGNATION UNDER RESOLUTION 1373¹⁸

24. All reasonable efforts should be made, by the designating country and (where appropriate or practicable) the country of residence, as soon as possible after the designation has taken effect, to inform designated persons and entities directly of:

- a) The designation and its implications, in order to prevent any unintentional breaches on the part of themselves or related third parties.
- b) The review procedure and information on the de-listing process, including a contact point within the government to address any questions regarding the process.
- c) Publicly-releasable information concerning the reasons for designation.
- d) Procedures to allow licensed access to funds or other assets, as set out in resolution 1452(2002) and other relevant UNSCR(s), for basic and extraordinary expenses as soon as possible.¹⁹

B. REVIEW OF DESIGNATION, DELISTING AND UNFREEZING

1. Availability of, and timely procedure for, review of both national and supranational designations under resolution 1373

25. For review of both national and supranational designations pursuant to resolution 1373(2001), paragraph 8 of INR6 requires countries to have appropriate legal authorities and procedures or mechanisms to de-list and unfreeze the funds or other assets of persons and entities that no longer meet the criteria for designation pursuant to resolution 1373, and to also have procedures in place to allow, upon request, review of the designation decision before a court of other independent competent authority.

26. To ensure procedural fairness both in administrative and judicial procedures for asset freezing, countries should make provision for any person or entity to apply for a review of the designation from the designating authority, with the ability to seek further review of an adverse

¹⁸ With respect to the Al-Qaida/Taliban sanctions regimes, paragraph 17 of resolution 1822(2008) demands that “Member States receiving notification [of designation]...take, in accordance with their domestic laws and practices, all possible measures to notify or inform in a timely manner the listed individual or entity of the designation and to include with this notification a copy of the publicly releasable portion of the statement of case, any information on reasons for listing available on the [1267 or 1988] Committee’s website, a description of the effects of designation, as provided in the relevant resolutions, the Committee’s procedures for considering delisting requests, and the provisions of resolution 1452 (2002) regarding available exemptions”. Paragraph 18 of resolution 2083(2012) requires Member States “to include with this notification [of designation] the narrative summary of reasons for listing”. The narrative summaries of reasons for listing are available on the 1267 Committee website (<http://www.un.org/sc/committees/1267/narrative.shtml>) and on the 1988 Committee website (<http://www.un.org/sc/committees/1988/narrative.shtml>). See also paragraph 11 of INR6.

¹⁹ Regarding access to frozen funds or other assets, see paragraph 10 of INR6 and the Section **IV. B** of this paper.

finding by the designating authority, before a court or other independent competent authority, consistent with the country's general principles of law.

27. The designating authority and the relevant designated person or entity should be entitled to make submissions to the review body. In accordance with the fundamental principles of the country's legal system, hearings may be in public or private at the discretion of the review body, after hearing any submissions on this matter which the parties may wish to present.

28. Final decisions of the review body should be public, but the review body should have the ability to exclude from its publicised findings, at its own motion or at the motion of the designating authority or applicant for review, any aspects of the decision which might raise significant privacy or security concerns. Such exclusions should take into account the rights of a designated person or entity or affected third parties under domestic law and domestic laws and policies relating to transparency in decision making.

29. Publication of the review body decisions would allow a body of jurisprudence to be developed which would, in turn, help promote better primary decision making with a view to reducing the need for review of those decisions. Publication could also be a means of drawing the private sector's attention to changes or updates to the list of designated persons and entities consequent upon review decisions.

30. A designated person or entity should also be able to apply again for review on a periodic basis if their initial applications are unsuccessful.

31. Countries should consider implementing procedures for the periodic review of designations based upon new information that has come to light regarding a designation or an application for review by a country affected by the designation.

2. Timely procedure for facilitating review of UNSC designations under the Al-Qaida/Taliban sanctions regimes

32. Countries should develop and implement publicly known procedures to submit de-listing requests to the Security Council in the case of persons and entities designated under the Al-Qaida/Taliban sanctions regimes that, in the view of the country, do not or no longer meet the criteria for designation. For the Al-Qaida (1267/1989) sanctions regime, such procedures and criteria should be in accordance with any applicable guidelines or procedures adopted by the 1267 Committee.²⁰ In case of challenges to designation which are made via the Ombudsperson process under resolutions 1267(1999), 1904(2009), 1989(2011) and 2083(2012), countries may wish to consider establishing gateways for exchanging information, including confidential information, with

²⁰ See paragraph 7 of INR6. Regarding review and maintenance of the Al-Qaida Sanctions List, paragraph 38 of resolution 2083(2012) encourages all Member States, in particular designating States and States of residence or nationality, to "submit to the [1267] Committee additional identifying and other information, along with supporting documentation, on listed individuals, groups, undertakings and entities, including updates on the operating status of listed entities, groups and undertakings, the movement, incarceration or death of listed individuals and other significant events, as such information becomes available".

the Ombudsperson. For the 1988 sanctions regime,²¹ such procedures and criteria should be in accordance with the guidelines or procedures adopted by the 1988 Committee including those of the Focal Point mechanism established under resolution 1730(2006).

3. Delisting and unfreezing under UNSCR 1373 and the Al-Qaida/Taliban sanctions regimes

33. For persons and entities designated under resolution 1373(2001), countries should have appropriate legal authorities and procedures or mechanisms to delist, unfreeze the funds or other assets of, and remove the terms of sanctions against those parties that have for example credibly disassociated with the conditions and circumstances leading to their designation and/or no longer meet the criteria for designation.

34. For those persons and entities designated under the Al-Qaida/Taliban sanctions regimes, countries should have appropriate legal authorities and procedures to unfreeze the funds or other assets of, and remove the terms of sanctions against those parties that have been delisted by the 1267 Committee or the 1988 Committee.²² However, even if the person or entity is removed from the Al-Qaida Sanctions List or the 1988 Sanctions List, countries may maintain targeted financial sanctions, including asset freeze and ongoing prohibitions, against persons or entities of concern, if they determine that they meet the designation criteria pursuant to obligations under resolution 1373.

III. POST-DESIGNATION ISSUES: FREEZING AND PROHIBITING DEALING IN FUNDS OR OTHER ASSETS OF DESIGNATED PERSONS AND ENTITIES

A. SCOPE OF FUNDS OR OTHER ASSETS THAT ARE SUBJECT TO FREEZING ACTION

35. The obligation expressed in resolution 1373(2001) and the Al-Qaida/Taliban sanctions regimes, and the requirements of Recommendation 6 to freeze *funds or other assets* are defined in

²¹ In relation to delisting requests to the 1988 Committee, paragraph 21 of resolution 2082(2012) “Strongly urges Member States to consult with the Government of Afghanistan on their delisting requests prior to submission to the [1988] Committee, to ensure coordination with the Government of Afghanistan’s peace and reconciliation efforts” (see also footnote 12, in relation to designation requests to the 1988 Committee).

²² In cases where the designated persons or entities cease to exist, paragraph 30 of resolution 2083(2012) encourages Member States to “submit delisting requests for individuals that are officially confirmed to be dead, particularly where no assets are identified, and for entities reported or confirmed to have ceased to exist, while at the same time taking all reasonable measures to ensure that the assets that had belonged to these individuals or entities have not been or will not be transferred or distributed to other individuals, groups, undertakings and entities on the Al-Qaida Sanctions List”. According to paragraph 27 of resolution 2082 (2012) and paragraph 35 of resolution 2083(2012), countries receiving such delisting notification should take measures, in accordance with their domestic laws and practices, to notify or inform the concerned person or entity of the delisting in a timely manner. Paragraph 31 of resolution 2083 (2012) also encourages Member States, when unfreezing the assets of a deceased person or an entity that is reported or confirmed to have ceased to exist as a result of a delisting, to prevent unfrozen assets from being used for terrorist purposes.

With respect to the case of Usama bin Laden, countries should take note of the provisions of paragraph 32 of resolution 2083, which provides for special procedure in regard to unfreezing of any of his frozen assets.

the Glossary of the *FATF Recommendations* to cover any assets, including, but not limited to, financial assets, economic resources, property of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets.²³

36. Countries should ensure that, if their asset freezing mechanism is set up in a way that links the ability to freeze to a definition of terrorism or terrorist financing in domestic criminal legislation, such definitions are comprehensive enough to cover a freeze of all of the funds or other assets of any person or entity designated under the Al-Qaida/Taliban sanctions regimes and resolution 1373.

37. Countries should take appropriate action to ensure that government authorities maintaining registries of title to specific types of property, or those responsible for the disbursement of funds or other assets, are aware of the asset freezing action and take appropriate measures to implement the obligation according to the law of the countries.

B. FREEZING FUNDS OR OTHER ASSETS “WITHOUT DELAY” ON DESIGNATION

38. Freezing should take place without delay.²⁴ However, publication of the action should not take place until the freeze is in effect. This should be the case irrespective of whether the designation was made by a country on its own motion or upon acceptance of a designation request from another country.

C. COMMUNICATION STRATEGY

39. Effective implementation of the asset freeze obligation requires an efficient and effective communication strategy. Whilst the private sector is legally required by relevant implementing legislation to comply with asset freeze obligations, countries need to be aware of the impact compliance with these laws has on their business activities, and seek to minimise the costs of compliance as far as possible.

40. Requirements should be clearly articulated to the private sector, as required by paragraph 6(c) of INR6. This should include not just financial institutions, but also designated non-financial businesses and professions (DNFBPs) and high risk sectors that may not have had as much exposure to asset freeze measures, such as non-profit organizations (NPOs).²⁵

²³ See also ‘Assets Freeze: Explanation of Terms’ of the 1267 Committee’ (available at: <http://www.un.org/sc/committees/1267/pdf/EoT%20assets%20freeze%20-%20English.pdf>).

²⁴ For the definition of the term *without delay*, see the Section I. H of this paper.

²⁵ Paragraph 51 of resolution 2083(2012) encourages Member States to “share, in accordance with their domestic laws and practices, with the private sector information in their national databases related to fraudulent, counterfeit, stolen and lost identity or travel documents pertaining to their own jurisdictions, and, if a listed party is found to be using a false identity including to secure credit or fraudulent travel documents, to provide the [1267] Committee with information in this regard”.

1. Targeting the communication strategy

41. The asset freeze obligations in resolution 1373(2001) and the Al-Qaida/Taliban sanctions regimes apply, through relevant implementing legislation, to all natural and legal persons in the country. The communication strategy should therefore;

- a) Incorporate efficient and effective methods for informing the private sector and general public of their obligations under the asset freezing mechanism;
- b) Provide clear guidance to all persons and entities likely to hold targeted funds or other assets, which include, but go beyond, financial institutions;
- c) Incorporate efficient and effective methods for informing high-risk sectors and DNFBPs of their obligations under the asset freezing mechanism; and,
- d) May include senior level engagement with appropriate bodies representing business, industry and high risk sectors, as well as more informal engagement with individual institutions and sectors.

2. Content of the message

42. The communication strategy should ensure the timely and broad public dissemination of:

- a) The existence of the asset freezing restrictions and the obligations they impose on the private sector within the country (to identify, freeze/block, ensure that no funds and other assets are made available and report relevant funds or other assets, to subsequently prohibit unlicensed dealings with designated persons and entities and to continue to check for transactions relating to the designated person or entity and the actions to be taken if funds or other assets or suspect transactions are discovered).
- b) The benefits of an asset freezing mechanism as a preventive tool to disrupt terrorist support and activity and the importance of complying with the asset freezing obligations (emphasising both the potential criminal and civil liabilities for non-compliance, as well as the reputational risks for financial institutions and DNFBPs of being seen to be in breach).
- c) Information identifying all persons and entities subject to the asset freezing mechanism (all current designation information under resolution 1373(2001) as well as the Al-Qaida/Taliban sanctions regimes), through publication of a comprehensive list of all such persons and entities.
- d) Actions taken under asset freezing mechanisms. The legal notice of a designation decision (both new designations and revocations) should be considered the first stage of this communication strategy.
- e) Clear points of contact within the government to which the private sector can direct any enquiries, including a mechanism for the private sector to request, after conducting appropriate due diligence, guidance on possible matches to designated persons and entities.

3. Means for conveying the message

43. Countries should consider maintaining a government Internet site including up-to-date and comprehensive information on:

- a) The designation procedure and asset freezing mechanism.
- b) Texts of relevant laws.
- c) Comprehensive list of all persons and entities currently subject to the asset freezing mechanism.
- d) The contact point for public inquiries.

44. Countries should consider an electronic subscription service for persons and organizations with a particular need to be kept informed of decisions to designate or revoke a designation, such as the financial sector, DNFBPs and high risk industries.

D. POST-FREEZING REPORTING AND INVESTIGATION

1. Quality and utility of data

45. Given the breadth of transactions covered by an asset freeze and the substantial number of persons and entities subject to an asset freeze, the work involved for the private sector in ensuring they are compliant with an asset freeze is substantial. The more difficult it is to identify a person or entity from a sanctions list, the greater the burden on the private sector in ensuring compliance. This not only creates inefficiencies and lengthens the time it may take to detect breaches, but also reduces the goodwill of the private sector in implementing the measures. Poor quality identifiers increase the compliance burden on businesses, and have a similar effect on law enforcement.

46. Countries should therefore regularly review and update lists of persons and entities subject to asset freeze measures, to provide the most current and accurate identifiers on listed persons under either resolution 1373(2001) or the Al-Qaida/Taliban sanctions regimes. Countries with additional identifying data for persons or entities listed under the Al-Qaida (1267/1989) sanctions regime should make that data available to the 1267 Committee for possible amendment of the Al-Qaida Sanctions List.²⁶ For possible amendment of the 1988 Sanctions List, countries should make such data available to the 1988 Committee.

2. Reporting matches and deconflicting false positives

47. Where countries' asset freezing mechanisms require the reporting of possible matches, those making such reports should be encouraged to take reasonable measures to validate the accuracy of any matches to lists before reporting them to the relevant authority. In circumstances where the reporting entity does not meet the legal threshold to freeze the funds or other assets (and report to

²⁶ Paragraph 25 of resolution 2082(2012) requests Member States, the Government of Afghanistan in particular, to inform the 1988 Committee if they become aware of any information indicating that a person, group, undertaking or entity that has been delisted should be considered for designation.

competent authorities), countries should require the reporting entity to submit a suspicious transaction report (STR) to the FIU.

48. Countries should assist the private sector in identifying false positives through publication of guidance on how to determine whether a potential match is an actual match and providing a clear point of contact to assist with deconflicting false positives. False positives are potential matches to listed persons and entities, either due to the common nature of the name or due to ambiguous identifying data, which on examination prove not to be matches.

3. Ensuring adequate compliance, controls, and reporting in the private sector

49. Countries should work with the private sector in developing the following practices to: (i) facilitate co-operation and compliance by the private sector in identifying and freezing funds or other assets of designated persons and entities, and (ii) prevent designated persons and entities from conducting financial or other transactions within their territories or through their financial institutions:

- a) Co-operate with the private sector generally, including DNFBPs, and financial institutions in particular, especially those that are independently implementing programs to prevent potential terrorist financing activity or those that have come forward with potentially incriminating information, in investigating possible financial activity by a designated person or entity;
- b) Ensure that financial institutions and DNFBPs develop and maintain adequate internal controls (including due diligence procedures and training programs as appropriate) to identify the existing accounts, transactions, funds or other assets of designated persons and entities;
- c) Ensure that financial institutions and DNFBPs immediately freeze any identified funds or other assets held or controlled by designated persons and entities;
- d) Ensure that financial institutions and DNFBPs have the appropriate procedures and resources to meet their obligations under Recommendation 6;
- e) Ensure that financial institutions and DNFBPs implement reasonable procedures to prevent designated persons and entities from conducting transactions with, in or through them;
- f) Develop an effective monitoring system by a competent authority or a court with sufficient supervisory experience, authority and resources with a mandate to support the objectives set out in sub-paragraphs (b), (c) and (d) above;
- g) Encourage, to the extent commercially reasonable, financial institutions and DNFBPs to search or examine past financial activity by designated persons and entities;
- h) Identify, assess compliance with, and improve as necessary client or customer identification rules and record keeping requirements used by financial institutions and DNFBPs;
- i) Adopt reasonable measures to consider beneficial owners, signatories and powers of attorney with respect to accounts or transactions held by financial institutions or DNFBPs

when searching for activity by designated persons or entities, including any ongoing business relationships; and

- j) Harmonise counter-terrorist financing internal controls within each economic sector, as appropriate, with anti-money laundering programs.

50. For each type of DNFBPs, there should be mechanisms for monitoring and ensuring compliance with asset freezing mechanisms, for instance through assignment of responsibility to relevant competent authorities or to senior responsible owners.

IV. DESIGNATED PERSONS AND ENTITIES: COMPLIANCE AND ACCESS TO FROZEN FUNDS OR OTHER ASSETS

A. RESIDENT DESIGNATED PERSONS AND ENTITIES

51. In order to comply with requirements to grant exemptions for access to frozen funds or other assets for basic or extraordinary expenses as set out in resolution 1452(2002) whilst still ensuring that the asset freeze is maintained,²⁷ strong relationships and robust cross-government processes should be built and maintained. There should be:

- a) Communication among competent authorities (including, where relevant, prosecution services or other appropriate judicial authorities) and other relevant authorities (such as the police service or intelligence agencies) to ensure comprehensive monitoring of compliance with the terms of the asset freeze.
- b) Co-ordination between competent authorities and social welfare departments supporting a resident designated person and his/her family.

B. CLEAR DOMESTIC AUTHORITIES AND PROCEDURES TO LICENSE THE USE OF OR DEALING WITH FROZEN FUNDS OR OTHER ASSETS OR THE MAKING OF FUNDS OR OTHER ASSETS AVAILABLE TO DESIGNATED PERSONS OR ENTITIES

52. The asset freezing obligations under the Al-Qaida/Taliban sanctions regimes provide for exemptions to be made to the asset freeze where necessary under specific circumstances, as set out in resolution 1452(2002), as amended by resolution 1735(2006). Paragraph 1 of resolution 1452 provides that “the provisions of paragraph 4(b) of resolution 1267(1999), and paragraphs 1 and 2(a) of resolution 1390(2002), do not apply to funds and other financial assets or economic resources that have been determined by the relevant State(s) to be:

- a) necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges, or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service

²⁷ Paragraph 2 of resolution 1452(2002) provides that countries may allow for the addition to accounts subject to resolution 1267(1999), “provided that any such interest, other earnings and payments continue to be subject to those provisions [of resolutions 1267(1999), 1333(2000) and 1390(2002)]”. Paragraph 7 of resolution 2082(2012) and paragraph 7 of resolution 2083(2012) provide that Member States may permit the addition to accounts frozen of any payment in favour of listed persons, groups, undertakings or entities, provided that any such payments continue to be frozen.

charges for routine holding or maintenance of frozen funds or other financial assets or economic resources, after notification by the relevant State(s) to the [1267 or 1988] Committee...of the intention to authorize, where appropriate, access to such funds, assets or resources and in the absence of a negative decision by the [1267 or 1988] Committee within 48 hours of such notification²⁸;

- b) necessary for extraordinary expenses, provided that such determination has been notified by the relevant State(s) to the [1267 or 1988] Committee and has been approved by the [1267 or 1988] Committee”.

53. Paragraph 5 of resolution 1452 also urges Member States to take full account of these considerations (*i.e.* exemptions set out in resolution 1452) in their implementation of resolution 1373(2001).

54. Where funds or other assets have been frozen under the Al-Qaida/Taliban sanctions regimes or pursuant to resolution 1373, a clear process should be in place to ensure that, where necessary, exemptions requests can be considered, authorised or licensed in a prompt manner.²⁹ Effective decision making procedures at the domestic level should be supported by effective procedures for obtaining agreement from the relevant Security Council Committees where required (resolutions 1267/1989 and resolution 1988).³⁰

55. An authorisation regime needs to balance, for example:

- a) Realising the purpose for which the authorisation is granted (whether for basic expenses, extraordinary expenses, contractual payments or other authorisable grounds).
- b) Mitigating against the risks of authorised payments going to purposes other than those for which they were granted, including terrorist purposes.
- c) Minimising the burden on the financial sector.
- d) The operation of domestic law.

²⁸ Paragraph 15 of resolution 1735(2006) extended “the period for consideration by the [1267] Committee of notifications submitted pursuant to paragraph 1(a) of resolution 1452 (2002) from 48 hours to 3 working days”.

²⁹ See paragraph 10 of INR6.

³⁰ As for requests for exemptions in relation to the Al-Qaida (1267/1989) sanctions regime, the 1267 Committee considers and approves (or disapproves) the request. For exemptions requests regarding the 1988 sanctions regime, the 1988 Committee considers the request (see paragraph 30(j) of resolution 1988(2011)). For the Al-Qaida (1267/1989) sanctions regime, paragraph 8 of resolution 2083(2012) “authorizes the Focal Point mechanism established in resolution 1730(2006) to receive exemption requests submitted by, or on behalf of, an individual, group, undertaking or entity on the Al-Qaida Sanctions List, or by the legal representative or estate of such individual, group, undertaking or entity, for [1267] Committee consideration”. Paragraph 37(a) of resolution 2083 provides that the Focal Point mechanism may “Receive requests from listed individuals, groups, undertakings, and entities for exemptions to the measures outlined in paragraph 1 (a) of this resolution [2083], as defined in resolution 1452(2002) provided that the request has first been submitted for the consideration of the State of residence”, and that “the Focal Point shall transmit such requests to the [1267] Committee for a decision”.

56. This process needs to be carefully managed to ensure that its application is consistent, transparent, reasonable and proportionate, with a clear audit trail as to why an authorisation was made, and if any conditions are attached to the exemption, how they were decided upon.

57. Countries should implement appropriate controls on the granting of authorisations to ensure that they are complied with, meet the terms of the specific exemption grounds under which they were granted, and do not result in the diversion of funds or other assets for other, including terrorist, purposes.