



Guernsey Financial Services Commission

INSTRUCTION (NUMBER 01/2016) FOR FINANCIAL SERVICES BUSINESSES

BUSINESS FROM SENSITIVE SOURCES

22 March 2016

This Instruction is made under section 49(7) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 and repeals Instruction (Number 04/2015) for Financial Services Businesses.

This Instruction is being issued in light of a request from the Financial Action Task Force (FATF) for jurisdictions to apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism risks emanating from jurisdictions which have deficiencies in their anti-money laundering and financing of terrorism regimes. In this regard, the FATF has issued two documents, namely “The FATF Public Statement” and “Improving Global AML/CFT Compliance: On-Going Process”. These documents and the action to be taken by financial services businesses in respect of each document are quoted below.

A. ACTION TO BE TAKEN BY FINANCIAL SERVICES BUSINESSES IN RESPECT OF JURISDICTIONS LISTED IN “THE FATF PUBLIC STATEMENT”

Financial services businesses must exercise a greater degree of caution when taking on business from the countries or territories specified in this part of the Instruction. Additionally, financial services businesses must ensure enhanced client due diligence measures are undertaken and special attention given to all existing and new business relationships and transactions connected with such countries or territories.

In light of the particular concerns of the FATF regarding Iran and the Democratic People’s Republic of Korea (“DPRK”), financial services businesses must, in addition to the requirements of the above paragraph, take appropriate measures to ensure that correspondent relationships are not being used to bypass or evade counter-measures and risk mitigation practices.

The action taken by each financial services business under this part of the Instruction will be reviewed during on-site inspections and by other means as necessary.

THE FATF PUBLIC STATEMENT

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 money laundering and financing of terrorism (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.

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

Iran
Democratic People's Republic of Korea (DPRK)

Iran

The FATF remains 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.

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. The 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.

The FATF urges Iran to immediately and meaningfully address its AML/CFT deficiencies, in particular by criminalising terrorist financing and effectively implementing suspicious transaction reporting requirements. If Iran fails to take concrete steps to continue to improve its CFT regime, the FATF will consider calling on its members and urging all jurisdictions to strengthen counter-measures in June 2016.

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 25 February 2011 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.

B. ACTION TO BE TAKEN BY FINANCIAL SERVICES BUSINESSES IN RESPECT OF JURISDICTIONS LISTED IN THE FATF DOCUMENT ENTITLED “IMPROVING GLOBAL AML/CFT COMPLIANCE: ON-GOING PROCESS”.

Financial services businesses must consider the risk posed by the jurisdictions listed in this part of the Instruction when undertaking or reviewing the assessment of risk of any business relationship or occasional transaction.

The consideration of risk and of any consequential action taken by each financial services business under this part of the Instruction will be reviewed during on-site inspections and by other means as necessary.

IMPROVING GLOBAL AML/CFT COMPLIANCE: ON-GOING PROCESS

As part of its on-going review of compliance with the AML/CFT standards, the FATF has to date identified the following jurisdictions which have strategic AML/CFT deficiencies for which they have developed an action plan with the FATF. While the situations differ among each jurisdiction, each jurisdiction has provided a written high-level political commitment to address the identified deficiencies. The FATF welcomes these commitments.

A large number of jurisdictions have not yet been reviewed by the FATF. The FATF continues to identify additional jurisdictions, on an on-going basis, that pose a risk to the international financial system.

The FATF and the FATF-style regional bodies (FSRBs) will continue to work with the jurisdictions noted below and to report on the progress made in addressing the identified deficiencies. The FATF calls on these jurisdictions to complete the implementation of action plans expeditiously and within the proposed timeframes. The FATF will closely monitor the implementation of these action plans and encourages its members to consider the information presented below.

Afghanistan

In June 2012, Afghanistan made a high-level political commitment to work with the FATF and APG to address its strategic AML/CFT deficiencies. Since October 2015, Afghanistan has taken steps towards improving its AML/CFT regime, including by issuing amended cross-border declaration regulations for the physical transportation of cash and bearer negotiable instruments. However, the FATF has determined that certain strategic deficiencies remain. Afghanistan should continue to implement its action plan, including by: (1) further implementing its legal framework for identifying, tracing and freezing terrorist assets; (2) implementing an adequate AML/CFT supervisory and oversight programme for all financial sectors; and (3) implementing effective controls for cross-border cash transactions. The FATF encourages Afghanistan to address its remaining deficiencies and continue the process of implementing its action plan.

Bosnia and Herzegovina

In June 2015, Bosnia and Herzegovina made a high-level political commitment to work with the FATF and MONEYVAL to address its strategic AML/CFT deficiencies. However, the FATF has determined that certain strategic deficiencies remain. Bosnia and Herzegovina should continue to implement its action plan to address these deficiencies, including by: (1) harmonising criminalisation of terrorist financing in all criminal codes; (2) establishing and implementing an adequate legal framework for freezing terrorist assets under UNSCR 1373; (3) implementing an adequate supervisory framework; (4) implementing adequate AML/CFT measures for the non-profit sector; (5) establishing and implementing adequate cross-border currency controls; (6) harmonising criminalisation of money laundering in all criminal codes; and (7) ensuring adequate procedures for the confiscation of assets. The FATF encourages Bosnia and Herzegovina to address its AML/CFT deficiencies by implementing its action plan.

Guyana

In October 2014, Guyana made a high-level political commitment to work with the FATF and CFATF to address its strategic AML/CFT deficiencies. Since October 2015, Guyana has taken steps towards improving its AML/CFT regime, including by enacting further amendments to the AML/CFT Act and AML/CFT Regulations, and issuing FIU guidelines on targeted financial sanctions. However, the FATF has determined that certain strategic deficiencies remain. Guyana should continue to implement its action plan, including by ensuring and implementing an adequate legal framework for identifying, tracing and freezing terrorist assets. The FATF encourages Guyana to address its remaining deficiencies and continue the process of implementing its action plan.

Iraq

In October 2013, Iraq made a high-level political commitment to work with the FATF and MENAFATF to address its strategic AML/CFT deficiencies. Since October 2015, Iraq has taken steps towards improving its AML/CFT regime, including by gazetting a new AML/CFT law, which has now entered into force. However, the FATF has determined that certain strategic deficiencies remain. Iraq should continue to implement its action plan to address these deficiencies, including by: (1) addressing remaining issues related to its criminalisation of money laundering and terrorist financing; (2) establishing and implementing an adequate legal framework and appropriate procedures for identifying and freezing terrorist assets; (3) ensuring that all financial institutions are subject to adequate customer due diligence requirements; (4) ensuring that all financial institutions are subject to adequate suspicious transaction reporting requirements; (5) ensuring a fully operational and effectively functioning financial intelligence unit; and (6) establishing and implementing an adequate AML/CFT supervisory and oversight programme for all financial sectors. The FATF encourages Iraq to address its remaining AML/CFT deficiencies and continue the process of implementing its action plan.

Lao PDR

In June 2013, Lao PDR made a high-level political commitment to work with the FATF and APG to address its strategic AML/CFT deficiencies. Since October 2015, Lao PDR has taken steps towards improving its AML/CFT regime, including by issuing a Prime Minister's Order on the freezing of terrorist assets, STR guidance for reporting entities, and regulations on preventive measures and financial sector supervision. However, the FATF has determined that certain strategic deficiencies remain. Lao PDR should continue to work on implementing its action plan to address these deficiencies, including by: (1) adequately criminalising money laundering and terrorist financing; (2) establishing and implementing adequate procedures for the confiscation of assets related to money laundering; (3) establishing and implementing an adequate legal framework for identifying, tracing and freezing terrorist assets; (4) implementing an adequate AML/CFT supervisory and oversight programme for all financial sectors; and (5) implementing effective controls for cross-border currency transactions. The FATF encourages Lao PDR to address its AML/CFT deficiencies and continue the process of implementing its action plan.

Myanmar

Since February 2010, when Myanmar made a high-level political commitment to work with the FATF and APG to address its strategic AML/CFT deficiencies, Myanmar has substantially addressed its action plan at a technical level, including by: (1) adequately criminalising money laundering and terrorist financing; (2) establishing and implementing adequate procedures to identify and freeze terrorist assets; (3) strengthening the extradition framework in relation to terrorist financing; (4) ensuring a fully operational and effectively functioning Financial Intelligence Unit; (5) enhancing financial transparency; and (6) strengthening customer due diligence measures. The FATF will conduct an on-site visit to confirm that the process of implementing the required reforms and actions is underway to address deficiencies previously identified by the FATF.

Papua New Guinea

Since February 2014, when Papua New Guinea made a high-level political commitment to work with the FATF and APG to address its strategic AML/CFT deficiencies, Papua New Guinea has substantially addressed its action plan at a technical level, including by: (1) adequately criminalising money laundering and terrorist financing; (2) establishing adequate procedures for the confiscation of assets related to money laundering; (3) establishing and implementing an adequate legal framework for identifying, tracing and freezing terrorist assets; (4) establishing a fully operational and effectively functioning financial intelligence unit; (5) establishing suspicious transaction reporting requirements; (6) implementing an adequate AML/CFT supervisory and oversight programme for all financial sectors; and (7) establishing effective controls for cross-border currency transactions. The FATF will conduct an on-site visit to confirm that the process of implementing the required reforms and actions is underway to address deficiencies previously identified by the FATF.

Syria

Since February 2010, when Syria made a high-level political commitment to work with the FATF and MENAFATF to address its strategic AML/CFT deficiencies, Syria has made progress to improve its AML/CFT regime. In June 2014, the FATF determined that Syria had substantially addressed its action plan at a technical level, including by criminalising terrorist financing and establishing procedures for freezing terrorist assets. While the FATF determined that Syria has completed its action plan agreed upon with the FATF, due to the security situation, the FATF has been unable to conduct an on-site visit to assess whether the process of implementing the required reforms and actions is underway. The FATF will continue to monitor the situation, and will conduct an on-site visit at the earliest possible date.

Uganda

In February 2014, Uganda made a high-level political commitment to work with the FATF and ESAAMLG to address its strategic AML/CFT deficiencies. Since October 2015, Uganda has taken steps towards improving its AML/CFT regime, including by amending the Financial Institutions Act to make the financial intelligence unit the central agency for receiving STRs, issuing and implementing regulations for the freezing of terrorist assets, issuing AML regulations for implementation of AML requirements, and issuing AML/CFT inspection manuals for financial sector supervisors. However, the FATF has determined that strategic deficiencies remain. Uganda should therefore continue to work on addressing the following deficiencies: (1) implementing an adequate legal framework and set of procedures for identifying and freezing terrorist assets; (2) ensuring that all financial institutions are subject to adequate record-keeping requirements; (3) establishing a fully operational and effectively functioning financial intelligence unit; (4) ensuring an adequate and effective AML/CFT supervisory and oversight programme for all financial sectors; and (5) ensuring that appropriate laws and procedures are in place with regard to international co-operation for the financial intelligence unit and supervisory authorities. The FATF encourages Uganda to address its remaining AML/CFT

deficiencies, including adequately criminalising terrorist financing, and continue the process of implementing its action plan.

Vanuatu

In February 2016, Vanuatu made a high-level political commitment to work with the FATF and APG to address its strategic AML/CFT deficiencies. Vanuatu will work on implementing its action plan to address these deficiencies, including by: (1) adequately criminalising money laundering and terrorist financing; (2) establishing and implementing adequate procedures for the confiscation of assets related to money laundering; (3) establishing and implementing an adequate legal framework for identifying, tracing and freezing terrorist assets and other UNSCR sanctions; (4) ensuring a fully operational and effectively functioning financial intelligence unit; (5) strengthening preventive measures, including for wire transfers; (6) establishing transparency for the financial sector, and for legal persons and arrangements; (7) implementing an adequate AML/CFT supervisory and oversight programme for the whole financial sector and trust and company service providers; and (8) establishing appropriate channels for international co-operation and domestic coordination policies and actions on identified risks and ensuring effective implementation.

Yemen

Since February 2010, when Yemen made a high-level political commitment to work with the FATF and MENAFATF to address its strategic AML/CFT deficiencies, Yemen has made progress to improve its AML/CFT regime. In June 2014, the FATF determined that Yemen had substantially addressed its action plan at a technical level, including by adequately criminalising money laundering and terrorist financing; establishing procedures to identify and freeze terrorist assets; improving its customer due diligence and suspicious transaction reporting requirements; issuing guidance; developing the monitoring and supervisory capacity of the financial sector supervisory authorities and the financial intelligence unit; and establishing a fully operational and effectively functioning FIU. While the FATF determined that Yemen has completed its action plan agreed upon with the FATF, due to the security situation, the FATF has been unable to conduct an on-site visit to assess whether the process of implementing the required reforms and actions is underway. The FATF will continue to monitor the situation, and conduct an on-site visit at the earliest possible date.

JURISDICTIONS NO LONGER SUBJECT TO THE FATF'S ON-GOING GLOBAL AML/CFT COMPLIANCE PROCESS

Algeria

The FATF welcomes Algeria's significant progress in improving its AML/CFT regime and notes that Algeria has established the legal and regulatory framework to meet its commitments in its action plan regarding the strategic deficiencies that the FATF had identified in October 2011. Algeria is therefore no longer subject to the FATF's monitoring process under its on-going global AML/CFT compliance process. Algeria will work with MENAFATF as it continues to address the full range of AML/CFT issues identified in its mutual evaluation report.

Angola

The FATF welcomes Angola's significant progress in improving its AML/CFT regime and notes that Angola has established the legal and regulatory framework to meet its commitments in its action plan regarding the strategic deficiencies that the FATF had identified in June 2010 and February 2013. Angola is therefore no longer subject to the FATF's monitoring process under its on-going global AML/CFT compliance process. Angola will work with ESAAMLG as it continues to address the full range of AML/CFT issues identified in its mutual evaluation report.

Panama

The FATF welcomes Panama's significant progress in improving its AML/CFT regime and notes that Panama has established the legal and regulatory framework to meet its commitments in its action plan regarding the strategic deficiencies that the FATF had identified in June 2014. Panama is therefore no longer subject to the FATF's monitoring process under its on-going global AML/CFT compliance process. Panama will work with GAFILAT as it continues to address the full range of AML/CFT issues identified in its mutual evaluation report.

C. ACTION TO BE TAKEN BY FINANCIAL SERVICES BUSINESSES IN RESPECT OF JURISDICTIONS WHICH ARE OF CONCERN TO THE GUERNSEY FINANCIAL SERVICES COMMISSION

Financial services businesses must exercise a greater degree of caution when taking on business from the countries or territories specified in this part of the Instruction. Additionally, financial services businesses must ensure enhanced client due diligence measures are undertaken and special attention given to all existing and new business relationships and transactions connected with such countries or territories.

The action taken by each financial services business under this part of the Instruction will be reviewed during on-site inspections and by other means as necessary.

CONCERNS OF THE GUERNSEY FINANCIAL SERVICES COMMISSION REGARDING VENEZUELA AND WEST AFRICA

Venezuela

It has come to the attention of the Commission that there may be doubts over the validity of some identity documents issued in Venezuela. In light of widespread corruption in that country, it has been suggested that corrupt officials have been issuing national identity cards and passports to criminals and to individuals with suspected links to terrorist organisations.

It should also be noted that, due to its proximity to major drug producing countries, Venezuela has become an important hub for the transport of drugs for consumption in the United States and Western Europe.

West Africa

The Commission notes that there has been a significant increase in trafficking between South America and West Africa of drugs that are ultimately destined for use in Western Europe. A number of the same countries have also been traditionally used as transit points for heroin from south west and south east Asia. Furthermore, it should be noted that people trafficking continues to take place in the more northerly group of West African countries.

The concerns of the Commission relate to the West African countries of:

- Morocco
- Mauritania
- Senegal
- Cape Verde Islands
- Guinea-Bissau
- Guinea
- Sierra Leone
- Liberia
- Ivory Coast
- Ghana