



Guernsey Financial Services Commission

INSTRUCTION (NUMBER 02/2017) FOR FINANCIAL SERVICES BUSINESSES

BUSINESS FROM SENSITIVE SOURCES

10 April 2017

This Instruction is made under section 49(7) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 and repeals Instruction (Number 01/2017) 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, 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 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 risks emanating from the jurisdiction.

Democratic People's Republic of Korea (DPRK)

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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. Further, FATF has serious concerns with the threat posed by DPRK’s illicit activities related to the proliferation of weapons of mass destruction (WMDs) and its financing.

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, financial institutions and those acting on their behalf. In addition to enhanced scrutiny, the FATF further calls on its members and urges all jurisdictions to apply effective counter-measures, and targeted financial sanctions in accordance with applicable United Nations Security Council Resolutions, to protect their financial sectors from money laundering, financing of terrorism and WMD proliferation financing (ML/FT/PF) risks emanating from the DPRK. Jurisdictions should take necessary measures to close existing branches, subsidiaries and representative offices of DPRK banks within their territories and terminate correspondent relationships with DPRK banks, where required by relevant UNSC Resolutions.

Jurisdictions subject to a FATF call on its members and other jurisdictions to apply enhanced due diligence measures proportionate to the risks arising from the jurisdiction.

Iran

Iran

In June 2016, the FATF welcomed Iran's adoption of, and high-level political commitment to, an Action Plan to address its strategic AML/CFT deficiencies, and its decision to seek technical assistance in the implementation of the Action Plan. Accordingly, in June 2016, the FATF suspended counter-measures for twelve months in order to monitor Iran's progress in implementing the Action Plan. If the FATF determines that Iran has not demonstrated sufficient progress in implementing the Action Plan at the end of that period, FATF's call for counter-measures will be re-imposed. If Iran meets its commitments under the Action Plan in that time period, the FATF will consider next steps in this regard.

Iran will remain on the FATF Public Statement until the full Action Plan has been completed. Until Iran implements the measures required to address the deficiencies identified in the Action Plan, the FATF will remain concerned with the terrorist financing risk emanating from Iran and the threat this poses to the international financial system. The FATF, therefore, calls on its members and urges all jurisdictions to continue to advise their financial institutions to apply enhanced due diligence to business relationships and transactions with natural and legal persons from Iran, consistent with FATF Recommendation 19. The FATF urges Iran to fully address its AML/CFT deficiencies, in particular those related to terrorist financing.

The FATF will continue to engage with Iran and closely monitor its progress.

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

Since June 2012, when Afghanistan made a high-level political commitment to work with the FATF and APG to address its strategic AML/CFT deficiencies, Afghanistan has substantially addressed its action plan at a technical level, including by: (1) introducing mechanisms for policy and operational level coordination on AML/CFT; (2) adequately criminalising money laundering and terrorist financing; (3) establishing adequate provisions for freezing and asset confiscation; (4) establishing a targeted financial sanctions framework; (5) establishing an adequate supervisory and oversight system; (6) improving the legal status and resources of the FIU; (7) and developing a cross-border currency declaration system. 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.

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. Since October 2016, Bosnia and Herzegovina established a legal framework for freezing terrorist assets under UNSCR 1373 and made progress in adopting several insurance laws. Bosnia and Herzegovina should continue to implement its action plan to address its deficiencies, including by: (1) harmonising criminalisation of terrorist financing and money laundering in the remaining criminal code; (2) implementing an adequate supervisory framework; (3) implementing adequate AML/CFT measures for the non-profit sector; (4) establishing and implementing adequate cross-border currency controls; and (5) ensuring adequate procedures for the confiscation of assets. The FATF encourages Bosnia and Herzegovina to continue implementing its action plan to address its AML/CFT deficiencies.

Ethiopia

The 4th round mutual evaluation report of Ethiopia was adopted in March 2015. This report detailed some progress towards the development of an adequate AML/CFT legal framework, in line with the FATF standards. However, there is a lack of effective implementation in the country, including with regard to the recommendations provided in that report. Therefore, in February 2017, Ethiopia made a high-level political commitment to work with the FATF and ESAAMLG to strengthen its effectiveness and address any related technical deficiencies. Ethiopia will work to implement its action plan to accomplish these objectives, including by: (1) implementing the results of its national risk assessment; (2) fully integrating designated non-financial businesses and professions into its AML/CFT regime; (3) ensuring that the proceeds and instrumentalities of crime are confiscated; (4) consistently implementing terrorism-related targeted financial sanctions and proportionately regulating non-profit organizations in line with a risk-based approach; and (5) establishing and implementing WMD-related targeted financial sanctions.

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 2016, Iraq has taken steps towards improving its AML/CFT regime. Iraq should continue to implement its action plan to address its remaining deficiencies, including by: (1) continue implementing the legal framework and appropriate procedures for identifying and freezing terrorist assets; (2) ensuring that all financial institutions are subject to adequate customer due diligence requirements; (3) ensuring that all financial institutions are subject to adequate suspicious transaction reporting requirements; and (4) establishing and implementing an adequate AML/CFT supervisory and oversight programme for all financial sectors. The FATF encourages Iraq to continue implementing its action plan to address its remaining AML/CFT deficiencies.

Lao PDR

Since June 2013, when Lao PDR made a high-level political commitment to work with the FATF and APG to address its strategic AML/CFT deficiencies, Lao PDR has substantially addressed its action plan at a technical level, including by: (1) establishing mechanisms for domestic AML cooperation; (2) adequately criminalising money laundering and terrorism financing; (3) establishing a legal framework for the confiscation, freezing, and seizing of the proceeds of crime; (4) establishing a targeted financial sanctions framework; (5) improving the legal status and resources of the FIU; (6) strengthening its STR legal framework and financial sector supervision; (7) and developing a cross-border declaration system. 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. Uganda should continue to work on addressing the following deficiencies: (1) adequately criminalise terrorist financing; (2) implement adequate procedures for freezing terrorist assets in accordance with UNSCRs 1267 and 1373, and their successor resolutions; (3) ensure that all financial institutions are subject to adequate record-keeping requirements; (4) establish a fully operational and effectively functioning financial intelligence unit; (5) introduce and implement an appropriate legal basis to permit the competent authorities to provide a wide range of mutual legal assistance; and (6) ensure 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 continue implementing its action plan to address its AML/CFT deficiencies.

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. Since October 2016, Vanuatu has enhanced the resources and capacity of its FIU. Vanuatu should continue to work on implementing its action plan to address its 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 all the 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. The FATF encourages Vanuatu to continue implementing its action plan to address its AML/CFT deficiencies.

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.

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 customer 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 HAITI, VENEZUELA AND CENTRAL AND WEST AFRICA

Haiti

The Commission is aware that the Caribbean Financial Action Task Force (“CFATF”), following an evaluation of Haiti during April 2015, identified strategic deficiencies in the country’s AML/CFT controls. As a result of the evaluation Haiti has been subject to enhanced follow-up and oversight of its remediation of the deficiencies identified.

The full text of the CFATF’s statement has been included below:

“The CFATF undertook a High Level Mission (HLM) to the Republic of Haiti on Monday 27th of April 2015. Thereinafter, a letter from the CFATF Chair, was sent to Haiti on the 17th of September 2015, making reference that Haiti would remain in the second stage of enhanced of follow-up but would need to demonstrate progress. At the CFATF Plenary in November 2015, Haiti demonstrated some progress on non-legislative measures. Plenary determined that Haiti should remain in the status quo and demonstrate to the May 2016 Plenary substantial compliance with both non-legislative and legislative requirements. At the CFATF Plenary in June 2016, Haiti demonstrated

that had taken steps towards improving its AML/CFT compliance regime with non-legislative actions, including providing training to FIU, Police officers, Prosecutors and Magistrates; and taking steps to join the Egmont Group. However, Plenary was not satisfied with the pace of reforms and agreed to the issuance of a public statement against Haiti asking members to consider the risk posed by Haiti. Plenary also agreed that Haiti must make sufficient progress and demonstrate such progress by the November 2016 Plenary. At the CFATF Plenary in November 2016, Haiti demonstrated that sufficient progress has been made through: the amended Law Sanctioning Money Laundering and Terrorist Financing (LSMLTF) by the Chamber of Deputies on September 9th, 2016 and by the Senate on September 28th, 2016; the enactment of the new UCREF law seeking to establish the l'Unité Centrale de Renseignements Financiers (Central Financial Intelligence Unit) (UCREF) as an autonomous administrative financial intelligence unit; and the publication in the National Gazette of the Decree establishing procedures for the implementation of measures aimed at freezing funds and other assets connected with the financing of terrorism.

Haiti is encouraged to continue the reform process including the passage of the legislative framework and continue addressing its AML/CFT deficiencies.

Haiti and the CFATF should continue to work together to ensure that Haiti's reform process is completed, by addressing its remaining deficiencies and continue implementing its Action Plan".

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.

Central and West Africa

The Commission has a number of concerns related to Central and West Africa and the risks arising from this region, particularly in respect of terrorism, terrorist financing, and trafficking in drugs and people.

With regard to the former, the Commission is aware of the terrorism and terrorist financing risks emanating from Central and West African countries, both from terrorist organisations based in and carrying out their operations in the region, and terrorist organisations not based in West Africa but who derive a significant amount of their financing through activities in the region. Examples of terrorist organisations with links to Central and West Africa include: Boko Haram; Al-Qaeda in the Lands of the Islamic Maghreb; and Ansar Eddine, together with associated groups or factions.

In respect of trafficking and connected with the methods of terrorist financing referenced above, the Commission remains concerned about the levels of trafficking between South America and West Africa of drugs ultimately destined for use in Western Europe and of people in the more northerly group of West African countries. A number of the same West African countries have also been traditionally used as transit points for heroin from South West and South East Asia.

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

Cape Verde Islands
Côte d'Ivoire
Ghana
Guinea
Guinea Bissau
Liberia

Mauritania
Morocco
Nigeria
Senegal
Sierra Leone