GUERNSEY
FINANCIAL
SERVICES
COMMISSION

INSTRUCTION (NUMBER 7) FOR FINANCIAL SERVICES BUSINESSES

11 November 2009

BUSINESS FROM SENSITIVE SOURCES

This Instruction is made under section 49(7) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

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. It is also being issued to address specific concerns that have been brought to the attention of the Commission in respect of Venezuela and West Africa.

The Financial Action Task Force (FATF)

The Forty Recommendations and Nine Special Recommendations of the FATF are the international standard for effective anti-money laundering and terrorist financing measures. Through periodic mutual evaluations, the FATF reviews its members' compliance with these Forty Recommendations, as well as the Nine Special Recommendations on Terrorist Financing, and suggests areas for improvement as necessary.

The Non-Cooperative Countries and Territories (NCCTs) exercise began in 1998 at a time when many countries around the world did not have adequate AML measures in place. The goal of the initiative was to secure the adoption by all financial centres of international standards to prevent, detect and punish money laundering, and thereby effectively co-operate internationally in the global fight against money laundering. Financial services businesses will be aware that no countries or territories are listed by the FATF as non-cooperative.

To ensure continued effective implementation of the reforms enacted, the FATF adopted a monitoring mechanism. This mechanism included the submission of regular implementation reports and a possible follow-up visit to assess progress in implementing reforms and to ensure that stated goals had been fully achieved.

Myanmar

Myanmar, which was formerly listed as non-cooperative, is listed by the FATF as a country subject to its monitoring mechanism.

Iran, Uzbekistan, Turkmenistan Pakistan, and São Tomé and Príncipe

The FATF remains concerned about the lack of comprehensive AML/CFT systems in Iran, Uzbekistan, Turkmenistan Pakistan, and São Tomé and Príncipe and has taken further steps to protect the international financial system from abuse, by putting the following notice on its website.

"IRAN

The FATF is concerned by Iran's lack of engagement with the FATF and its failure to meaningfully address the ongoing and substantial deficiencies in its anti-money laundering and combating the financing of terrorism (AML/CFT) regime. The FATF remains particularly 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 urges Iran to immediately and meaningfully address its AML/CFT deficiencies, in particular by criminalising terrorist financing and effectively implementing suspicious transaction reporting (STR) requirements.

The FATF reaffirms its call on members and urges all jurisdictions to advise their financial institutions to give special attention to business relationships and transactions with Iran, including Iranian companies and financial institutions. In addition to enhanced scrutiny, the FATF reaffirms its 25 February 2009 call on its members and urges all jurisdictions to apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism (ML/FT) risks emanating from Iran. FATF continues to urge jurisdictions to protect against correspondent relationships being used to bypass or evade counter-measures and risk mitigation practices, and to take into account ML/FT risks when considering requests by Iranian financial institutions to open branches and subsidiaries in their jurisdiction. If Iran fails to take concrete steps to improve its AML/CFT regime, the FATF will consider calling on its members and urging all jurisdictions to strengthen counter-measures in February 2010.

UZBEKISTAN

The FATF welcomes the significant steps that Uzbekistan has taken to establish the necessary AML/CFT framework and urges Uzbekistan to continue its progress towards implementing effective AML/CFT measures. The FATF welcomes Uzbekistan's upcoming mutual evaluation by the EAG that will be finalized in spring 2010. The FATF will continue to monitor the progress being made in Uzbekistan and will reconsider in February 2010 the measures that are currently in place to protect jurisdictions' financial sectors from ML/FT risks emanating from Uzbekistan.

TURKMENISTAN

The FATF welcomes Turkmenistan's progress in adopting AML/CFT legislation and secondary legislation that aims to implement the AML/CFT law. However, deficiencies remain in Turkmenistan's AML/CFT regime, including the absence of a Financial Intelligence Unit (FIU). Consequently, the FATF reiterates its 25 February 2009 statement informing financial institutions that these deficiencies constitute an ML/FT vulnerability in the international financial system and that they should take appropriate measures to address this risk. Turkmenistan is urged to continue to take steps to implement an AML/CFT regime that meets international AML/CFT standards. Turkmenistan is encouraged to continue to work closely with the Eurasian Group and the International Monetary Fund to achieve this.

PAKISTAN

The FATF welcomes the close co-operation between Pakistan and the Asia/Pacific Group on Money Laundering (APG), but remains concerned regarding the ML/FT risks posed by Pakistan and reaffirms its public statement of 28 February 2008 regarding these risks. In particular, the FATF expresses concern that Pakistan's Anti-Money Laundering Ordinance (AMLO) will expire on 28 November 2009. The FATF notes that Pakistan has initiated a legislative process to address this. The FATF strongly urges Pakistan to implement a permanent AML/CFT framework before the expiration of the AMLO and strongly encourages Pakistan to establish a comprehensive AML/CFT framework. Failing concrete progress, the FATF will consider taking action in February 2010 to protect the financial system from the ML/FT risks emanating from Pakistan.

SÃO TOMÉ AND PRÍNCIPE

The FATF welcomes São Tomé and Príncipe's continuing efforts to implement its AML law, including the development of an action plan with the Inter Governmental Action Group against Money Laundering in West Africa (GIABA). However, the FATF remains concerned about the deficiencies in São Tomé and Príncipe's AML/CFT regime, particularly relating to terrorist financing. The FATF urges São Tomé and Príncipe to work with GIABA to address the remaining AML/CFT deficiencies."

Recognition by the Commission

The Commission wishes to recognise that as identified in the FATF statement, steps have been taken by a number of jurisdictions towards addressing the deficiencies in their AML/CFT regimes. Albeit that, at this time they are still on our Business from Sensitive Sources Notices.

<u>The Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)</u>

MONEYVAL under Step VI of its Compliance Enhancing Procedures has issued the following public statement in respect of Azerbaijan.

"The Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) has been concerned since 2006 with deficiencies in the anti money laundering/combating the financing of terrorism (AML/CFT) regime in Azerbaijan.

On 12 December 2008, at its 28th plenary meeting, and on 20 March 2009 Public Statements were issued by MONEYVAL under Step VI, which remain in effect.

At its 30th plenary meeting in Strasbourg (21-24 September 2009), MONEYVAL welcomed the further progress that had been made with the adoption of additional measures to finalise the legal framework. However, the new preventive AML/CFT structure is not, as yet, operational, but is anticipated to be so by December 2009. Azerbaijan will report back to MONEYVAL's 31st plenary in December 2009 on progress."

<u>Concerns of the Commission regarding Venezuela and West Africa</u>

<u>Venezuela</u>

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 the major drug producing country of Colombia, Venezuela has become an important hub for the transport of drugs for consumption in the United States and western Europe.

<u>West Africa</u>

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

Action to be taken by Financial Services Businesses

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

In light of the particular concerns of the FATF regarding Iran, financial services businesses must, in addition to the requirements of the above paragraph:

- review and consider any existing business relationships with Iran to ascertain whether any action is needed; and

- 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 Instruction will be reviewed during on-site inspections and by other means as necessary.