



**Financial Action Task Force
on Money Laundering**
Groupe d'action financière
sur le blanchiment de capitaux

FREEZING OF TERRORIST ASSETS

International Best Practices

3 October 2003

All rights reserved.
Applications for permission to reproduce all or part of this publication should be made to:
FATF Secretariat, OECD, 2 rue André Pascal 75775 Paris Cedex 16, France

FREEZING OF TERRORIST ASSETS¹

International Best Practices

Introduction

1. Responding to the growing prevalence of terrorist attacks around the world, the international community united in a campaign to freeze the *funds or other assets*² of *terrorists, those who finance terrorism, and terrorist organisations* around the world. As part of this campaign, the United Nations Security Council issued resolutions *S/RES/1267(1999)* and *S/RES/1373(2001)*. These international obligations are reiterated in FATF Special Recommendation III (SR III). The Interpretative Note to SR III (Interpretative Note) explains how these international freezing obligations should be fulfilled. To further assist in this effort, the FATF has identified the following set of best practices which are based on jurisdictions' experience to date and which may serve as a benchmark for developing institutional, legal, and procedural frameworks of an effective terrorist financing freezing regime.³ These best practices are organised along five basic themes and complement the obligations set forth in the Interpretative Note. A common element to each of these themes is the importance of sharing terrorist financing information.

Importance of an Effective Freezing Regime

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

- (i) deterring non-designated parties who might otherwise be willing to finance terrorist activity;
- (ii) exposing terrorist financing “money trails” that may generate leads to previously unknown terrorist cells and financiers;
- (iii) dismantling terrorist financing networks by encouraging designated persons to disassociate themselves from terrorist activity and renounce their affiliation with terrorist groups;
- (iv) terminating terrorist cash flows by shutting down the pipelines used to move terrorist-related funds or other assets;
- (v) forcing terrorists to use more costly and higher risk means of financing their activities, which makes them more susceptible to detection and disruption; and

¹ The term “blocking” is a synonym of “freezing.” These best practices will not address the funds or other asset seizure or funds or other asset confiscation / forfeiture authorities and procedures of a counter-terrorist financing regime, although the process of searching for such funds or other assets may be identical in cases of freezing, seizure and confiscation or forfeiture.

² Any term or phrase introduced in italics in this Best Practices Paper shall have the same meaning throughout as that ascribed to it in the Interpretative Note to FATF Special Recommendation III (SR III).

³ These best practices focus on the financial sector because of the high risk of terrorist financing associated with this sector and also because of this sector's particular need for communication and guidance regarding the freezing of terrorist-related funds or other assets. However, the FATF recognizes that all persons and entities are obligated to freeze the funds or other assets of persons designated under either *S/RES/1267(1999)* or *S/RES/1373(2001)*. Additionally, *S/RES/1373(2001)* prohibits all persons and entities from providing any financial services or any form of support to any designated person. Any references to *financial institutions* should, therefore, be understood to include other relevant persons and entities.

- (vi) fostering international co-operation and compliance with obligations under S/RES/1267(1999) and S/RES/1373(2001).

3. Efforts to combat terrorist financing are greatly undermined if jurisdictions do not freeze the funds or other assets of designated persons quickly and effectively. Nevertheless, in determining the limits of or fostering widespread support for an effective counter-terrorist financing regime, jurisdictions must also respect human rights, respect the rule of law and recognise the rights of innocent third parties.

Statement of the Problem

4. The global nature of terrorist financing networks and the urgency of responding to terrorist threats require unprecedented levels of communication, co-operation and collaboration within and among governments, and between the public and private sectors. It is recognised that jurisdictions will necessarily adopt different terrorist financing freezing regimes in accordance with their differing legal traditions, constitutional requirements, systems of government and technological capabilities. However, the efficient and rapid dissemination of terrorist financing information to all those who can help identify, disrupt and dismantle terrorist financing networks must be a central focus of the international effort to freeze terrorist-related funds or other assets. Active participation and full support by the private sector is also essential to the success of any terrorist financing freezing regime. Consequently, jurisdictions should work with the private sector to ensure its ongoing co-operation in developing and implementing an effective terrorist-financing regime.

Best Practices

5. Establishing effective regimes and competent authorities or courts. Jurisdictions should establish the necessary legal authority and procedures, and designate accountable, competent authorities or courts responsible for: (a) freezing the funds or other assets of designated persons; (b) lifting such freezing action; and (c) providing access to frozen funds or other assets in certain circumstances. Jurisdictions may undertake the following best practices to establish a comprehensive and effective terrorist financing freezing regime:

- i) Develop a designation process which authorises a competent authority or a court to freeze funds or other assets based on information creating reasonable grounds, or a reasonable basis, to suspect or believe that such funds or other assets are terrorist-related. Jurisdictions may adopt executive, administrative or judicial procedures in this regard, provided that: (a) a competent authority or a court is immediately available to determine whether reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, terrorist organisation or associated person or entity exists;⁴ (b) terrorist-related funds or other assets are frozen immediately upon a determination that such reasonable grounds, or a reasonable basis, to suspect or believe exists; and (c) freezing occurs without prior notice to the parties whose funds or other assets are being frozen. These procedures may complement existing civil and/or criminal seizure and forfeiture laws, and other available judicial procedures;
- ii) Establish effective procedures to facilitate communication, co-operation and collaboration among relevant governmental agencies and entities, as appropriate, during the designation process in order to: (a) develop all available information to accurately identify designated

⁴ A designation by the Al-Qaida and Taliban Sanctions Committee constitutes, ipso facto, reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, terrorist organisation or an associated person or entity.

persons (e.g. birth date, address, citizenship or passport number for individuals; locations, date and jurisdiction of incorporation, partnership or association for entities, etc.)⁵, and (b) consider and co-ordinate, as appropriate, any designation with other options and actions for addressing terrorists, terrorist organisations and associated persons and entities;

- iii) Develop a process for financial institutions to communicate information concerning frozen funds or other assets (name, accounts, amounts) to the competent authorities or courts in their jurisdiction. Identify, assess the impact of, and amend, as necessary and to the extent possible, existing bank secrecy provisions or data protection rules that may prohibit this communication to appropriate authorities of information concerning frozen terrorist-related funds or other assets;
- iv) Identify and accommodate the concerns of the intelligence community, law enforcement, private sector and legal systems arising from circulation of sensitive information concerning frozen terrorist-related funds or other assets;
- v) Develop a publicly known delisting process for considering any new arguments or evidence that may negate the basis for freezing funds or other assets⁶ and develop procedures for reviewing the appropriateness of a freezing action upon presentation of any such new information;
- vi) Develop procedures to ensure that adequate prohibitions against the publication of sensitive information exist in accordance with applicable legislation;
- vii) Develop procedures and designate competent authorities or courts responsible for providing access to frozen funds or other assets in accordance with S/RES/1452(2002) to mitigate, where appropriate and feasible, unintended consequences of freezing action; and
- viii) Consider enacting hold-harmless or public indemnity⁷ laws to shield financial institutions, their personnel, government officials, and other appropriate persons from legal liability when acting in good faith according to applicable law to implement the requirements of a terrorist financing freezing regime.

6. Facilitating communication and co-operation with foreign governments and international institutions. To the extent legally and constitutionally possible, jurisdictions may undertake the following best practices to improve international co-operation and the effectiveness of the international campaign against terrorist financing by sharing information relating to the freezing of terrorist-related funds or other assets:

- i) Develop a system for mutual, early, and rapid pre-notification of pending designations, through diplomatic and other appropriate channels, where security concerns and applicable legal principles permit, to those jurisdictions invited to join in a designation and/or where funds or other assets of designated persons might be located, so that funds or other assets can be frozen simultaneously across jurisdictions with the objective of preventing terrorists,

⁵ Accurate identification of a designated person is a precondition to an effective terrorist financing freezing regime.

⁶ Only the Al-Qaida and Taliban Sanctions Committee can delist persons designated pursuant to S/RES/1267(1999).

⁷ In contrast to hold-harmless laws, public indemnity laws allow a remedy for innocent parties that are injured by the good faith implementation of a terrorist financing freezing regime. The appropriate compensation or relief for such innocent parties is not at the expense of the persons or entities that actually implement the terrorist financing regime in good faith, but comes from a public insurance fund or similar vehicle established or made available by the applicable jurisdiction.

terrorist organisations and associated persons and entities from hiding or moving them. In this regard, consideration should be given to establishing a list of relevant contacts to ensure that freezing action is taken rapidly;⁸

- ii) Develop a system for undertaking useful and appropriate consultation with other jurisdictions for the purpose of gathering, verifying, and correcting identifier information for designated persons as well as, where appropriate and where intelligence concerns and applicable laws permit, the sharing and development of information on possible terrorists and terrorist financing activity of the parties involved. In undertaking such consultation, jurisdictions should consider: (a) the greater effectiveness of freezing on the basis of accurate and complete identifying information; (b) the burden created by unsubstantiated or incomplete identifying information; (c) the security concerns associated with releasing sensitive identifier or corroborating information; and (d) the degree of danger or urgency associated with the potential designated persons. Where appropriate such information should be shared and developed before a designation is made;
- iii) Prepare a packet of information for each potential designation that includes as much information as is available and appropriate to identify the designated person accurately and to set forth the basis for the potential designation in any pre-notification or communication of the designation (*see Paragraph 6.(i), above*);
- iv) Develop a process for rapidly and globally communicating new designations and the accompanying packet of information to other jurisdictions;
- v) Expand coverage of the hold-harmless and public indemnity laws referred to in *Paragraph 5.(viii)* above, or otherwise implement procedures to deal with situations in which freezing does not occur simultaneously, so as to avoid conflicting legal obligations for financial institutions that operate in multiple jurisdictions;
- vi) Share on a mutual and confidential basis, to the extent possible, with other jurisdictions information about the amount of funds or other assets frozen pursuant to terrorist financing freezing orders by account; and
- vii) Make public and update on a regular basis the aggregate amount of funds or other assets frozen in order to signal the effectiveness of terrorist financing freezing regimes and to deter terrorist financing.

7. Facilitating communication with the private sector. Because terrorist-related funds or other assets overwhelmingly are held in the private sector, jurisdictions must develop efficient and effective means of communicating terrorist financing-related information with the general public, particularly financial institutions. To the extent possible and practicable, jurisdictions can adopt the following practices to develop and enhance communication with the private sector regarding the freezing of terrorist-related funds or other assets, the availability of additional information concerning existing designations, and other counter-terrorist financing guidance or instruction:

- i) Integrate, organise, publish and update *without delay* the designated persons list, for example both alphabetically and by date of designation to assist financial institutions in freezing terrorist-related funds or other assets and making the list as user-friendly as possible. Create different entries for different aliases or different spellings of names. Where technologically

⁸ Such a pre-notification system should be developed to compliment rather than replace the pre-notification system in place for submitting designations to the Al-Qaida and Taliban Sanctions Committee and should include designations arising from obligations under S/RES/1373(2001).

possible provide a consolidated list in an electronic format with a clear indication of changes and additions. Consult the private sector on other details of the format of the list and coordinate the format internationally with other jurisdictions;

- ii) Develop clear guidance to the private sector, particularly financial institutions, with respect to their obligations in freezing terrorist-related funds or other assets;
- iii) Identify all financial institutions for use in notification and regulatory oversight and enforcement of freezing action related to terrorist financing, utilising, where appropriate and feasible, existing registration or licensing information;
- iv) Implement a process for early, rapid and secure pre-notification of pending designations, where security concerns or applicable legal principles permit, to those financial institutions where funds or other assets of designated persons are known or believed to be located so that those institutions can freeze such funds or other assets immediately upon designation;
- v) Implement a system for early, rapid, and uniform global communication, consistent with available technology and resources and where security concerns permit, of any designation-related information, amendments or revocations of designations. For the reasons set out in *Paragraph 6.(ii)* above, include as much information as is available and appropriate to clearly identify designated persons in any communication of a designation to the private sector;
- vi) Implement a clear process for responding to inquiries concerning potential identification mismatches based on homonyms or similar sounding names;
- vii) Develop appropriate regulatory authorities and procedures where applicable, and properly identify a point of contact to assist financial institutions in freezing terrorist-related funds or other assets and to address, where feasible, unforeseen or unintended consequences resulting from freezing action (such as the handling and disposition of perishable or wasting funds or other assets and authorising access to funds or other assets in accordance with S/RES/1452(2002)); and
- viii) Elaborate clear guidance to the private sector with respect to any permitted transactions in administering frozen funds or other assets (e.g. bank charges, fees, interest payments, crediting on frozen accounts, etc).

8. Ensuring adequate compliance, controls, and reporting in the private sector. Jurisdictions may work with the private sector in developing the following practices to: (a) facilitate co-operation and compliance by the private sector in identifying and freezing funds or other assets of designated persons, and (b) prevent designated persons from conducting financial or other transactions within their territories or through their financial institutions:⁹

- i) Co-operate with the private sector generally 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;
- ii) Ensure that financial institutions 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;

⁹ Many of the best practices set forth in this section reinforce obligations of jurisdictions and financial institutions under the revised FATF 40 Recommendations. As with all of the best practices set forth in this paper, these best practices should be interpreted and implemented in accordance with the revised FATF 40 Recommendations.

- iii) Ensure that financial institutions immediately freeze any identified funds or other assets held or controlled by designated persons;
- iv) Ensure that financial institutions have the appropriate procedures and resources to meet their obligations under SR III;
- v) Ensure that financial institutions implement reasonable procedures to prevent designated persons from conducting transactions with, in or through them;
- vi) 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 *Paragraphs 8.(ii), (iii) and (iv)* above;
- vii) Encourage, to the extent commercially reasonable, financial institutions to search or examine past financial activity by designated persons;
- viii) Identify, assess compliance with, and improve as necessary client or customer identification rules used by financial institutions;
- ix) Identify, assess compliance with, and improve as necessary record keeping requirements of financial institutions;
- x) Adopt reasonable measures to consider beneficial owners, signatories and power of attorney with respect to accounts or transactions held by financial institutions when searching for activity by designated persons, including any ongoing business relationships; and
- xi) Harmonise counter-terrorist financing internal controls within each economic sector, as appropriate, with anti-money laundering programs.

9. Ensuring thorough follow-up investigation, co-ordination with law enforcement, intelligence and security authorities, and appropriate feedback to the private sector. Financial information pertaining to designated persons is extremely valuable to law enforcement and other security authorities investigating terrorist financing networks. Law enforcement and prosecutorial authorities should, therefore, be given access to such information. Jurisdictions may adopt the following practices to ensure that information available from the private sector in freezing terrorist-related funds or other assets is fully exploited:

- i) Develop procedures to ensure that appropriate intelligence and law enforcement bodies and authorities receive, share, and act on information gathered from the private sector's freezing of terrorist-related funds or other assets, including sharing such information internationally to the extent possible and appropriate;
- ii) Develop procedures to ensure that, to the extent possible and appropriate, law enforcement authorities provide feedback to financial institutions indicating how financial intelligence is being used to support law enforcement actions; and
- iii) Gather and analyse all available terrorist financing data to: (a) assess terrorist financing activity; (b) determine terrorist financing trends; (c) develop and share terrorist financing typologies, including sharing such information internationally as appropriate; (d) identify vulnerable sectors within each jurisdiction, and (e) take appropriate measures to safeguard any such vulnerable sectors.