
FATF REVISES RECOMMENDATIONS ON COMBATING TERRORIST FINANCING

*By Nancy E. Claridge and Terrance S. Carter**

A. INTRODUCTION

The Financial Action Task Force (“FATF”), an inter-governmental body established in 1989 with the mandate to develop and promote national and international policies to combat money laundering, terrorist financing and the proliferation of weapons of mass destruction, recently announced revisions to its recommendations on international standards on combating money laundering and the financing of terrorism (the “Recommendations”).¹ The revisions to the Recommendations are the result of more than two years of consultations with governments and the private sector. This *Anti-terrorism and Charity Law Alert* will provide a brief review of the revisions to the Recommendations.

B. BACKGROUND ON THE RECOMMENDATIONS

The original Recommendations, commonly referred to as the *FATF Forty Recommendations*, were originally produced in 1990 as an initiative to combat the misuse of financial systems for the purposes of laundering drug money, and by 1996 the Recommendations were first revised to reflect evolving trends and techniques in money laundering. The second revision to the Recommendations in 2003 reflected the major shift in the mandate of the FATF to combat terrorist financing, and also included the creation of the Nine Special Recommendations on Terrorist Financing. The Recommendations and the Special Recommendations have now been endorsed by over 180 countries and are recognized as the international standard for anti-money

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¹ Available online at <http://www.fatf-gafi.org/dataoecd/49/29/49684543.pdf>.

laundering and countering the financing of terrorism, which crimes are estimated to be valued at between 2 and 5% of the global GDP.

C. CHANGES TO THE RECOMMENDATIONS

There are six primary areas of changes to the Recommendations, as discussed below:

1. Targeted Financial Sanctions

The original Special Recommendation III (now incorporated in Recommendation 7) recommended the implementation of measures to freeze without delay the funds or other assets of terrorists and those who fund terrorism in accordance with United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts. As the proliferation of weapons of mass destruction is an increasing security concern, the new Recommendations suggest that financial measures can be an effective way to combat this threat. Similar to the targeted financial sanctions with respect to terrorist financing, Recommendation 7 also aims to ensure consistent and effective implementation of targeted financial sanctions with regard to the proliferation of weapons of mass destruction and its financing, in order to comply with UN Security Council resolutions.

2. Improved Transparency

The lack of transparency with regard to the ownership or control of legal persons (e.g. corporations) remains a concern in relation to combating money laundering and terrorist financing. In this regard, legal persons can enable criminals and terrorists to conceal their identities or hide assets. The original Rule 33 (now Rule 24), which recommended countries ensure there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be accessed in a timely fashion by competent authorities, has been strengthened by recommending that countries facilitate access to the beneficial ownership and control information by financial institutions and Designated Non-Financial Businesses or Professions (DNFBPs) who are undertaking the requirements set out in Recommendations 10 and 22 (customer due diligence and record-keeping).

3. Politically Exposed Persons

The new Rule 12 imposes stronger requirements on financial institutions when dealing with politically exposed persons (PEPs). The new Rule expands the scope of the requirements to persons who are or have been entrusted with a prominent function by an international organization. The existing requirement to apply enhanced due diligence to PEPs has been extended from foreign PEPs, with new risk-based requirements applied to domestic PEPs and PEPs from international organizations, and to family and close associates of all PEPs.

4. Predicate Offences

The new Recommendations expand the scope of money laundering offences to include serious tax crimes, thereby seeking to have countries include the widest range of predicate offences. A predicate offence is essentially an underlying crime, and in relation to the offence of money laundering, a predicate offence means any criminal offence by which the proceeds generated might become the subject of the money laundering offence. This will bring the proceeds of tax crimes within the scope of the powers and authorities used to investigate money laundering. The smuggling offence has also been clarified to include offences relating to customs and excise duties and taxes. The FATF is seeking to attain better coordination between law enforcement, border and tax authorities, and remove potential obstacles to international cooperation regarding tax crimes.

5. Enhanced Risk-Based Approach

The revisions to the Recommendations also seek to have countries clearly understand the risks they face with respect to money laundering and terrorist financing, suggesting that the anti-money laundering and counter-terrorist financing regimes need to adapt to the nature of these risks. This would involve applying enhanced measures where the risks are higher, and having the option of simplified measures where the risks are lower.

6. International Cooperation

Recognizing that the issue of money laundering and terrorist financing is not limited by jurisdictional boundaries, the Recommendations seek to enhance the scope and application of international cooperation between authorities, which is intended to assist countries in tracing, freezing and confiscating illegal assets.

D. CONCLUDING COMMENTS

Charities carrying on operations in foreign jurisdictions need to review the new Recommendations and determine if their existing anti-terrorism policies and/or procedures appropriately reflect the enhanced requirements. Although the document is referred to as “Recommendations”, they strongly influence governments in their regulation of charities and organizations would be well advised to ensure compliance.



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