



# Department of the Treasury Financial Crimes Enforcement Network

## Advisory

**FIN-2010-A002**

**Issued: March 18, 2010**

**Subject: Guidance to Financial Institutions Based on the Financial Action Task Force Public Statement on Anti-Money Laundering and Counter-Terrorist Financing Risks.**

- A. Countermeasures: Iran**
- B. Enhanced Due Diligence: Angola; Democratic People's Republic of Korea (DPRK); Ecuador; Ethiopia.**
- C. Due Diligence: Pakistan; Turkmenistan; São Tomé and Príncipe.**

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The Financial Crimes Enforcement Network (FinCEN) is issuing this advisory to inform banks and other financial institutions operating in the United States of the risks associated with jurisdictions identified by the Financial Action Task Force (FATF) <sup>1</sup> on February 18, 2010, as having deficiencies in their anti-money laundering and counter-terrorist financing (AML/CFT) regimes. <sup>2</sup>

The FATF public statement comes in response to the G-20 leaders' call for the FATF to reinvigorate its process for assessing countries' compliance with international AML/CFT standards and to publicly identify high risk jurisdictions. <sup>3</sup> Specifically, the FATF's International Cooperation Review Group (ICRG) is tasked with leading this process to identify and examine uncooperative jurisdictions and jurisdictions that are failing to implement effective AML/CFT systems. At the February 2010 FATF Plenary, the FATF adopted the recommendations of the ICRG and publicly identified jurisdictions with strategic AML/CFT deficiencies. The FATF public statement classified these jurisdictions into different categories based on their level of political commitment to address these deficiencies. The FATF public statement, which is

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<sup>1</sup> The FATF is a 35 member inter-governmental policy-making body whose purpose is to establish international standards and develop and promote policies, both at national and international levels, to combat money laundering and terrorist financing. See [www.fatf-gafi.org](http://www.fatf-gafi.org). The United States is a member of the FATF. See also, previous FATF statements of October 11, 2007, at [www.fatf-gafi.org/dataoecd/1/2/39481684.pdf](http://www.fatf-gafi.org/dataoecd/1/2/39481684.pdf); February 28, 2008, at [www.fatf-gafi.org/dataoecd/16/26/40181037.pdf](http://www.fatf-gafi.org/dataoecd/16/26/40181037.pdf); June 20, 2008, at [www.fatf-gafi.org/dataoecd/50/1/40879782.pdf](http://www.fatf-gafi.org/dataoecd/50/1/40879782.pdf); October 16, 2008, at [www.fatf-gafi.org/dataoecd/25/17/41508956.pdf](http://www.fatf-gafi.org/dataoecd/25/17/41508956.pdf); and February 25, 2009, at [www.fatf-gafi.org/dataoecd/18/28/42242615.pdf](http://www.fatf-gafi.org/dataoecd/18/28/42242615.pdf).

<sup>2</sup> The FATF issued two documents: (i) a public statement at <http://www.fatf-gafi.org/dataoecd/34/29/44636171.pdf>; and (ii) a publication entitled "Improving Global AML/CFT Compliance: Ongoing Process," at <http://www.fatf-gafi.org/dataoecd/34/28/44636196.pdf>.

<sup>3</sup> See "Declaration on Strengthening the Financial System: London Summit, April 2, 2009," at <http://www.pittsburghsummit.gov/resources/125091.htm> and "Leaders' Statement: The Pittsburgh Summit, September 24 – 25, 2009," at <http://www.pittsburghsummit.gov/mediacenter/129639.htm>.

reprinted below and can be found on the FATF website, cites specific concerns regarding each of the jurisdictions and calls for action on the part of FATF's members. This is an important step in our collective efforts to protect the international financial system from abuse.

Also note that FinCEN is issuing today a complementary advisory, FIN-2010-A003,<sup>4</sup> which addresses a separate but related FATF document regarding a different group of jurisdictions.

## **FATF PUBLIC STATEMENT 18 February 2010**

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 ML/FT risks and to encourage greater compliance with the AML/CFT standards, the FATF identified jurisdictions that have strategic deficiencies and, along with the FATF-style regional bodies (FSRBs), works with them to address those deficiencies that pose a risk to the international financial system. The FATF and the relevant FSRBs will continue to work with the jurisdictions below and report on their progress in addressing the identified deficiencies.

[Chart omitted]

### **1. Jurisdictions subject to a FATF call on its members and other jurisdictions to apply countermeasures to protect the international financial system from the ongoing and substantial money laundering and terrorist financing (ML/TF) risks emanating from the jurisdiction:**

#### **Iran**

The FATF welcomes the recent steps that Iran has taken to engage with the FATF, but remains concerned by Iran's 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.

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<sup>4</sup> Website of Advisory at [www.fincen.gov/statutes\\_regs/guidance/html/fin-2010-a003.html](http://www.fincen.gov/statutes_regs/guidance/html/fin-2010-a003.html)

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<sup>5</sup> 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 June 2010.

**2. Jurisdictions with strategic AML/CFT deficiencies that have not committed to an action plan developed with the FATF to address key deficiencies as of February 2010. The FATF calls on its members to consider the risks arising from the deficiencies associated with each jurisdiction, as described below.**

### **Angola**

Angola has not committed to the AML/CFT international standards, nor has it responded to the FATF's request for engagement on these issues. Angola's lack of a comprehensive AML/CFT regime poses a risk to the international financial system. Angola should work with the FATF to develop a viable AML/CFT regime in line with international standards.

### **Democratic People's Republic of Korea (DPRK)**

The Democratic People's Republic of Korea (DPRK) has not committed to the AML/CFT international standards, nor has it responded to the FATF's request for engagement on these issues. DPRK's lack of a comprehensive AML/CFT regime poses a risk to the international financial system. DPRK should work with the FATF to develop a viable AML/CFT regime in line with international standards.

### **Ecuador**

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<sup>5</sup> See FATF Statement of February 25, 2009, at <http://www.fatf-gafi.org/dataoecd/18/28/42242615.pdf>.

FATF has identified Ecuador as having strategic AML/CFT deficiencies. Ecuador has engaged with the FATF and GAFISUD but has not delivered a clear high-level political commitment to address these deficiencies. Ecuador should work with the FATF and GAFISUD to address these deficiencies, including by: (1) adequately criminalising money laundering and terrorist financing (Recommendation I and Special Recommendation II); (2) establishing and implementing adequate procedures to identify and freeze terrorist assets (Special Recommendation III); implementing adequate procedures for the confiscation of funds related to money laundering (Recommendation 3); (3) Reinforcing and improving coordination of financial sector supervision (Recommendation 23).

### **Ethiopia**

Ethiopia has not committed to the AML/CFT international standards, nor has it constructively engaged with the FATF. The FATF has identified Ethiopia as having strategic AML/CFT deficiencies that pose a risk to the international financial system. Ethiopia should work with the FATF to develop a viable AML/CFT regime in line with international standards.

### **3. Jurisdictions previously publicly identified by the FATF as having strategic AML/CFT deficiencies, which remain to be addressed as of February 2010**

#### **Pakistan**

The FATF welcomes Pakistan's efforts to ensure that its Anti-Money Laundering Ordinance (AMLO) remains in effect and to implement a permanent AML/CFT framework through legislation. However, FATF remains concerned regarding the ML/FT risks posed by Pakistan and reaffirms its public statement of 28 February 2008<sup>6</sup> regarding these risks. In particular, the FATF expresses concern that Pakistan's Anti-Money Laundering Ordinance (AMLO) will expire on 26 March 2010. 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.

#### **Turkmenistan**

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<sup>6</sup> See FATF Statement of February 28, 2008, at [www.fatf-gafi.org/dataoecd/16/26/40181037.pdf](http://www.fatf-gafi.org/dataoecd/16/26/40181037.pdf).

The FATF welcomes Turkmenistan's continued progress in addressing its AML/CFT deficiencies, including by taking steps towards establishing a Financial Intelligence Unit (FIU). Given that the FIU is not yet operational, the FATF reiterates its 25 February 2009<sup>7</sup> statement in forming financial institutions that these deficiencies constitute a national ML/TF 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 a national AML/CFT regime that meets international AML/CFT standards and to work closely with the Eurasian Group and the International Monetary Fund to achieve this.

### **São Tomé and Príncipe**

The FATF remains concerned by São Tomé and Príncipe's failure to meaningfully address the deficiencies in its AML/CFT regime, particularly relating to terrorist financing, and its recent lack of engagement with the *Inter-Governmental Action Group against Money Laundering in West Africa* (GIABA). The FATF urges São Tomé and Príncipe to work with GIABA to address the remaining AML/CFT deficiencies. Failing concrete progress, the FATF will consider taking action in June 2010 to protect the financial system from ML/TF risks emanating from São Tomé and Príncipe.

### **FinCEN Guidance**

**A.** Jurisdictions in FATF Statement Section 1 are subject to the FATF's call for countermeasures. Currently, **Iran** is the only jurisdiction within Section 1. U.S. financial institutions should continue to consult existing FinCEN and Treasury guidance on engaging in financial transactions with Iran.<sup>8</sup>

**B.** Jurisdictions in FATF Statement Section 2 have been identified by the FATF as having strategic AML/CFT deficiencies and not having committed to an action plan developed with the FATF to address key deficiencies. Based on the FATF's adoption of the ICRG's findings, a

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<sup>7</sup> See FATF Statement of February 25, 2009, at <http://www.fatf-gafi.org/dataoecd/18/28/42242615.pdf>.

<sup>8</sup> Previous FinCEN guidance on the money laundering threat involving illicit Iranian activity, including FIN-2009-A007, at [http://www.fincen.gov/statutes\\_regs/guidance/html/fin-2009-a007.html](http://www.fincen.gov/statutes_regs/guidance/html/fin-2009-a007.html); FIN-2008-A002, at [www.fincen.gov/statutes\\_regs/guidance/pdf/fin-2008-a002.pdf](http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2008-a002.pdf); and FIN-2007-A001, at [www.fincen.gov/statutes\\_regs/guidance/pdf/guidance\\_fi\\_increasing\\_mlt\\_iranian.pdf](http://www.fincen.gov/statutes_regs/guidance/pdf/guidance_fi_increasing_mlt_iranian.pdf), which remains in effect. In addition, financial institutions should be familiar with United Nations Security Council Resolution 1803 (March 2008), at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/257/81/PDF/N0825781.pdf?OpenElement>, previously at <http://daccessdds.un.org/doc/UNDOC/GEN/N08/257/81/PDF/N0825781.pdf?OpenElement>, which calls on all states to exercise vigilance over activities of financial institutions in their territories with all banks domiciled in Iran and their branches and subsidiaries abroad. Further, financial institutions are reminded of the existing U.S. sanctions that are administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC) with respect to Iran and the Government of Iran, including but not limited to Iranian Government-owned banks and other entities, as well as Iranian entities that have been linked to terrorist activity and the proliferation of weapons of mass destruction. Information about these sanctions is available on OFAC's website [www.treasury.gov/offices/enforcement/ofac/](http://www.treasury.gov/offices/enforcement/ofac/).

decision by the FATF in which the United States concurs, FinCEN is advising U.S. financial institutions of their increased obligations under Section 312 of the USA PATRIOT ACT, 31 USC § 5318(i). Accordingly, U.S. financial institutions should apply enhanced due diligence, as described under implementing regulations 31 CFR § 103.176(b) and (c) when maintaining correspondent accounts for foreign banks operating under a banking license issued by **Angola, DPRK, Ecuador, and Ethiopia**.

Enhanced due diligence is required for any correspondent account maintained for a foreign bank that operates under a banking license issued by a foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative to the group or organization concurs.<sup>9</sup>

As required under 31 CFR § 103.176(b), covered financial institutions should ensure that their enhanced due diligence programs, which address correspondent accounts established, maintained, administered, or managed in the United States for a foreign bank, include, at a minimum, steps to: conduct enhanced scrutiny of such correspondent account to guard against money laundering and to identify and report any suspicious transactions, in accordance with applicable law and regulation;<sup>10</sup> determine whether the foreign bank for which the correspondent account is established or maintained in turn maintains correspondent accounts for other foreign banks that use the foreign correspondent account established or maintained by the covered financial institution and, if so, take reasonable steps to obtain information relevant to assess and mitigate money laundering risks associated with the foreign bank's correspondent accounts for other foreign banks, including, as appropriate, the identity of those foreign banks;<sup>11</sup> and determine, for any correspondent account established or maintained for a foreign bank whose shares are not publicly traded, the identity of each owner of the foreign bank and the nature and extent of each owner's ownership interest.<sup>12</sup>

**C. U.S. financial institutions should consider the risks associated with the AML/CFT deficiencies of jurisdictions in FATF Statement Section 3: **Pakistan; Turkmenistan; São Tomé and Príncipe**.** With respect to these jurisdictions, U.S. financial institutions are reminded of their obligations to comply with the general due diligence obligations under 31 CFR § 103.176(a).

As required under 31 CFR § 103.176(a), covered financial institutions should ensure that their due diligence programs, which address correspondent accounts maintained for foreign financial institutions, include appropriate, specific, risk-based, and, where necessary, enhanced policies, procedures, and controls that are reasonably designed to detect and report known or suspected money laundering activity conducted through or involving any correspondent account established, maintained, administered, or managed in the United States. Additionally, as required under 31 CFR §§ 103.15 – 103.21, if a financial institution knows, suspects, or has reason to suspect that a transaction involves funds derived from illegal activity or that a customer has

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<sup>9</sup> In addition, enhanced due diligence is required for any correspondent account maintained for a foreign bank that operates under: an offshore banking license; or a banking license issued by a foreign country that has been designated by the Secretary as warranting special measures due to money laundering concerns. See 31 CFR 103.176(c).

<sup>10</sup> See 31 CFR 103.176(b)(1).

<sup>11</sup> See 31 CFR 103.176(b)(2).

<sup>12</sup> See 31 CFR 103.176(b)(3).

otherwise engaged in activities indicative of money laundering, terrorist financing, or other violation of federal law or regulation, the financial institution shall then file a Suspicious Activity Report.