

反洗钱金融行动特别工作组《反恐怖融资特别建议》

Special Recommendations on Terrorist Financing

背景：2001年10月29日至30日，反洗钱金融行动特别工作组在美国华盛顿特区召开了关于恐怖主义融资的特别大会。在这次特别大会上，FATF认识到采取行动打击恐怖主义融资的极端重要性，FATF同意以下八条建议同FATF反洗钱的四十条建议一起，建立起监测、预防和禁止为恐怖主义行动筹集资金的基本网络。这八条建议就称为FATF反恐融资八条建议，包括：1. 批准和执行联合国有关决议；2. 将恐怖主义融资及习惯的洗钱定为犯罪；3. 冻结和没收与恐怖主义有关的资产；4. 举报与恐怖主义有关的可疑交易；5. 国际合作；6. 替代性汇款；7. 电子转账；8. 非盈利组织。

Ratification and implementation of UN instruments

Each country should take immediate steps to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.

Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373[1].

Criminalizing the financing of terrorism and associated money laundering

Each country should criminalize the financing of terrorism, terrorist acts and terrorist organizations. Countries should ensure that such offences are designated as money laundering predicate offences.

Freezing and confiscating terrorist assets

Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organizations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.

Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organizations.

Reporting suspicious transactions related to terrorism

If financial institutions, or other businesses or entities subject to anti-money laundering obligation, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations, they should be required to report promptly their suspicions to the competent authorities.

International co-operation

Each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organizations.

Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorism, terrorist acts or terrorist organizations, and should have procedures in place to extradite, where possible, such individuals.

Alternative remittance[2]

Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.

Wire transfers

Countries should take measures to require financial institutions, institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related message through the payment chain.

Countries should take measures to ensure that financial institutions, including money remitters, conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information (name, address and account number).

Non-profit organizations[3]

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organizations are particularly vulnerable, and countries should ensure that they cannot be misused:

by terrorist organizations posing as legitimate entities;

to exploit legitimate entities as conduits[4] for terrorist financing, including for the purpose of escaping asset freezing measures; and

to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.

9. Cash Couriers[5]

Countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including a declaration

system or other disclosure obligation.

Countries should ensure that their competent authorities have the legal authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to terrorist financing or money laundering, or that are falsely declared or disclosed.

Countries should ensure that effective, proportionate and dissuasive sanctions are

available to deal with persons who make false declaration(s) or disclosure(s). In cases where the currency or bearer negotiable instruments are related to terrorist financing or money laundering, countries should also adopt measures, including legislative ones consistent with Recommendation 3 and Special Recommendation III, which would enable the confiscation of such currency or instruments.

[1] 2002年9月28日,联合国安理会一致通过第1373号决议,要求各国紧急合作,防止和制止恐怖主义行为,对支持恐怖主义的国家,安理会将进行制裁。

[2] **alternative remittance**:替代性汇款。这是一种在受监管的体系之外运行的,提供资金或价值的转移服务的网络体系或机制。这些监管外的体系通常在特定的地理区域内运作。这些体系通常包括: hawala, hundi, fei-chien 等,并且采用黑市汇率。

[3] **Non-profit organization**:非盈利组织。该建议是为了帮助当局来保护那些为了慈善、宗教、文化、教育、社会或友爱的目的,或为了开展其他类型的“良好事业”而筹集或支付资金的非盈利组织,使之不被恐怖主义融资所利用。法律和实践认可的非盈利组织的合法形式主要有:协会、基金会、筹资委员会、公社服务组织、代表公共利益的社团、有限公司和公共慈善机构。

[4] **conduit**[5kCndit] 渠道,管道

[5] **courier**[5kuriE] 信使