

INTERPRETIVE NOTE TO RECOMMENDATION 6 (TARGETED FINANCIAL SANCTIONS RELATED TO TERRORISM AND TERRORIST FINANCING)

A. OBJECTIVE

1. Recommendation 6 requires each country to implement targeted financial sanctions to comply with the United Nations Security Council resolutions that require countries to freeze, without delay, the funds or other assets, and to ensure that no funds and other assets are made available to or for the benefit of: (i) any person² or entity designated by the United Nations Security Council (the Security Council) under Chapter VII of the Charter of the United Nations, as required by Security Council resolution 1267 (1999) and its successor resolutions³; or (ii) any person or entity designated by that country pursuant to Security Council resolution 1373 (2001).
2. It should be stressed that none of the obligations in Recommendation 6 is intended to replace other measures or obligations that may already be in place for dealing with funds or other assets in the context of a criminal, civil or administrative investigation or proceeding, as is required by Recommendation 4 (confiscation and provisional measures)⁴. Measures under Recommendation 6 may complement criminal proceedings against a designated person or entity, and be adopted by a competent authority or a court, but are not conditional upon the existence of such proceedings. Instead, the focus of Recommendation 6 is on the preventive measures that are necessary and unique in the context of stopping the flow of funds or other assets to terrorist groups; and the use of funds or other assets by terrorist groups. In determining the limits of, or fostering widespread support for, an effective counter-terrorist financing regime, countries must also respect human rights, respect the rule of law, and recognise the rights of innocent third parties.

² Natural or legal person.

³ Recommendation 6 is applicable to all current and future successor resolutions to resolution 1267(1999) and any future UNSCRs which impose targeted financial sanctions in the terrorist financing context. At the time of issuance of this Interpretive Note, (February 2012), the successor resolutions to resolution 1267 (1999) are resolutions: 1333 (2000), 1363 (2001), 1390 (2002), 1452 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1730 (2006), 1735 (2006), 1822 (2008), 1904 (2009), 1988 (2011), and 1989 (2011).

⁴ Based on requirements set, for instance, in the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)(the Vienna Convention)* and the *United Nations Convention against Transnational Organised Crime (2000) (the Palermo Convention)*, which contain obligations regarding freezing, seizure and confiscation in the context of combating transnational crime. Additionally, the *International Convention for the Suppression of the Financing of Terrorism (1999)(the Terrorist Financing Convention)* contains obligations regarding freezing, seizure and confiscation in the context of combating terrorist financing. Those obligations exist separately and apart from the obligations set forth in Recommendation 6 and the United Nations Security Council Resolutions related to terrorist financing.

B. IDENTIFYING AND DESIGNATING PERSONS AND ENTITIES FINANCING OR SUPPORTING TERRORIST ACTIVITIES

3. For resolution 1267 (1999) and its successor resolutions, designations relating to Al-Qaida are made by the 1267 Committee, and designations pertaining to the Taliban and related threats to Afghanistan are made by the 1988 Committee, with both Committees acting under the authority of Chapter VII of the Charter of the United Nations. For resolution 1373 (2001), designations are made, at the national or supranational level, by a country or countries acting on their own motion, or at the request of another country, if the country receiving the request is satisfied, according to applicable legal principles, that a requested designation is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee meets the criteria for designation in resolution 1373 (2001), as set forth in Section E.
4. Countries need to have the authority, and effective procedures or mechanisms, to identify and initiate proposals for designations of persons and entities targeted by resolution 1267 (1999) and its successor resolutions, consistent with the obligations set out in those Security Council resolutions⁵. Such authority and procedures or mechanisms are essential to propose persons and entities to the Security Council for designation in accordance with Security Council list-based programmes, pursuant to those Security Council resolutions. Countries also need to have the authority and effective procedures or mechanisms to identify and initiate designations of persons and entities pursuant to S/RES/1373 (2001), consistent with the obligations set out in that Security Council resolution. Such authority and procedures or mechanisms are essential to identify persons and entities who meet the criteria identified in resolution 1373 (2001), described in Section E. A country's regime to implement resolution 1267 (1999) and its successor resolutions, and resolution 1373 (2001), should include the following necessary elements:
 - (a) Countries should identify a competent authority or a court as having responsibility for:
 - (i) proposing to the 1267 Committee, for designation as appropriate, persons or entities that meet the specific criteria for designation, as set forth in Security Council resolution 1989 (2011) (on Al-Qaida) and related resolutions, if that authority decides to do so and believes that it has sufficient evidence to support the designation criteria;
 - (ii) proposing to the 1988 Committee, for designation as appropriate, persons or entities that meet the specific criteria for designation, as set forth in Security Council resolution 1988 (2011) (on the Taliban and those associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan) and related resolutions, if that authority decides to do so and believes that it has sufficient evidence to support the designation criteria; and
 - (iii) designating persons or entities that meet the specific criteria for designation, as set forth in resolution 1373 (2001), as put forward either on the country's own

⁵ The relevant Security Council resolutions do not require countries to identify persons or entities and submit these to the relevant United Nations Committees, but to have the authority and effective procedures and mechanisms in place to be able to do so.

motion or, after examining and giving effect to, if appropriate, the request of another country, if the country receiving the request is satisfied, according to applicable legal principles, that a requested designation is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee meets the criteria for designation in resolution 1373 (2001), as set forth in Section E.

- (b) Countries should have a mechanism(s) for identifying targets for designation, based on the designation criteria set out in resolution 1988 (2011) and resolution 1989 (2011) and related resolutions, and resolution 1373 (2001) (see Section E for the specific designation criteria of relevant Security Council resolutions). This includes having authority and effective procedures or mechanisms to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other countries pursuant to resolution 1373 (2001). To ensure that effective cooperation is developed among countries, countries should ensure that, when receiving a request, they make a prompt determination whether they are satisfied, according to applicable (supra-) national principles, that the request is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee meets the criteria for designation in resolution 1373 (2011), as set forth in Section E.
- (c) The competent authority(ies) should have appropriate legal authorities and procedures or mechanisms to collect or solicit as much information as possible from all relevant sources to identify persons and entities that, based on reasonable grounds, or a reasonable basis to suspect or believe, meet the criteria for designation in the relevant Security Council resolutions.
- (d) When deciding whether or not to make a (proposal for) designation, countries should apply an evidentiary standard of proof of “reasonable grounds” or “reasonable basis”. For designations under resolutions 1373 (2001), the competent authority of each country will apply the legal standard of its own legal system regarding the kind and quantum of evidence for the determination that “reasonable grounds” or “reasonable basis” exist for a decision to designate a person or entity, and thus initiate an action under a freezing mechanism. This is the case irrespective of whether the proposed designation is being put forward on the relevant country’s own motion or at the request of another country. Such (proposals for) designations should not be conditional upon the existence of a criminal proceeding.
- (e) When proposing names to the 1267 Committee for inclusion on the Al-Qaida Sanctions List, pursuant to resolution 1267 (1999) and its successor resolutions, countries should:
 - (i) follow the procedures and standard forms for listing, as adopted by the 1267 Committee;
 - (ii) provide as much relevant information as possible on the proposed name, in particular, sufficient identifying information to allow for the accurate and positive identification of individuals, groups, undertakings, and entities, and to

- the extent possible, the information required by Interpol to issue a Special Notice;
- (iii) provide a statement of case which contains as much detail as possible on the basis for the listing, including: specific information supporting a determination that the person or entity meets the relevant criteria for designation (see Section E for the specific designation criteria of relevant Security Council resolutions); the nature of the information; supporting information or documents that can be provided; and details of any connection between the proposed designee and any currently designated person or entity. This statement of case should be releasable, upon request, except for the parts a Member State identifies as being confidential to the 1267 Committee; and
 - (iv) specify whether their status as a designating state may be made known.
- (f) When proposing names to the 1988 Committee for inclusion on the Taliban Sanctions List, pursuant to resolution 1988 (2011) and its successor resolutions, countries should:
- (i) follow the procedures for listing, as adopted by the 1988 Committee;
 - (ii) provide as much relevant information as possible on the proposed name, in particular, sufficient identifying information to allow for the accurate and positive identification of individuals, groups, undertakings, and entities, and to the extent possible, the information required by Interpol to issue a Special Notice; and
 - (iii) provide a statement of case which contains as much detail as possible on the basis for the listing, including: specific information supporting a determination that the person or entity meets the relevant designation (see Section E for the specific designation criteria of relevant Security Council resolutions); the nature of the information; supporting information or documents that can be provided; and details of any connection between the proposed designee and any currently designated person or entity. This statement of case should be releasable, upon request, except for the parts a Member State identifies as being confidential to the 1988 Committee.
- (g) When requesting another country to give effect to the actions initiated under the freezing mechanisms that have been implemented pursuant to resolution 1373 (2001), the initiating country should provide as much detail as possible on: the proposed name, in particular, sufficient identifying information to allow for the accurate and positive identification of persons and entities; and specific information supporting a determination that the person or entity meets the relevant criteria for designation (see Section E for the specific designation criteria of relevant Security Council resolutions).

- (h) Countries should have procedures to be able to operate ex parte against a person or entity who has been identified and whose (proposal for) designation is being considered.

C. FREEZING AND PROHIBITING DEALING IN FUNDS OR OTHER ASSETS OF DESIGNATED PERSONS AND ENTITIES

5. There is an obligation for countries to implement targeted financial sanctions without delay against persons and entities designated by the 1267 Committee and 1988 Committee (in the case of resolution 1267 (1999) and its successor resolutions), when these Committees are acting under the authority of Chapter VII of the Charter of the United Nations. For resolution 1373 (2001), the obligation for countries to take freezing action and prohibit the dealing in funds or other assets of designated persons and entities, without delay, is triggered by a designation at the (supra-)national level, as put forward either on the country's own motion or at the request of another country, if the country receiving the request is satisfied, according to applicable legal principles, that a requested designation is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee meets the criteria for designation in resolution 1373 (2001), as set forth in Section E.
6. Countries should establish the necessary legal authority and identify domestic competent authorities responsible for implementing and enforcing targeted financial sanctions, in accordance with the following standards and procedures:
- (a) Countries⁶ should require all natural and legal persons within the country to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities. This obligation should extend to: all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular terrorist act, plot or threat; those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; and the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities, as well as funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities.
- (b) Countries should prohibit their nationals, or any persons and entities within their jurisdiction, from making any funds or other assets, economic resources, or financial or other related services, available, directly or indirectly, wholly or jointly, for the benefit of designated persons and entities; entities owned or controlled, directly or indirectly, by designated persons or entities; and persons and entities acting on behalf of, or at the direction of, designated persons or entities, unless licensed, authorised or

⁶ In the case of the European Union (EU), which is a supra-national jurisdiction under Recommendation 6, the EU law applies as follows. The assets of designated persons and entities are frozen by the EU regulations and their amendments. EU member states may have to take additional measures to implement the freeze, and all natural and legal persons within the EU have to respect the freeze and not make funds available to designated persons and entities.

otherwise notified in accordance with the relevant Security Council resolutions (see Section E below).

- (c) Countries should have mechanisms for communicating designations to the financial sector and the DNFBPs immediately upon taking such action, and providing clear guidance, particularly to financial institutions and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations in taking action under freezing mechanisms.
- (d) Countries should require financial institutions and DNFBPs⁷ to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements of the relevant Security Council resolutions, including attempted transactions, and ensure that such information is effectively utilised by the competent authorities.
- (e) Countries should adopt effective measures which protect the rights of *bona fide* third parties acting in good faith when implementing the obligations under Recommendation 6.

D. DE-LISTING, UNFREEZING AND PROVIDING ACCESS TO FROZEN FUNDS OR OTHER ASSETS

- 7. Countries should develop and implement publicly known procedures to submit de-listing requests to the Security Council in the case of persons and entities designated pursuant to resolution 1267(1999) and its successor resolutions that, in the view of the country, do not or no longer meet the criteria for designation. In the event that the 1267 Committee or 1988 Committee has de-listed a person or entity, the obligation to freeze no longer exists. In the case of de-listing requests related to Al-Qaida, such procedures and criteria should be in accordance with procedures adopted by the 1267 Committee under Security Council resolutions 1730 (2006), 1735 (2006), 1822 (2008), 1904 (2009), 1989 (2011), and any successor resolutions. In the case of de-listing requests related to the Taliban and related threats to the peace, security and stability of Afghanistan, such procedures and criteria should be in accordance with procedures adopted by the 1988 Committee under Security Council resolutions 1730 (2006), 1735 (2006), 1822 (2008), 1904 (2009), 1988 (2011), and any successor resolutions.
- 8. For persons and entities designated pursuant to resolution 1373 (2001), countries should have appropriate legal authorities and procedures or mechanisms to delist and unfreeze the funds or other assets of persons and entities that no longer meet the criteria for designation. Countries should also have procedures in place to allow, upon request, review of the designation decision before a court or other independent competent authority.
- 9. For persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism (i.e. a false positive), countries should develop and implement publicly known procedures to unfreeze the funds or other assets of such persons or entities in a timely manner, upon verification that the person or entity involved is not a designated person or entity.

⁷ Security Council resolutions apply to all natural and legal persons within the country.

10. Where countries have determined that funds or other assets of persons and entities designated by the Security Council, or one of its relevant sanctions committees, are necessary for basic expenses, for the payment of certain types of fees, expenses and service charges, or for extraordinary expenses, countries should authorise access to such funds or other assets in accordance with the procedures set out in Security Council resolution 1452 (2002) and any successor resolutions. On the same grounds, countries should authorise access to funds or other assets, if freezing measures are applied to persons and entities designated by a (supra-)national country pursuant to resolution 1373 (2001) and as set out in resolution 1963 (2010).
11. Countries should provide for a mechanism through which a designated person or entity can challenge their designation, with a view to having it reviewed by a competent authority or a court. With respect to designations on the Al-Qaida Sanctions List, countries should inform designated persons and entities of the availability of the United Nations Office of the Ombudsperson, pursuant to resolution 1904 (2009), to accept de-listing petitions.
12. Countries should have mechanisms for communicating de-listings and unfreezings to the financial sector and the DNFBPs immediately upon taking such action, and providing adequate guidance, particularly to financial institutions and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action.

E. UNITED NATIONS DESIGNATION CRITERIA

13. The criteria for designation as specified in the relevant United Nations Security Council resolutions are:
 - (a) **Security Council resolutions 1267 (1999), 1989 (2011) and their successor resolutions⁸:**
 - (i) any person or entity participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of; supplying, selling or transferring arms and related materiel to; recruiting for; or otherwise supporting acts or activities of Al-Qaida, or any cell, affiliate, splinter group or derivative thereof⁹; or
 - (ii) any undertaking owned or controlled, directly or indirectly, by any person or entity designated under subsection 13(a)(i), or by persons acting on their behalf or at their direction.

⁸ Recommendation 6 is applicable to all current and future successor resolutions to resolution 1267(1999). At the time of issuance of this Interpretive Note, (February 2012), the successor resolutions to resolution 1267 (1999) are: resolutions 1333 (2000), 1367 (2001), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008), 1904 (2009), 1988 (2011), and 1989 (2011).

⁹ OP2 of resolution 1617 (2005) further defines the criteria for being “associated with” Al-Qaida or Usama bin Laden.

- (b) **Security Council resolutions 1267 (1999), 1988 (2011) and their successor resolutions:**
- (i) any person or entity participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of; supplying, selling or transferring arms and related materiel to; recruiting for; or otherwise supporting acts or activities of those designated and other individuals, groups, undertakings and entities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan; or
 - (ii) any undertaking owned or controlled, directly or indirectly, by any person or entity designated under subsection 13(b)(i) of this subparagraph, or by persons acting on their behalf or at their direction.
- (c) **Security Council resolution 1373 (2001):**
- (i) any person or entity who commits or attempts to commit terrorist acts, or who participates in or facilitates the commission of terrorist acts;
 - (ii) any entity owned or controlled, directly or indirectly, by any person or entity designated under subsection 13(c) (i) of this subparagraph; or
 - (iii) any person or entity acting on behalf of, or at the direction of, any person or entity designated under subsection 13(c) (i) of this subparagraph.