

Financial Action Task Force Identifies Jurisdictions with Anti-Money Laundering and Combating the Financing of Terrorism and Counter-Proliferation Deficiencies

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WASHINGTON—The Financial Crimes Enforcement Network (FinCEN) is informing U.S. financial institutions that the Financial Action Task Force (FATF), an intergovernmental body that establishes international standards for anti-money laundering, countering the financing of terrorism, and countering the financing of proliferation of weapons of mass destruction (AML/CFT/CPF), has issued public statements updating its lists of jurisdictions with strategic AML/CFT/CPF deficiencies following its plenary meeting this month.[1] U.S. financial institutions should consider the FATF's stance toward these jurisdictions when reviewing their obligations and risk-based policies, procedures, and practices.[2]

On June 17, 2022, the FATF removed Malta from its list of Jurisdictions under Increased Monitoring and added Gibraltar.

The FATF's list of High-Risk Jurisdictions Subject to a Call for Action remains the same with Iran and the Democratic People's Republic of Korea (DPRK) still subject to the FATF's countermeasures.

As part of the FATF's listing and monitoring process to ensure compliance with its international standards, the FATF issued two statements: (1) Jurisdictions under Increased Monitoring (<https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-june-2022.html>), which publicly identifies jurisdictions with strategic deficiencies in their AML/CFT/CPF regimes that have committed to, or are actively working with, the FATF to address those deficiencies in accordance with an agreed upon timeline and; (2) High-Risk Jurisdictions Subject to a Call for Action (<https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-june-2022.html>), which publicly identifies jurisdictions with significant strategic deficiencies in their AML/CFT/CPF regimes and calls on all FATF members to apply enhanced due diligence, and, in the most serious cases, apply counter-measures to protect the international financial system from the money laundering, terrorist financing, and proliferation financing risks emanating from the identified countries.

Jurisdictions Under Increased Monitoring

With respect to the FATF-identified Jurisdictions under Increased Monitoring, U.S. covered financial institutions are reminded of their obligations to comply with the due diligence obligations for foreign financial institutions (FFI) under 31 CFR § 1010.610(a) in addition to their general obligations under 31 U.S.C. § 5318(h) and its implementing regulations. As required under 31 CFR § 1010.610(a), covered financial institutions should ensure that their due diligence programs, which address correspondent accounts maintained for FFIs, 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. Furthermore, money services businesses (MSBs) have parallel requirements with respect to foreign agents or foreign counterparties, as described in FinCEN Interpretive Release 2004-1 (https://www.fincen.gov/sites/default/files/federal_register_notice/31cfr12142004.pdf), which clarifies that the AML program regulation requires MSBs to establish adequate and appropriate policies, procedures, and controls commensurate with the risk of money laundering and the financing of terrorism posed by their relationship with foreign agents or foreign counterparties. Additional information on these parallel requirements (covering both domestic and foreign agents and foreign counterparts) may be found in FinCEN's Guidance on Existing AML Program Rule Compliance Obligations for MSB Principals with Respect to Agent Monitoring. (<https://www.fincen.gov/resources/statutes-regulations/guidance/guidance-existing-aml-program-rule-compliance-obligations>) Such reasonable steps should not, however, put into question a financial institution's ability to maintain or otherwise continue appropriate relationships with customers or other financial institutions, and should not be used as the basis to engage in wholesale or indiscriminate de-risking of any class of customers or financial institutions. Financial institutions should also refer to previous interagency guidance on providing services to foreign embassies, consulates, and missions.

The United Nations (UN) adopted several resolutions implementing economic and financial sanctions (<https://www.un.org/securitycouncil/sanctions/information>). Member States are bound by the provisions of these UN Security Council Resolutions (UNSCRs), and certain provisions of these resolutions are especially relevant to financial institutions. Financial institutions should be familiar with the requirements and prohibitions contained in relevant UNSCRs. In addition to UN sanctions, the U.S. Government maintains a robust sanctions program. For a description of current Office of Foreign Assets Control (OFAC) sanctions programs, please consult OFAC's Sanctions Programs and Country Information (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>).

High-Risk Jurisdictions Subject to a Call for Action

With respect to the FATF-identified High-Risk Jurisdictions Subject to a Call for Action, specifically, counter-measures, financial institutions must comply with the extensive U.S. restrictions and prohibitions against opening or maintaining any correspondent accounts, directly or indirectly, for North Korean or Iranian financial institutions. In the case of the DPRK and Iran, existing U.S. sanctions and FinCEN regulations already prohibit any such correspondent account relationships.

In the case of Iran, the Government of Iran and Iranian financial institutions remain persons whose property and interests in property are blocked under E.O. 13599 and section 560.211 of the Iranian Transactions and Sanctions Regulations (ITSR). U.S. financial institutions and other U.S. persons continue to be broadly prohibited under the ITSR from engaging in transactions or dealings with Iran, the Government of Iran, and Iranian financial institutions, including opening or maintaining correspondent accounts for Iranian financial institutions. These sanctions impose obligations on U.S. persons that go beyond the relevant FATF recommendations. In addition to OFAC-administered sanctions, on October 25, 2019, FinCEN found Iran to be a Jurisdiction of Primary Money Laundering Concern and issued a final rule, pursuant to Section 311 of the USA PATRIOT Act, imposing the fifth special measure available under Section 311 (<https://www.fincen.gov/news/news-releases/imposition-fifth-special-measure-against-islamic-republic-iran-jurisdiction>). This rule prohibits U.S. financial institutions from opening or maintaining correspondent accounts for, or on behalf of, an Iranian financial institution, and the use of foreign financial institutions' correspondent accounts at covered United States financial institutions to process transactions involving Iranian financial institutions (31 C.F.R. § 1010.661).

Countries Removed

For jurisdictions removed from the FATF listing and monitoring process, U.S. financial institutions should take the FATF's decisions and the reasons behind the delisting into consideration when assessing risk, consistent with financial institutions' obligations under 31 C.F.R. § 1010.610(a) and 31 C.F.R. § 1010.210.

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

Questions or comments regarding the contents of this release should be addressed to the FinCEN Regulatory Support Section at frc@fincen.gov (<mailto:frc@fincen.gov>)

[1] See also, FATF Statement on the Russian Federation (<https://www.fatf-gafi.org/publications/fatfgeneral/documents/ukraine-june-2022.html>) (June 2022) which outlines measures taken by the FATF with respect to Russia's role and level of involvement in the FATF in response to its invasion of Ukraine.

[2] See also, FATF Recommendation 19 on higher-risk countries in which countries and financial institutions should be required to apply countermeasures, including enhanced due diligence measures to business relationships and transactions with natural and legal persons, and financial institutions, from countries for which this is called for by the FATF. Such countermeasures should be effective and proportionate to the risks. FinCEN issues these public statements about higher-risk countries as identified by the FATF to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.

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