

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

Luxembourg, le 26 mars 2010

A toutes les personnes et entreprises
surveillées par la CSSF

CIRCULAIRE CSSF 10/445

Concerne: Déclarations du GAFI concernant

- 1) les juridictions dont le régime de lutte contre le blanchiment et de financement du terrorisme présente des déficiences substantielles ;
- 2) les juridictions dont le régime de lutte contre le blanchiment et le financement du terrorisme n'est pas satisfaisant

Mesdames, Messieurs,

Nous avons l'honneur de vous rendre attentifs à deux documents émis par le Groupe d'action financière (« GAFI ») lors de sa réunion plénière de février 2010.

1) Juridictions dont le régime de lutte contre le blanchiment et le financement du terrorisme présente des défaillances stratégiques :

Le GAFI a déclaré que les juridictions suivantes disposent d'un régime de lutte contre le blanchiment et le financement du terrorisme qui présente des déficiences substantielles :

Iran, Angola, République démocratique du peuple de Corée, Equateur, Ethiopie, Pakistan, Turkménistan, Sao Tomé et Principe.

En ce qui concerne, en particulier, la situation de l'Iran, le GAFI appelle non seulement à la prise en compte des risques résultant du dispositif LBC/FT insuffisant, comme pour les autres pays énumérés ci-avant, mais prévoit également l'application de contre-mesures.

Nous vous prions dès lors de considérer avec une attention toute particulière les relations d'affaires et opérations avec l'Iran, y compris avec des sociétés et institutions financières iraniennes, en traitant ces relations d'affaires et opérations comme étant particulièrement susceptibles de tomber dans le champ d'application de la loi modifiée du 12 novembre 2004 relative à la lutte contre le blanchiment et le financement du terrorisme. Nous vous rappelons d'appliquer dans ce cas, ainsi qu'en cas de relations de correspondance bancaire, des mesures de vigilance et de suivi renforcées et également de renforcer les mécanismes de déclaration au Procureur d'Etat auprès du tribunal d'arrondissement de Luxembourg.

2) Les juridictions dont le régime de lutte contre le blanchiment et le financement du terrorisme n'est pas satisfaisant

Le GAFI a déclaré les juridictions suivantes comme présentant un régime de lutte contre le blanchiment et le financement du terrorisme insatisfaisant :

Antigua et Barbuda, Azerbaïdjan, Bolivie, Grèce, Indonésie, Kenya, Maroc, Birmanie/Myanmar, Népal, Nigéria, Paraguay, Qatar, Sri Lanka, Soudan, Syrie, Trinidad et Tobago, Thaïlande, Turquie, Ukraine et Yémen.

Nous vous prions dès lors de considérer les relations d'affaires et les opérations avec ces juridictions avec une attention particulière en tenant compte des déficiences mises en lumière par le GAFI dans ses déclarations concernant les juridictions précitées et en tenant compte des risques résultant de ces lacunes.

Nous vous demandons de consulter les déclarations du GAFI dans leur entièreté sur le site Internet www.fatf-gafi.org

Veillez recevoir, Mesdames, Messieurs, l'assurance de nos sentiments très distingués.

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

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Annexes



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.

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 jurisdiction¹:

Iran

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*

Democratic People's Republic of Korea (DPRK)*

Ecuador

Ethiopia*

* Despite the FATF's efforts, these jurisdictions have not constructively engaged with the FATF or an FSRB as of February 2010 and have not committed to the international AML/CFT standards.

3. Jurisdictions previously publicly identified by the FATF as having strategic AML/CFT deficiencies, which remain to be addressed as of February 2010²:

Pakistan

Turkmenistan

São Tomé and Príncipe

¹ The FATF has previously issued public statements calling for counter-measures on Iran. Those statements are updated below.

² The FATF has previously issued public statements on these jurisdictions. These statements are updated below.

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.

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 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

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 1 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 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

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 statement informing financial institutions that these deficiencies constitute an ML/FT 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 an 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.



IMPROVING GLOBAL AML/CFT COMPLIANCE: ON-GOING PROCESS

18 February 2010

As part of its ongoing review of compliance with the AML/CFT standards, the FATF has to date identified the following jurisdictions which have strategic AML/CFT deficiencies for which they have developed an action plan with the FATF. While the situations differ among each jurisdiction, each jurisdiction has provided a written high-level political commitment to address the identified deficiencies. FATF welcomes these commitments.

A large number of jurisdictions have not yet been reviewed by the FATF. The FATF will continue to identify additional jurisdictions, on an ongoing basis, that pose a risk in the international financial system. The FATF has already begun an initial review of a number of such jurisdictions as part of this process and will present its findings later this year.

The FATF and the FSRBs will continue to work with the jurisdictions noted below and to report on the progress made in addressing the identified deficiencies. The FATF calls on these jurisdictions to complete the implementation of action plans expeditiously and within the proposed timeframes. The FATF will closely monitor the implementation of these action plans and encourages its members to consider the information presented below.

Antigua and Barbuda

Antigua and Barbuda has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Antigua and Barbuda has made a high-level political commitment to work with the FATF and CFATF to address these deficiencies, including by: (1) establishing and implementing an adequate legal framework for identifying and freezing terrorist assets (Special Recommendation III); (2) improving the overall supervisory framework (Recommendation 23); and (3) enhancing financial transparency (Recommendation 4).

Azerbaijan

Azerbaijan has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Azerbaijan has made a high-level political commitment to work with the FATF and MONEYVAL to address these deficiencies, including by: (1) adequately criminalising money laundering and terrorist financing (Recommendation 1 and Special Recommendation II); (2) amending relevant laws or regulations to address deficiencies in customer due diligence requirements (Recommendation 5); (3) establishing and implementing adequate procedures to identify and freeze terrorist assets (Special Recommendation III); and (4) ensuring a fully operational and effectively functioning FIU (Recommendation 26).

Bolivia

The FATF has determined that Bolivia's AML/CFT regime contains certain strategic deficiencies. Bolivia has expressed a high-level political commitment to address these deficiencies. Bolivia should work with the FATF and GAFISUD to address these deficiencies, including by: (1) adequately criminalise money laundering and the financing of terrorism (Recommendation 1 and Special Recommendation II); (2) establishing and implementing an adequate legal framework for identifying and freezing terrorist assets (Special Recommendation III); (3) establishing a fully operational and effective Financial Intelligence Unit (Recommendation 26).

Greece

Greece has demonstrated progress, including as indicated in the most recent FATF enhanced Follow-Up Report on Greece, in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Greece has made a high-level political commitment to work with the FATF and has provided a short term action plan to address these deficiencies, including by: (1) addressing remaining issues regarding adequately criminalising terrorist financing (Special Recommendation II); (2) improving mechanisms and procedures for freezing terrorist assets (Special Recommendation III); and (3) enhancing the effectiveness of the FIU (Recommendation 26).

Indonesia

Indonesia has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Indonesia has made a high-level political commitment to work with the FATF and APG to address these deficiencies, including by: (1) adequately criminalising money laundering and terrorist financing (Recommendation 1 and Special Recommendation II); (2) establishing and implementing adequate procedures to identify and freeze terrorist assets (Special Recommendation III); and (3) amending and implementing laws or other instruments to fully implementing the 1999 International Convention for the Suppression of Financing of Terrorism (Special Recommendation I).

Kenya

Kenya has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Kenya has made a high-level political commitment to work with the FATF and ESAAMLG to address these deficiencies, including by: 1) adequately criminalising money laundering and terrorist financing (Recommendation 1 and Special Recommendation II); 2) ensuring a fully operational and effectively functioning Financial Intelligence Unit (Recommendation 26); 3) establishing and implementing an adequate legal framework for identifying and freezing terrorist assets (Special Recommendation III); 4) raising awareness of AML/CFT issues within the law enforcement community (Recommendation 27); and (5) implementing effective, proportionate and dissuasive sanctions in order to deal with natural or legal persons that do not comply with the national AML/CFT requirements (Recommendation 17).

Morocco

Morocco has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Morocco

has made a high-level political commitment to work with the FATF and MENAFATF to address these deficiencies, including by: (1) amending the penal code to extend the scope of the ML and FT offences (Recommendation 1 and Special Recommendation II); (2) amending relevant laws or regulations to address deficiencies in customer due diligence requirements (Recommendation 5); and (3) ensuring a fully operational and effectively functioning Financial Intelligence Unit (Recommendation 26).

Myanmar

Myanmar has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Myanmar has made a high-level political commitment to work with the FATF and APG to address these deficiencies, including by: (1) adequately criminalising money laundering and terrorist financing (Recommendation 1 and Special Recommendation II); (2) establishing and implementing adequate procedures to identify and freeze terrorist assets (Special Recommendation III); (3) strengthening the extradition framework in relation to terrorist financing (Recommendation 35 and Special Recommendation I); (4) ensuring a fully operational and effectively functioning Financial Intelligence Unit (Recommendation 26); (5) enhancing financial transparency (Recommendation 4); and (6) strengthening customer due diligence measures (Recommendations 5).

Nepal

Nepal has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Nepal has made a high-level political commitment to work with the FATF and APG to address these deficiencies, including by: (1) adequately criminalising money laundering and terrorist financing (Recommendation 1 and Special Recommendation II); (2) establishing and implementing adequate procedures to identify and freeze terrorist assets (Special Recommendation III); (3) implementing adequate procedures for the confiscation of funds related to money laundering (Recommendation 3); and (4) enacting and implementing appropriate mutual legal assistance legislation (Recommendation 36).

Nigeria

Nigeria has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Nigeria has made a high-level political commitment to work with the FATF and GIABA to address these deficiencies, including by: (1) adequately criminalising money laundering and terrorist financing (Recommendation 1 and Special Recommendation II); (2) implementing adequate procedures to identify and freeze terrorist assets (Special Recommendation III); (3) ensuring that relevant laws or regulations address deficiencies in customer due diligence requirements and that they apply to all financial institutions (Recommendation 5); and (5) demonstrating that AML/CFT supervision is undertaken effectively across the financial sector (Recommendation 23).

Paraguay

Paraguay has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain.

Paraguay has made a high-level political commitment to work with the FATF and GAFISUD to address these deficiencies, including by: (1) adequately criminalising terrorist financing (Special Recommendation II); (2) establishing and implementing adequate procedures to identify, freeze and confiscate terrorist assets (Special Recommendation III); (3) improving financial transparency (Recommendation 4); (4) improving and broadening customer due diligence measures (Recommendation 5), and (5) developing and implementing effective controls for cross-border cash transactions (Special Recommendation IX).

Qatar

Qatar has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Qatar has made a high-level political commitment to work with the FATF and MENAFATF to address these deficiencies, including by: (1) adequately criminalising money laundering and terrorist financing (Recommendation 1 and Special Recommendation II); (2) implementing adequate procedures to identify and freeze terrorist assets (Special Recommendation III); (3) instituting adequate regulatory instructions for AML/CFT, particularly with regard to customer due diligence (Recommendation 5); and (4) ensuring that financial institutions are properly fulfilling their obligations to report suspicious transactions and are receiving appropriate guidance (Recommendation 13 and Special Recommendation IV).

Sri Lanka

Sri Lanka has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Sri Lanka has made a high-level political commitment to work with the FATF and APG to address these deficiencies, including by: (1) adequately criminalising money laundering and terrorist financing (Recommendation 1 and Special Recommendation II); and (2) establishing and implementing adequate procedures to identify and freeze terrorist assets (Special Recommendation III).

Sudan

Sudan has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Sudan has made a high-level political commitment to work with the FATF and MENAFATF to address these deficiencies, including by: (1) implementing adequate procedures for identifying and freezing terrorist assets (Special Recommendation III); (2) ensuring a fully operational and effectively functioning Financial Intelligence Unit (Recommendation 26); (3) ensuring financial institutions are aware of and comply with their obligations to file suspicious transaction reports in relation to ML and FT (Recommendation 13 and Special Recommendation IV) and (4) implementing a supervisory programme for the regulators to ensure compliance with the provisions of the new law and regulations (Recommendation 23).

Syria

Syria has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Syria has made a high-level political commitment to work with the FATF and MENAFATF to address these deficiencies, including by: (1) adopting adequate measures to implement and enforce the 1999 International Convention for the Suppression of

Financing of Terrorism (Special Recommendation I); (2) adequately criminalising terrorist financing (Special Recommendation II); (3) implementing adequate procedures for identifying and freezing terrorist assets (Special Recommendation III); (4) ensuring financial institutions are aware of and comply with their obligations to file suspicious transaction reports in relation to ML and FT (Recommendation 13 and Special Recommendation IV) and (5) adopting appropriate laws and procedures to provide mutual legal assistance (Recommendations 36-38, Special Recommendation V).

Trinidad and Tobago

Trinidad and Tobago has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Trinidad and Tobago has made a high-level political commitment to work with the FATF and the CFATF to address these deficiencies, including by: (1) implementing adequate procedures to identify and freeze terrorist assets without delay (Special Recommendation III); (2) implementing adequate procedures for the confiscation of funds related to money laundering (Recommendation 3); (3) ensuring a fully operational and effectively functioning FIU, including supervisory powers (Recommendation 26).

Thailand

Thailand has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Thailand has made a high-level political commitment to work with the FATF and APG to address these deficiencies, including by: (1) adequately criminalising terrorist financing (Special Recommendation II); (2) establishing and implementing adequate procedures to identify and freeze terrorist assets (Special Recommendation III); and (3) further strengthening AML/CFT supervision (Recommendation 23);

Turkey

Turkey has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Turkey has made a high-level political commitment to work with the FATF to address these deficiencies, including by: (1) adequately criminalising terrorist financing (Special Recommendation II); and (2) implementing an adequate legal framework for identifying and freezing terrorist assets (Special Recommendation III).

Ukraine

Ukraine has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Ukraine has made a high-level political commitment to work with the FATF and MONEYVAL to address these deficiencies, including by: (1) adequately criminalising money laundering and terrorist financing (Recommendation 1 and Special Recommendation II), (2) enhancing financial transparency (Recommendation 4); and (3) establishing and implementing an adequate legal framework for identifying and freezing terrorist assets (Special Recommendation III).

Yemen

Yemen has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic deficiencies remain. Yemen has made a high-level political commitment to work with the FATF and MENAFATF to address these deficiencies, including by: (1) adequately criminalising money laundering (Recommendation 1); (2) establishing and implementing adequate procedures to identify and freeze terrorist assets (Special Recommendation III); (3) issuing substantive guidance/instructions to reporting institutions with respect to their ML/FT obligations (Recommendation 25); (4) developing the monitoring and supervisory capacity of the financial sector supervisory authorities and the FIU, to ensuring compliance by financial institutions with their STR obligations, especially in relation to FT (Recommendation 23); and (5) ensuring a fully operational and effectively functioning Financial Intelligence Unit (Recommendation 26).