

PRESS RELEASE

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AML-ATF Ministerial Advisory 3/2018: Money Laundering and Terrorist Financing controls in higher risk jurisdictions

Requirement to apply Enhanced Due Diligence for higher risk jurisdictions

Minister of Legal Affairs, Hon. Kathy Lynn Simmons, JP, today issued AML-ATF Advisory 3/2018 about the risks in a number of jurisdictions arising from inadequate systems and controls to combat money laundering and terrorist financing.

The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (POCA Regulations) require the Bermuda regulated sector and relevant persons to apply enhanced customer due diligence to high-risk countries.

- Regulation 11 (1)(aa) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, requires that a relevant person must apply on a risk-sensitive basis enhanced customer due diligence measures to business relationships with customers in instances where a person or a transaction is from or in a country that has been identified as having a higher risk by the Financial Action Task Force; and
- Regulation 11 (1)(ab) requires that a relevant person must apply, on a risk-sensitive basis, enhanced customer due diligence in instances where a person or transaction is from or in a country which represents a higher risk of money laundering, corruption, terrorist financing or being subject to international sanctions.

As the international anti-money laundering and counter-terrorist financing (AML/CFT) standard-setter, FATF regularly publishes statements that identify high-risk countries based on assessments of their AML/CFT regimes. In accordance with Regulation 11 (1) (aa), the Minister of Legal Affairs would like to draw the regulated sectors' and relevant persons' attention to the latest FATF publication on high risk jurisdictions.

FATF Public Statement

On 19th October, 2018 FATF published two statements identifying jurisdictions with strategic deficiencies in their AML/CFT regimes. These statements are included at Annex A and Annex B.

In response to the latest FATF statements, the Minister of Legal Affairs advises the regulated sectors and relevant persons to consider the following:

Minister of Legal Affairs' Advice:	Consider as a high risk and apply counter measures and enhanced due diligence measures in accordance with the risks	Consider as high risk and apply enhanced due diligence measures in accordance with the risks	Take appropriate actions to minimise the associated risks, which may include enhanced due diligence measures in high risk situations
Jurisdictions:	Democratic People's Republic of Korea* (DPRK)	Iran*	The Bahamas Botswana Ethiopia Ghana Pakistan Serbia Sri Lanka Syria* Trinidad and Tobago Tunisia* Yemen*

To ensure that an appropriate determination of the risks relating to these jurisdictions can be carried out, it is important that the annexed statements are read in their entirety. All financial institutions and relevant persons, in the implementation of their systems and controls to combat financial crime, should give consideration to the FATF assessments and take appropriate actions in light of the associated risks.

*These jurisdictions are subject to sanctions measures at the time of publication of this notice which require firms to take additional measures, in accordance with the International Sanctions Regulations 2013. Details can be found here: <https://www.gov.bm/sites/default/files/International-Sanctions-Regulations-2013-v2.pdf>

Please see the following links for more information about international sanctions: <https://www.gov.bm/international-sanctions-measures> and

Background Information

1. This Advisory replaces all previous advisory notices issued by the Minister of Legal Affairs on this subject.
2. The Financial Action Task Force is an inter-governmental body established by the G7 in 1989 and today its members include 35 member jurisdictions and two regional organisations (the European Commission and the Gulf Co-Operation Council).
3. The Bermuda Government's strategy is to use financial tools to deter crime and terrorism; detect it when it happens; and disrupt those responsible and hold them accountable for their actions. The FATF is central to Bermuda's international objectives within this strategy.
4. The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 require the regulated sector and relevant persons to put in place policies and procedures in order to prevent activities related to money laundering and terrorist financing. The regulated sector and relevant persons are also required to apply enhanced customer due diligence and enhanced ongoing monitoring on a risk-sensitive basis in certain defined situations and in "any other situation, which by its nature can present a higher risk of money laundering or terrorist financing".
5. This Advisory applies to all entities and persons subject to the POCA Regulations as provided for in Regulation 4, namely:
 - a. AML/AFT regulated financial institutions;
 - b. independent professionals;
 - c. casino operators;
 - d. dealers in high value goods, who are registered with the FIA; and
 - e. real estate brokers and real estate agents.

Therefore, these sectors shall comply with the above AML-ATF Ministerial Advisory.

6. A large number of jurisdictions have not yet been reviewed by the FATF, thus the jurisdictions included in the FATF public statement and 'ongoing compliance' document are not intended to provide an exhaustive list of jurisdictions that should be considered by relevant persons to present a higher risk of money laundering or terrorist financing.

Annex A: FATF Public Statement – October 2018

Public Statement - October 2018

Paris, France, 19 October 2018 - 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 money laundering and financing of terrorism (ML/FT) risks and to encourage greater compliance with the AML/CFT standards, the FATF identifies jurisdictions that have strategic deficiencies and works with them to address those deficiencies that pose a risk to the international financial system.

Jurisdictions subject to a FATF call on its members and other jurisdictions to apply counter-measures to protect the international financial system from the ongoing and substantial money laundering and financing of terrorism (ML/FT) risks.

Democratic People's Republic of Korea (DPRK)

The FATF remains concerned by the DPRK's failure to address the significant deficiencies in its anti-money laundering and combating the financing of terrorism (AML/CFT) regime and the serious threats they pose to the integrity of the international financial system. The FATF urges the DPRK to immediately and meaningfully address its AML/CFT deficiencies. Further, the FATF has serious concerns with the threat posed by the DPRK's illicit activities related to the proliferation of weapons of mass destruction (WMDs) and its' financing.

The FATF reaffirms its 25 February 2011 call on its members and urges all jurisdictions to advise their financial institutions to give special attention to business relationships and transactions with the DPRK, including DPRK companies, financial institutions, and those acting on their behalf. In addition to enhanced scrutiny, the FATF further calls on its members and urges all jurisdictions to apply effective counter-measures, and targeted financial sanctions in accordance with applicable United Nations Security Council Resolutions, to protect their financial sectors from money laundering, financing of terrorism and WMD proliferation financing (ML/FT/PF) risks emanating from the DPRK. Jurisdictions should take necessary measures to close existing branches, subsidiaries and representative offices of DPRK banks within their territories and terminate correspondent relationships with DPRK banks, where required by relevant UNSC resolutions.

Jurisdictions subject to a FATF call on its members and other jurisdictions to apply enhanced due diligence measures proportionate to the risks arising from the jurisdiction.

Iran

In June 2016, the FATF welcomed Iran's high-level political commitment to address its strategic AML/CFT deficiencies, and its decision to seek technical assistance in the implementation of the Action Plan. Given that Iran provided that political commitment and the relevant steps it has taken, the FATF decided in June 2018 to continue the suspension of counter-measures.

In December 2017, Iran established a cash declaration regime. Since June 2018, Iran has enacted amendments to its Counter-Terrorist Financing Act and Parliament has passed amendments to its AML law and bills to ratify the Palermo and TF Conventions. The FATF notes the progress of the legislative efforts. As with any country, the FATF can only consider fully enacted legislation. Once the remaining legislation is fully in force, the FATF will review this alongside existing enacted legislation to determine whether the measures contained therein address Iran's Action Plan, in line with the FATF standards. Iran's action plan expired in January 2018. In October 2018, the FATF noted that the following items are still not completed and Iran should fully address its remaining items,

including: (1) adequately criminalising terrorist financing, including by removing the exemption for designated groups “attempting to end foreign occupation, colonialism and racism”; (2) identifying and freezing terrorist assets in line with the relevant United Nations Security Council resolutions; (3) ensuring an adequate and enforceable customer due diligence regime; (4) ensuring the full independence of the Financial Intelligence Unit and requiring the submission of STRs for attempted transactions; (5) demonstrating how authorities are identifying and sanctioning unlicensed money/value transfer service providers; (6) ratifying and implementing the Palermo and TF Conventions and clarifying the capability to provide mutual legal assistance; (7) ensuring that financial institutions verify that wire transfers contain complete originator and beneficiary information; (8) establishing a broader range of penalties for violations of the ML offense; and (9) ensuring adequate legislation and procedures to provide for confiscation of property of corresponding value. The FATF decided at its meeting this week to continue the suspension of counter-measures. However, the FATF expresses its disappointment that the majority of the Action Plan remains outstanding and expects Iran to proceed swiftly in the reform path to ensure that it addresses all of the remaining items by completing and implementing the necessary AML/CFT reforms. By February 2019, the FATF expects Iran to have brought into force the necessary legislation in line with FATF standards, or the FATF will take further steps to protect against the risks emanating from deficiencies in Iran’s AML/CFT regime. The FATF also expects Iran to continue to progress with enabling regulations and other amendments. Iran will remain on the FATF Public Statement until the full Action Plan has been completed. Until Iran implements the measures required to address the deficiencies identified in the Action Plan, the FATF will remain concerned with the terrorist financing risk emanating from Iran and the threat this poses to the international financial system. The FATF, therefore, calls on its members and urges all jurisdictions to continue to advise their financial institutions to apply enhanced due diligence, including obtaining information on the reasons for intended transactions, to business relationships and transactions with natural and legal persons from Iran, consistent with FATF Recommendation 19.

Annex B: Improving Global AML/CFT Compliance: update on-going process – 19 October 2018

Paris, France, 19 October 2018 - As part of its ongoing review of compliance with the AML/CFT standards, the FATF identifies the following jurisdictions that 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. The FATF welcomes these commitments.

A number of jurisdictions have not yet been reviewed by the FATF. The FATF continues to identify additional jurisdictions, on an ongoing basis, that pose a risk to the international financial system.

The FATF and the FATF-style regional bodies (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.

Jurisdictions with strategic deficiencies
The Bahamas Botswana Ethiopia Ghana Pakistan Serbia Sri Lanka Syria Trinidad and Tobago Tunisia Yemen

The Bahamas

In October 2018, The Bahamas made a high-level political commitment to work with the FATF and CFATF to strengthen the effectiveness of its AML/CFT regime and address any related technical deficiencies. The Bahamas will work to implement its action plan to accomplish these objectives, including by: (1) developing and implementing a comprehensive electronic case management system for international cooperation; (2) demonstrating risk-based supervision of non-bank financial institutions; (3) ensuring the timely access to adequate, accurate and current basic and beneficial ownership information; (4) increasing the quality of the FIU's products to assist LEAs in the pursuance of ML/TF investigations, specifically complex ML/TF and stand-alone ML investigations; (5) demonstrating that authorities are investigating and prosecuting all types of money laundering, including complex ML cases, stand-alone money laundering, and cases involving proceeds of foreign offences; (6) demonstrating that confiscation proceedings are initiated and concluded for all types of ML cases; and (7) addressing gaps in the TF and PF TFS frameworks and demonstrating implementation.

Botswana

In October 2018, Botswana made a high-level political commitment to work with the FATF and ESAAMLG to strengthen the effectiveness of its AML/CFT regime and address any related technical deficiencies. Botswana will work to implement its action plan to accomplish these objectives, including by: (1) assessing the risks associated with legal persons, legal arrangements, and NPOs, and developing and implementing a risk-based comprehensive national AML/CFT strategy; (2) developing and implementing risk-based AML/CFT supervisory manuals; (3) improving its analysis and dissemination of financial intelligence by the FIU, and enhancing the use of financial intelligence among the relevant law enforcement agencies; (4) developing and implementing CFT strategy, and ensuring the TF investigation capacity of the law enforcement agencies; (5) ensuring the implementation without delay of targeted financial sanctions measures related to terrorist financing and proliferation financing, and (6) applying a risk-based approach to monitoring non-profit organisations.

Ethiopia

Since February 2017, when Ethiopia made a high-level political commitment to work with the FATF and ESAAMLG to strengthen its effectiveness and address any related technical deficiencies, Ethiopia has taken steps towards improving its AML/CFT regime, including by commencing risk-based supervision for DNFBPs and non-profit organisations (NPOs) and developing guidance for the identification, freezing and confiscation of assets. Ethiopia should continue to work on implementing its action plan to address its strategic deficiencies, including by establishing and implementing proliferation financing-related targeted financial sanctions.

Ghana

In October 2018, Ghana made a high-level political commitment to work with the FATF and GIABA to strengthen the effectiveness of its AML/CFT regime and address any related technical deficiencies. Ghana will work to implement its action plan to accomplish these objectives, including by: (1) developing and implementing a comprehensive national AML/CFT Policy based on the risks identified in the NRA, including measures to mitigate ML/TF risks associated with the legal persons; (2) improving risk-based supervision, by enhancing the capacity of the regulators and the awareness of the private sector; (3) ensuring the timely access to adequate, accurate and current basic and beneficial ownership information; (4) ensuring the focused actions of the FIU in accordance with the risks identified by the NRA, and adequate resource allocation to the FIU; (5) ensuring adequate and effective investigation and prosecution of TF; and (6) applying a risk-based approach for monitoring non-profit organisations.

Pakistan

In June 2018, Pakistan made a high-level political commitment to work with the FATF and APG to strengthen its AML/CFT regime and to address its strategic counter-terrorist financing-related deficiencies. Pakistan will work to implement its action plan to accomplish these objectives, including by: (1) demonstrating that TF risks are properly identified, assessed, and that supervision is applied on a risk-sensitive basis; (2) demonstrating that remedial actions and sanctions are applied in cases

of AML/CFT violations, and that these actions have an effect on AML/CFT compliance by financial institutions; (3) demonstrating that competent authorities are cooperating and taking action to identify and take enforcement action against illegal money or value transfer services (MVTs); (4) demonstrating that authorities are identifying cash couriers and enforcing controls on illicit movement of currency and understanding the risk of cash couriers being used for TF; (5) improving inter-agency coordination including between provincial and federal authorities on combating TF risks; (6) demonstrating that law enforcement agencies (LEAs) are identifying and investigating the widest range of TF activity and that TF investigations and prosecutions target designated persons and entities, and persons and entities acting on behalf or at the direction of the designated persons or entities; (7) demonstrating that TF prosecutions result in effective, proportionate and dissuasive sanctions and enhancing the capacity and support for prosecutors and the judiciary; and (8) demonstrating effective implementation of targeted financial sanctions (supported by a comprehensive legal obligation) against all 1267 and 1373 designated terrorists and those acting for or on their behalf, including preventing the raising and moving of funds, identifying and freezing assets (movable and immovable), and prohibiting access to funds and financial services; (9) demonstrating enforcement against TFS violations including administrative and criminal penalties and provincial and federal authorities cooperating on enforcement cases; (10) demonstrating that facilities and services owned or controlled by designated persons are deprived of their resources and the usage of the resources.

Serbia

Since February 2018, when Serbia made a high-level political commitment to work with the FATF and MONEYVAL to strengthen the effectiveness of its AML/CFT regime and address any related technical deficiencies, Serbia has taken steps towards improving its AML/CFT regime, including by: updating and communicating the results of its NRA; and demonstrating the investigation and prosecution of third-party and stand-alone ML. Serbia should continue to work on implementing its action plan to address its strategic deficiencies, including by: (1) demonstrating that obligated entities have adequate risk mitigation-related requirements; (2) subjecting lawyers to AML/CFT supervision in practice, integrating the results of institutional risk assessments into supervisory matrices, and demonstrating the timely and effective imposition of sanctions; (3) demonstrating that competent authorities have timely access to beneficial ownership information regarding legal persons, and that such information is adequate, accurate, and current; (4) demonstrating the implementation without delay of targeted financial sanctions measures related to terrorist financing and taking proportionate measures for non-profit organisations in line with a risk-based approach; and (5) demonstrating the implementation without delay of targeted financial sanctions related to proliferation financing.

Sri Lanka

Since November 2017, when Sri Lanka made a high-level political commitment to work with the FATF and APG to strengthen the effectiveness of its AML/CFT regime and address any related technical deficiencies, Sri Lanka has taken steps towards improving its AML/CFT regime, including by providing case studies and statistics to demonstrate that competent authorities can obtain beneficial ownership information in relation to legal persons in a timely manner; issuing amendments to the directive in relation to CDD obligations; and establishing a targeted financial sanctions regime to implement relevant UNSCRs related to Iran and issuing a related directive. Sri Lanka should continue to work on implementing its action plan to address its strategic deficiencies,

including by enhancing risk-based supervision of high-risk DNFBPs, including through prompt and dissuasive enforcement actions and sanctions, as appropriate; and demonstrating effective implementation of its targeted financial sanctions obligations related to proliferation financing.

Syria

Since February 2010, when Syria made a high-level political commitment to work with the FATF and MENAFATF to address its strategic AML/CFT deficiencies, Syria has made progress to improve its AML/CFT regime. In June 2014, the FATF determined that Syria had substantially addressed its action plan at a technical level, including by criminalising terrorist financing and establishing procedures for freezing terrorist assets. While the FATF determined that Syria has completed its agreed action plan, due to the security situation, the FATF has been unable to conduct an on-site visit to confirm whether the process of implementing the required reforms and actions has begun and is being sustained. The FATF will continue to monitor the situation, and will conduct an on-site visit at the earliest possible date.

Trinidad and Tobago

Since November 2017, when Trinidad and Tobago made a high-level political commitment to work with the FATF and CFATF to strengthen the effectiveness of its AML/CFT regime and address any related technical deficiencies, Trinidad and Tobago has taken steps towards improving its AML/CFT regime, including by enacting amendments to its Anti-Terrorism Act and legislation on criminal justice reforms which will speed up consideration of ML cases in courts. Trinidad and Tobago should continue to work on implementing its action plan to address its strategic deficiencies, including by: (1) adopting and implementing the relevant measures to further enhance international cooperation; (2) addressing issues related to transparency and beneficial ownership; (3) completing the legislative efforts to enhance the processing of ML charges before the courts; (4) taking measures to enhance tracing and confiscation of criminal proceeds; (5) ensuring TFS are implemented without delay and implementing measures to monitor NPOs on the basis of risk; and (6) developing, adopting, and implementing the necessary framework to counter proliferation financing.

Tunisia

Since November 2017, when Tunisia made a high-level political commitment to work with the FATF and MENAFATF to strengthen the effectiveness of its AML/CFT regime and address any related technical deficiencies, Tunisia has taken steps towards improving its AML/CFT regime, including by conducting outreach to the DNFBPs to raise their awareness of the AML/CFT obligations, and hiring and training financial analysts of the FIU. Tunisia should continue to work on implementing its action plan to address its strategic deficiencies, including by: (1) fully integrating the DNFBPs into its AML/CFT regime; (2) maintaining comprehensive and updated commercial registries and strengthening the system of sanctions for violations of transparency obligations; (3) continuing to demonstrate increasing efficiency with regard to suspicious transaction report processing; (4) demonstrating that its terrorism-related TFS regime is fully functional and that it is appropriately monitoring the association sector; and (5) establishing and implementing proliferation finance-related targeted financial sanctions.

Yemen

Since February 2010, when Yemen made a high-level political commitment to work with the FATF and MENAFATF to address its strategic AML/CFT deficiencies, Yemen has made progress to improve its AML/CFT regime. In June 2014, the FATF determined that Yemen had substantially addressed its action plan at a technical level, including by: (1) adequately criminalising money laundering and terrorist financing; (2) establishing procedures to identify and freeze terrorist assets; (3) improving its customer due diligence and suspicious transaction reporting requirements; (4) issuing guidance; (5) developing the monitoring and supervisory capacity of the financial sector supervisory authorities and the financial intelligence unit; and (6) establishing a fully operational and effectively functioning financial intelligence unit. While the FATF determined that Yemen has completed its agreed action plan, due to the security situation, the FATF has been unable to conduct an on-site visit to confirm whether the process of implementing the required reforms and actions has begun and is being sustained. The FATF will continue to monitor the situation, and conduct an on-site visit at the earliest possible date.