

GUIDELINES ON GAFI/FATF SPECIAL RECOMMENDATION III

Preamble

The 9 Special Recommendations of the FATF (Financial Action Task Force) define a framework to combat money laundering and they should be applied at international level. These Recommendations contain the principles lying at the core of the measures implemented by Countries on the basis of their situation and constitutional order.

Preventing terrorists from using the global financial system to promote criminal activities is essential for the suppression of international terrorism. A key element of the response of the international community has been to adopt preventive measures against the concealment and transfer of funds or assets used to finance terrorism, and to designate individuals and other entities to whom such measures should be applied, by placing them on the lists.

It should be highlighted that any effort aimed at combating terrorist financing could be seriously compromised if Countries did not freeze funds or other assets linked to terrorists in a rapid and effective manner.

In compliance with the international obligations undertaken by the Republic of San Marino to counter terrorism, terrorist financing and the activity of Countries threatening international peace and security, San Marino authorities have been given regulatory instruments and administrative measures aimed at implementing the restrictive measures of the United Nations Security Council resolutions.

In particular, reference is made to Title IV “Measures for preventing, combating and repressing terrorist financing and the activity of States that threaten international peace and security” and, in particular, Article 46 and following of Law no. 92 of 17 June 2008.

In this context, the Financial Intelligence Agency, in the framework of the tasks assigned by Law no. 92 of 17 June 2008, attaches great importance to the fact that behaviours of all obliged entities are based on the utmost rapidity, uniformity, transparency and cooperation, so that the obligations deriving from higher international principles can be fulfilled.

Financial Intelligence Agency on 4 June 2010 issued Instruction no.2010-03 ‘Provision implementing FATF Special Recommendation III.

Having said this, the Agency, in the spirit of the Law and with the aim to strengthen the instruments useful to counter money laundering and terrorist financing, contributes the attached guidelines on FATF Special Recommendation III. These latter represent a tool of easy reference elaborated in form of question-answer and provide a framework for understanding the procedures prescribed by law, with particular reference to the "Lists" (*listing* and *de-listing*) and "asset freeze" (*freezing* and *un-freezing*).

1. What is the content of the FATF Special Recommendation III?

The FATF Special Recommendation III "Freezing and confiscating terrorist assets" provides:

Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations 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 organisations.

This recommendation requires two basic obligations: the first one, that refers to the freezing and seizing of terrorists assets, has preventive purposes and is directed to block goods potentially intended to finance terrorist activities; while the second, which concerns the obligation to proceed with confiscation of such properties, has both preventive and punitive nature and intended to subtract assets to terrorists.

The FATF Special Recommendation III is implemented into San Marino with Articles 46-50 of Law no.92 of June 17, 2008 as subsequent amended. Moreover on June 4, 2010, FIA issued in this regard Instruction no. 2010-03.

2. What are the United Nations Resolutions which have been implemented in San Marino?

With reference to Special Recommendation III, the relevant Resolutions, implemented in San Marino, are:

a. the **1267 (1999)** and its subsequent amendments or additions, implemented by Decision No. 2 of 6 October 2008, then updated periodically. Resolution 1267 (1999) requires countries to freeze the assets and funds held or controlled by the Taliban, Al-Qaida, Osama bin Laden, or persons and entities associated with them. The Sanctions Committee (the Al-Qaida and the Taliban Sanctions Committee, also called Committee 1267), based on the indications given by individual countries, compile lists of persons against whom the measure adopted must be freezing. The designations made by the Committee are binding - as adopted under Chapter VII of the UN Charter - and require States to freezing (*freezing*) of assets in respect of the entities included in these lists.

b. the **1737 (2006)** and its subsequent amendments or additions, implemented by Decision No. 3 of October 6, 2008, updated periodically thereafter. That resolution ordered substantially against the Islamic Republic of Iran a nearly complete embargo of all deliveries of materials in any way connected with the nuclear industry and provides a general obligation to freeze funds and other assets of persons (individuals, legal persons and groups) involved in the proliferation of weapons of mass destruction. Furthermore, the resolution orders other restrictive measures, including a ban on the transport of specific materials useful in the creation of nuclear weapons and the prohibition of transit in the States that adopt restrictive measures, for certain persons and of persons and entities acting on their interest or at their direction.

3. What is meant by "freezing"?

It means the "freezing of funds" as defined in Article 1, paragraph 1, letter g) of Law no. 92 of June 17, 2008, as subsequently amended. More specifically, "freezing of funds" is the prohibition to move, transfer, modify, dispose, use or manage funds or economic resources, to have access to them in such a way as to modify the entity, amount, location, entitlement of rights, ownership, nature, destination or cause any other change that would permit the use of funds or economic resources, including, for mere illustration purposes, portfolio management, sales, leasing, renting or establishment of real rights of guarantee.

4. Who is competent to decide whether the funds should be affected by freezing?

Article 46 of Law no.92 of June 17, 2008 as amended, provides that in compliance with international obligations of the Republic of San Marino for counter terrorism, terrorist financing and activities of countries that threaten international peace and security, The Congress of State, proposed by the Secretary of State for Foreign Affairs and the Secretary of State for Finance and Budget, by Decision, adopts restrictive measures (which include also the freezing of funds), according to the resolutions of UN Security Council or its Committee.

5. Which effects implies the freezing of funds?

Article 47 of Law no.92 of June 17, 2008 as amended, provides that the funds and economic resources subject to freezing cannot constitute the object of any transfer, holding or use. It is also prohibited to make funds or economic resources available, directly or indirectly, to subjects included in the lists drawn up by the appropriate Committees of the United Nations or to allocate them for their benefit. Contrary acts are null and void.

6. How quickly do you get the freezing?

The freezing is effective immediately after adoption of the Congress of State Decision and perfected without prior notice to the person whose property or funds are affected by such action.

7. How can I identify which assets are affected by freezing?

The freezing affects all property or funds held, managed or controlled in any way by persons, organizations or groups within the list, not just those that can be tied to a particular terrorist act, plot or threat.

8. What is the "List" or "Lists"?

For "List" or "Lists" it is meant a list of parties (persons, entities and groups) drawn up and amended on a regular basis by the United Nations Security Council or one of its Committees, in accordance with its resolutions implemented or to be implemented by the Republic of San Marino through a relevant Decision of the Congress of State.

9. Where can I find these lists updated?

The latest Lists can be found *in primis* on the United Nations Security Council website (<http://www.un.org/sc/committees>). However, to make it easier to consultation, the Financial Intelligence Agency, hosts on its website (www.aif.sm) a direct link to the UN lists. The Agency has established that direct access to the consolidated existing list on its website in order to allow obliged parties to see the updated lists to the most recent amendment of the Security Council or its Committee.

10. Who changes or updates the lists?

Lists are updated by the Security Council of the United Nations or its Committee in accordance with procedures established by the Council itself. Updates to the decisions of the Security Council or its Committee are regularly implemented in San Marino by Congress of State decision.

The Congress of State decisions are available on the FIA website under the "restrictive measures".

11. Lists are immutable or undergo changes?

Lists are modified and/or updated regularly, both "incoming" (*listing*) and "outgoing" (*de-listing*). That is, the list of parties (persons, institutions and groups) are regularly included but they can be subject to cancellation.

12. Is it difficult to see the lists?

Lists are easy to examine. The following guide/example of the modality of consultation of the List is shown on the Financial Intelligence Agency website: ([.doc](#)).

13. What is the San Marino authorities responsible for formulating to international bodies in charge the proposals for inclusion or deletion from lists and/or repeal of an order to freeze?

The Committee for Credit and Savings (CCS) may make proposals to the competent international bodies to include people, organizations or groups in the lists and proposals to remove from lists, even on the basis of applications advanced by stakeholders.

The CCS has the competence to evaluate requests for unfreezing of funds and economic resources presented by the interested parties. In case of abrogation of a freezing measure the Committee for Credit and Savings shall take the necessary actions to return the assets to the rightful owner or, in cases involving registered movable or immovable assets, to annotate the unfreezing order in the public registries.

14. What are restrictive measures? What types of restrictive measures may be adopted by resolution of the Congress of State?

Restrictive measures are sanctions, a tool of economic or diplomatic nature that will lead to changes with regard to activities or policies, such as violations of international law or human rights, or policies that do not respect the rule of law or democratic principles.

The restrictive measures include the following:

- a) the freezing of funds and economic resources held or controlled, directly or indirectly, by persons, entities or groups included in the list drawn up by the appropriate United Nations Committee;
- b) commercial restrictions, including commercial restrictions on imports or exports and arms embargoes;
- c) restrictions of a financial nature, including financial restrictions or financial assistance and the prohibition of providing financial services;
- d) restrictions of any other nature, including restrictions on technical assistance, flight prohibitions, prohibition of entry or transit, diplomatic sanctions, the suspension of cooperation and the boycotting of sporting events.

The Congress of State Decision may also introduce further restrictive measures or specific provisions in relation to the contents of the resolutions adopted by the UN Security Council or by its Committee. Moreover, the same Congress of State Decision which provides for the implementation of restrictive measures may provide for exceptions in respect of the resolutions of the UN Security Council or limitations for reasons of public order or interest.

15. Where can I find the Congress of State decisions adopting restrictive measures?

Such decisions are immediately published *ad valvas Palatii* and at the Court, and from that moment they are expected to be known by every one. The website of the Secretariat of State for Home Affairs (<http://delibere.interni.segreteria.sm/>) permit to view/search/download these decisions.

The Financial Intelligence Agency to give greater publicity to these measures has dedicated a special section on its website (www.aif.sm) "restrictive measures" - "Resolutions of the State Congress."

16. Who are the addressees of the FIA Instruction no.2010-03?

The Instruction 2010-03 issued by FIA on 4 June 2010 addressed to all obliged parties referred to in Article 17 (then the financial parties, non-financial parties and professionals as best described in Articles 18, 19 and 20) of Law 17 June 2008 No 92 which they hold, control or manage "property" or "funds" as defined by Law 17 June 2008 No 92; and, in cases specifically covered, to the State Administrations that keep public registries.

17. What is meant by "assets" or "funds"?

"Assets" or "funds" are defined in Article 1, para 1, letter e) of Law 17 June 2008 No.92 and subsequent amendments as any property, whether tangible or intangible, movable or immovable, including means of payment and credit, any document or instrument, including electronic or digital form, evidencing title to, or interest in such property; economic resources of any nature, tangible or intangible, movable or immovable assets, thus including all accessories, fixtures and returns that may be used to obtain funds, assets or services as well as any other utility specified in the technical Annex to this Law.

Article 2 of the Technical Annex to the law clarifies:

The following are considered "assets" or "funds": property of any kind, tangible or intangible, movable or immovable, including means of payment and credit, any document or instrumentalities, even electronic or digital, evidencing title to or interest in such property. The following can be included as an example:

- a) cash, checks, bills of exchange, pecuniary credits and claims on money, payment orders and other means of payment;
- b) deposits with banks or financial institutions or other entities, the balance on accounts, credits, bonds of any nature and negotiable securities at public and private levels as well as financial instruments as defined by Law N° 165 on November 17, 2005 and subsequent amendments;
- c) interests, dividends and other incomes and increases of values generated by the assets;
- d) credits, right of set-off (settlement and clearing), guarantee of any nature and other financial commitments, letters of credit, bills of lading and other certificates representative of assets or goods;
- e) documents that demonstrate an interest in funds or economic resources;
- f) all other instruments of exports-financing.

18. Is my office part of the State Administrations that keep public records? If yes, how can I communicate with FIA the data and information available in relation to a listed name?

The State Administrations concerned to the restrictive measures are all public offices that ensure the keeping of public records.

If State Administrations verifies that the movable or immovable property belong to persons registered in the list, they immediately notify the Agency, through filling in the following format ([.doc](#)).

The content of this communication must be anticipated by email to the following address congelamento@aif.sm.

19. Who order to annotate in the public registries the freezing?

It is the Financial Intelligence Agency that, under Article 48 paragraph 2 of Law, with special provision, order to annotate in the public registries the freezing of registered movable and immovable assets.

20. What governs the custody, administration and management of property or funds subject to freezing?

To regulate the custody, administration and management of property or funds subject to freezing, see the Delegate Decree of 31 October 2008 n.137 "*Discipline of custody, administration and management of financial resources to freeze*", available on the website of the Financial Intelligence Agency (www.aif.sm) to section "legislation in force" - "legislation".

21. What do I have to do if I discover that I am managing assets or funds for a person whose name is in this list?

The Law 17 June 2008 no.92 and subsequent amendments and Instruction 2010-03 provide that, where the obliged parties verify the presence among its customers or between the beneficial owners, of listed subjects, they shall send to the Agency a statement according the following format ([.doc](#)). This model must be received by registered letter to the Agency within 48 hours after the determination and must be anticipated by email to the following address congelamento@aif.sm not later than the day of detection.

Later, obliged parties shall:

- a) notify the Agency within 15 days from the adoption of the Congress of State decision, of the measures applied in accordance with the law, indicating the subjects involved, the amount and nature of the funds and economic resources;
- b) notify the Agency of the transactions, business relationships, as well as any other data or information available with reference to subjects included in the lists.

Who made that statement, must complete the following format ([.doc](#)).

22. What can I do if I need to use frozen funds or assets to satisfy a fundamental need or a need of my family?

Law no.92 of June 17, 2008 as subsequently amended provides that anyone who needs to use frozen funds or assets to satisfy a fundamental need of themselves or of a family members, may submit an application, in written, specifying the reasons for exemption, full or partial, from freezing to the Secretary of State for Finance in his capacity as Chairman of the Committee for Credit and Savings, at the Ministry of State for Finance, enclosing any relevant documentation or information.

The ground of the request must be unequivocally explained in the request for an exemption as specified in Article 49 paragraph 3 of Law. In particular, it must be document what is the basic need for which exemption is sought, the amount and terms of payment and the person (name, company name, headquarters and identification code or other similar identifier) that is intended to pay to meet demand.

A model example of application for exemption has been prepared by FIA: ([.doc](#)).

A similar application may be made for payments of charges food, medicines, housing, medical and legal assistance, taxes, compulsory insurance premiums, bank charges for maintaining accounts.

23. What do I do if my name has been wrongly included in the lists to ask to be removed?

If I see my name wrongly appears in the lists I can make a request that my name be removed. The request, in written indicating the ground, must be addressed to the Secretary of State for Finance in his capacity as Chairman of the Committee for Credit and Savings, at the Ministry of State for Finance, enclosing any relevant documentation or information.

A model example of application is as follows ([.doc](#)).

The Committee for Credit and Savings, made the necessary verifications, on the basis of the documentation received and as it deems the merits, will notify the UN Security Council or its Committee the received request.

24. What happens after the request is accepted by the UN Security Council or its Committee?

If the proposal for de-listing, which comes before the un-freezing, is accepted by the UN Security Council or by its Committee, the Committee for Credit and Savings, take timely measures to ensure that funds, property and economic resources are returned to the rightful owner or, in cases involving registered movable or immovable assets, to annotate the unfreezing order in the public registries.

25. What happens if the request for de-listing is not accepted by the UN Security Council or its Committee?

If the de-listing proposal (and the consequent un-freezing order) is not accepted by the UN Security Council or its Committee, the Committee for Credit and Savings shall inform without delay the applicant.

26. What can I do if I realize that my asset or properties are unfairly affected by freezing in order to request the removal of this measure [un-freezing]?

Anyone with interest, if it considers that the freezing of funds, assets or economic resources was done without just cause, may make an application, written and reasoned, to the Secretary of State for Finance in his capacity as Chairman of the Committee for Credit and Savings, at the Ministry of State for Finance, enclosing any relevant documentation or information.

It should be noted that as freezing is the immediate consequences of the listing mechanism (if implemented by Congress of State decision), at the same way, the un-freezing can be obtained as a direct result of the de-listing mechanism from such lists.

FIA has prepared the following examples of application form to request un-freezing ([.doc](#)).

In this process, the Committee for Credit and Savings, made the necessary verifications, based on the documentation received and as it deems the merits, will be in charge to notify the UN Security Council or its Committee about the application received.

27. Is it possible that I may find the name of my client is in the list, but the Congress of State has not yet adopted its relevant Decision? If this is the case, what do I have to do?

Where it is found that the name of a client is in the list, in the case where the Congress of State has not yet adopted the relevant decision, we recommend an immediate communication to FIA, according the following format ([.doc](#)).

This event may occur as FIA anticipates by e-mail any update of the resolutions of the UN Security Council or its Committee.

This with the main objective to pursue immediacy and effectiveness of freezing measure, in order to report promptly to obliged parties, the State Administrations who keep public registers and the Police Forces about the updates of the UN Security Council or its Committee.

The above, with the sole aim to put the obliged parties in this position to know "in real time" if he owns, controls or manages assets or funds.

Therefore, any positive comparison, pending the adoption of the of the Congress of State decision, must be reported immediately (at the latest within 3 hours after the determination) to Financial Intelligence Agency to enable it to adopt a timely blocking measure and prevent that property or funds of subjects related to terrorism can circulate freely. In such cases the Agency will require, through the Secretary of State for Finance, the urgent adoption of the Congress of State decision concerning the funds or assets blocked by the FIA, which will dispose the freezing referred to in Article 46 of the Law.

28. Is there a jurisdictional protection against the restrictive measures (including freezing) disposed towards me?

Under Article 50 of Law no.92 of June 17, 2008, as amended, against the restrictive measures ordered by the Congress of State decision and against the provisions adopted by the Committee for Credit and Savings, the person may lodge personally or through a lawyer, an appeal.

A jurisdictional appeal is also admitted against the same measures. Therefore, by way of derogation from article 3 of Law N° 5 of January 25, 1984, the interested subject, if he/she has not designated his/her own defence lawyer or has no defence lawyer, shall be assisted by the public defender also in proceedings before the administrative judge. No compensation shall be owed to the public defender for the professional services provided under this article.

29. Where can I find additional material on the procedures adopted by the UN Security Council on the Resolution 1267 (1999) and 1737 (2006)?

On the website of the UN Security Council Sanctions Committee (<http://www.un.org/sc/committees/>) are regularly published all documents related to distinct Resolutions.

More specifically, with regard to the resolution:

a. 1267 (1999) and its subsequent amendments or additions, see the website of the 1267 Committee (<http://www.un.org/sc/committees/1267/index.shtml>) to acquaint himself with general information on the work carried out, the guidelines on the procedure it follows in carrying out its work, as well as basic information on the procedures for insertion (*listing*) and cancellation (*de-listing*) from the lists, as well as the freezing (*freezing*) and its requests for exemption. The 1267 Committee also publishes annual reports on the activities carried out.

b. 1737 (2006) and its subsequent amendments or additions, see the website of the Committee established under the same resolution (<http://www.un.org/sc/committees/1737/index.shtml>) to have knowledge of selected documents relating to activity carried out, the guidelines on the procedure it follows in carrying out its work, in addition to reports that periodically (at least every 90 days), the Committee directs the Security Council.

30. Are there documents prepared by institutional bodies that might be useful to better understand this topic?

The FATF (Financial Action Task Force) has prepared Best Practices ([*International Best Practices - Freezing of Terrorist Assets, June 23, 2009*](#)) that are considered general guidelines for the effective implementation of restrictive measures, in accordance with international standards. *Best Practices* are not legally binding, they nevertheless seek to identify key elements in implementing appropriate disciplinary measures.

Even the European Union, in the framework of the Common Foreign and Security Policy (CFSP), apply restrictive measures to achieve the specific objectives of the CFSP, as set out in the Treaty on European Union. In this context the EU, therefore developed and updated a document entitled [The EU Best Practices for the effective implementation of restrictive measures](#) , which provides practical guidelines and recommendations on issues relating to the implementation of financial sanctions.