

APPENDIXES

Appendix

I

Table of Concordance

Topic	Convention	Resolutions	FATF SR*	Civil Law (Article)	Common Law (Section)
Criminalize the financing of terrorism (FT)	Article 4	1373 (2001)	II	II-2	2
Establish liability (criminal, civil or administrative) of corporations for FT	Article 5			II-3	3
Exclude excuses for FT based on political, philosophical, etc. considerations	Article 6			I-3	
Establish jurisdiction over FT offenses	Article 7			III-1	4
Identify, detect, freeze, or seize assets used in committing FT offenses, and freeze terrorist assets	Article 8	1267 (1999), 1333 (2001), 1373 (2001), 1390 (2002)	III	II-9–II-12	8–10
Establish procedure for detention of persons suspected of FT (including notification of other jurisdictions)	Articles 9, 17, and 19			IV-2–IV-5	5–7
Implement principle of “prosecute or extradite”	Article 10			IV-17	5(1)
Implement provisions on extradition	Article 11			IV-12–IV-16	12

Table of Concordance 77

Topic	Convention	Resolutions	FATF SR*	Civil Law (Article)	Common Law (Section)
Implement provisions on mutual legal cooperation	Articles 12–15			IV-6–IV-11	13
Implement provisions on transfer of detainees and prisoners	Article 16				14
Take FT prevention measures, including:	Article 18, 1				
Prohibit illegal encouragement, instigation, organization, or engaging in FT offenses	(a)			See the discussion on page 50	
Require financial institutions to utilize the most efficient measures available for customer identification; pay special attention to suspicious transactions, and report suspicious transactions; and, for this purpose, consider regulations on unidentified account holders and beneficiaries, on documentation for opening accounts for legal entities, on suspicious transaction reporting, and on record retention	(b)		IV	(Anti-Money Laundering (AML) Law)	

78 APPENDIX I

Topic	Convention	Resolutions	FATF SR*	Civil Law (Article)	Common Law (Section)
Consider:	Article 18, 2				
Supervision measures, including, for example, licensing of all money transmission agencies; and	(a)		(SR VI: impose anti-money laundering requirements on alternative remittance systems)	V-7–V-8	15
feasible measures to detect or monitor cross-border transportation of cash	(b)			(AML and other laws)	
Establish channels for exchange of information between competent agencies and services	Article 18, 3 (a)			(AML and other laws)	
Establish procedures for cooperating with other parties in inquiries on (i) persons and (ii) funds suspected of FT involvement	(b)			(AML and other laws)	
Consider exchanging such information through Interpol	Article 18, 4				
Include customer identification in money transfers			VII	V-9	

Table of Concordance 79

Topic	Convention	Resolutions	FATF SR*	Civil Law (Article)	Common Law (Section)
Ensure that in particular non-profit organizations cannot be used to finance terrorism.			VIII	V-1–V-6	16

* FATF SR denotes Financial Action Task Force Special Recommendation.

Preamble

The States Parties to this Convention,

Bearing in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of goodneighbourliness and friendly relations and cooperation among States,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, contained in General Assembly resolution 50/6 of 24 October 1995,

Recalling also all the relevant General Assembly resolutions on the matter, including resolution 49/60 of 9 December 1994 and its annex on the Declaration on Measures to Eliminate International Terrorism, in which the States Members of the United Nations solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

Noting that the Declaration on Measures to Eliminate International Terrorism also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

Recalling General Assembly resolution 51/210 of 17 December 1996, paragraph 3, subparagraph (f), in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds,

Recalling also General Assembly resolution 52/165 of 15 December 1997, in which the Assembly called upon States to consider, in particular, the implementation of the measures set out in paragraphs 3 (a) to (f) of its resolution 51/210 of 17 December 1996,

Recalling further General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments,

Considering that the financing of terrorism is a matter of grave concern to the international community as a whole,

Noting that the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain,

Noting also that existing multilateral legal instruments do not expressly address such financing,

Being convinced of the urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. “Funds” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.
2. “A State or governmental facility” means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.
3. “Proceeds” means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully

and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

- (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
 - (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.
2. (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;
- (b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.
3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraphs (a) or (b).
4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.
5. Any person also commits an offence if that person:
- (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;
 - (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;
 - (c) Contributes to the commission of one or more offences as set forth in paragraphs 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or

- (ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, paragraph 2, to exercise jurisdiction, except that the provisions of articles 12 to 18 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its domestic law the offences set forth in article 2;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

Article 5

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2. Such liability may be criminal, civil or administrative.
2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

84 APPENDIX II

- (a) The offence is committed in the territory of that State;
 - (b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;
 - (c) The offence is committed by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
 - (a) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State;
 - (b) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State;
 - (c) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act;
 - (d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State;
 - (e) The offence is committed on board an aircraft which is operated by the Government of that State.
3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.
4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.
5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.
6. Without prejudice to the norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 8

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.
2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in article 2 and the proceeds derived from such offences.
3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article.
4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.
5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

Article 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.
2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.
3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:
 - (a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;
 - (b) Be visited by a representative of that State;
 - (c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph (b), or paragraph 2, subparagraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraph 1 or 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 11

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 12

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

3. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

4. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence

needed to establish criminal, civil or administrative liability pursuant to article 5.

5. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 13

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

Article 14

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 15

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 16

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent;
- (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:
 - (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
 - (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
 - (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
 - (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.
3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 17

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 18

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, *inter alia*, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:
 - (a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

(b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

(i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

(ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

(iii) Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;

(iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.

2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:

(a) Measures for the supervision, including, for example, the licensing, of all money transmission agencies;

(b) Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified

information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

- (a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;
 - (b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:
 - (i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;
 - (ii) The movement of funds relating to the commission of such offences.
4. States Parties may exchange information through the International Criminal Police Organization (Interpol).

Article 19

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 20

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 21

Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.

Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 23

1. The annex may be amended by the addition of relevant treaties that:
 - (a) Are open to the participation of all States;
 - (b) Have entered into force;
 - (c) Have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.
2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States Parties and seek their views on whether the proposed amendment should be adopted.
3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.
4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties having deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

Article 24

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.
2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.
3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 25

1. This Convention shall be open for signature by all States from 10 January 2000 to 31 December 2001 at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 26

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 27

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 28

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 10 January 2000.

Annex

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.

3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.
9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

Appendix
III

**Status of the Convention
as of April 15, 2003¹**

Entry into force: April 10, 2002, in accordance with Article 26 (1).

Registration: April 10, 2002, No. 38349.

Status: Signatories: 132, Parties: 79.

Text: Resolution A/RES/54/109; depositary notifications C.N.327.2000.TREATIES-12 of May 30, 2000 (rectification of the original text of the Convention); and C.N.3.2002.TREATIES-1 of January 2, 2002 [proposal for corrections to the original text of the Convention (Arabic, Chinese, English, French, Russian and Spanish authentic texts)] and C.N.86.2002.TREATIES-4 of February 1, 2002 [Rectification of the original of the Convention (Arabic, Chinese, English, French, Russian and Spanish authentic texts)]; C.N.312.2002.TREATIES-14 of April 4, 2002 [proposal of a correction to the original of the Convention (Spanish authentic text)] and C.N.420.2002.TREATIES-20 of May 3, 2002 [rectification of the original of the Convention (Spanish authentic text)].¹

Note: The Convention was adopted by Resolution 54/109 of December 9, 1999 at the fourth session of the General Assembly of the United Nations. In accordance with its article 25 (1), the Convention will be open for signature by all States at United Nations Headquarters from January 10, 2000 to December 31, 2001.

Participant	Signature	Ratification, Acceptance (A), Approval (AA), Accession (a)
Albania	18 Dec 2001	10 Apr 2002
Algeria	18 Jan 2000	8 Nov 2001
Andorra	11 Nov 2001	
Antigua and Barbuda		11 Mar 2002 a
Argentina	28 Mar 2001	
Armenia	15 Nov 2001	
Australia	15 Oct 2001	26 Sep 2002

¹ For current status of ratifications, refer to the following website: <http://untreaty.un.org/english/bible/englishinternetbible/partI/chapterXVIII/treaty11.asp>.

96 APPENDIX III

Austria	24 Sep 2001	15 Apr 2002
Azerbaijan	4 Oct 2001	26 Oct 2001
Bahamas	2 Oct 2001	
Bahrain	14 Nov 2001	
Barbados	13 Nov 2001	18 Sep 2002
Belarus	12 Nov 2001	
Belgium	27 Sep 2001	
Belize	14 Nov 2001	
Benin	16 Nov 2001	
Bhutan	14 Nov 2001	
Bolivia	10 Nov 2001	7 Jan 2002
Bosnia and Herzegovina	11 Nov 2001	
Botswana	8 Sep 2000	8 Sep 2000
Brazil	10 Nov 2001	
Brunei Darussalam		4 Dec 2002 a
Bulgaria	19 Mar 2001	15 Apr 2002
Burundi	13 Nov 2001	
Cambodia	11 Nov 2001	
Canada	10 Feb 2000	19 Feb 2002
Cape Verde	13 Nov 2001	10 May 2002
Central African Republic	19 Dec 2001	
Chile	2 May 2001	10 Nov 2001
China	13 Nov 2001	
Colombia	30 Oct 2001	
Comoros	14 Jan 2000	
Congo	14 Nov 2001	
Cook Islands	24 Dec 2001	
Costa Rica	14 Jun 2000	24 Jan 2003
Côte d'Ivoire		13 Mar 2002 a
Croatia	11 Nov 2001	
Cuba	19 Oct 2001	15 Nov 2001
Cyprus	1 Mar 2001	30 Nov 2001
Czech Republic	6 Sep 2000	
Democratic People's Republic of Korea	12 Nov 2001	
Democratic Republic of the Congo	11 Nov 2001	
Denmark ¹	25 Sep 2001	27 Aug 2002
Djibouti	15 Nov 2001	
Dominican Republic	15 Nov 2001	
Ecuador	6 Sep 2000	
Egypt	6 Sep 2000	
Equatorial Guinea		7 Feb 2003 a
Estonia	6 Sep 2000	22 May 2002
Finland	10 Jan 2000	28 Jun 2002 A
France	10 Jan 2000	7 Jan 2002
Gabon	8 Sep 2000	
Georgia	23 Jun 2000	27 Sep 2002
Germany	20 Jul 2000	
Ghana	12 Nov 2001	6 Sep 2002
Greece	8 Mar 2000	
Grenada		13 Dec 2001 a
Guatemala	23 Oct 2001	12 Feb 2002
Guinea	16 Nov 2001	

Guinea-Bissau	14 Nov 2001	
Honduras	11 Nov 2001	25 Mar 2003
Hungary	30 Nov 2001	14 Oct 2002
Iceland	1 Oct 2001	15 Apr 2002
India	8 Sep 2000	
Indonesia	24 Sep 2001	
Ireland	15 Oct 2001	
Israel	11 Jul 2000	10 Feb 2003
Italy	13 Jan 2000	27 Mar 2003
Jamaica	10 Nov 2001	
Japan	30 Oct 2001	11 Jun 2002 A
Jordan	24 Sep 2001	
Kazakhstan		24 Feb 2003 a
Kenya	4 Dec 2001	
Latvia	18 Dec 2001	14 Nov 2002
Lesotho	6 Sep 2000	12 Nov 2001
Liberia		5 Mar 2003 a
Libyan Arab Jamahiriya	13 Nov 2001	9 Jul 2002
Liechtenstein	2 Oct 2001	
Lithuania		20 Feb 2003 a
Luxembourg	20 Sep 2001	
Madagascar	1 Oct 2001	
Mali	11 Nov 2001	28 Mar 2002
Malta	10 Jan 2000	11 Nov 2001
Marshall Islands		27 Jan 2003 a
Mauritius	11 Nov 2001	
Mexico	7 Sep 2000	20 Jan 2003
Micronesia (Federated States of)	12 Nov 2001	23 Sep 2002
Monaco	10 Nov 2001	10 Nov 2001
Mongolia	12 Nov 2001	
Morocco	12 Oct 2001	19 Sep 2002
Mozambique	11 Nov 2001	14 Jan 2003
Myanmar	12 Nov 2001	
Namibia	10 Nov 2001	
Nauru	12 Nov 2001	
Netherlands ²	10 Jan 2000	7 Feb 2002 A
New Zealand ³	7 Sep 2000	4 Nov 2002
Nicaragua	17 Oct 2001	14 Nov 2002
Nigeria	1 Jun 2000	
Norway	1 Oct 2001	15 Jul 2002
Palau		14 Nov 2001 a
Panama	12 Nov 2001	3 Jul 2002
Paraguay	12 Oct 2001	
Peru	14 Sep 2000	10 Nov 2001
Philippines	16 Nov 2001	
Poland	4 Oct 2001	
Portugal	16 Feb 2000	18 Oct 2002
Republic of Korea	9 Oct 2001	
Republic of Moldova	16 Nov 2001	10 Oct 2002
Romania	26 Sep 2000	9 Jan 2003
Russian Federation	3 Apr 2000	27 Nov 2002
Rwanda	4 Dec 2001	13 May 2002
Saint Kitts and Nevis	12 Nov 2001	16 Nov 2001

98 APPENDIX III

Saint Vincent and the Grenadines	3 Dec 2001	28 Mar 2002
Samoa	13 Nov 2001	27 Sep 2002
San Marino	26 Sep 2000	12 Mar 2002
Saudi Arabia	29 Nov 2001	
Serbia and Montenegro	12 Nov 2001	10 Oct 2002
Seychelles	15 Nov 2001	
Sierra Leone	27 Nov 2001	
Singapore	18 Dec 2001	30 Dec 2002
Slovakia	26 Jan 2001	13 Sep 2002
Slovenia	10 Nov 2001	
Somalia	19 Dec 2001	
South Africa	10 Nov 2001	
Spain	8 Jan 2001	9 Apr 2002
Sri Lanka	10 Jan 2000	8 Sep 2000
Sudan	29 Feb 2000	
Swaziland		4 Apr 2003 a
Sweden	15 Oct 2001	6 Jun 2002
Switzerland	13 Jun 2001	
Tajikistan	6 Nov 2001	
Thailand	18 Dec 2001	
The Former Yugoslav Republic of Macedonia	31 Jan 2000	
Togo	15 Nov 2001	10 Mar 2003
Tonga		9 Dec 2002 a
Tunisia	2 Nov 2001	
Turkey	27 Sep 2001	28 Jun 2002
Uganda	13 Nov 2001	
Ukraine	8 Jun 2000	6 Dec 2002
United Kingdom of Great Britain and Northern Ireland	10 Jan 2000	7 Mar 2001
United Republic of Tanzania		22 Jan 2003 a
United States of America	10 Jan 2000	26 Jun 2002
Uruguay	25 Oct 2001	
Uzbekistan	13 Dec 2000	9 Jul 2001
Venezuela	16 Nov 2001	
Viet Nam		25 Sep 2002 a

¹ With a territorial exclusion with respect to the Faroe Islands and Greenland.

² For the Kingdom in Europe.

³ With a territorial exclusion with respect to Tokelau to the effect that "... consistent with the constitutional status of Tokelau and taking into account the commitment of the Government of New Zealand to the development of self-government for Tokelau through an act of self-determination under the Charter of the United Nations, this ratification shall not extend to Tokelau unless and until a Declaration to this effect is lodged by the Government of New Zealand with the Depositary on the basis of appropriate consultation with that territory."

RESOLUTION 1267 (1999)

**Adopted by the Security Council at its 4051st meeting,
on October 15, 1999**

The Security Council,

Reaffirming its previous resolutions, in particular resolutions 1189 (1998) of 13 August 1998, 1193 (1998) of 28 August 1998 and 1214 (1998) of 8 December 1998, and the statements of its President on the situation in Afghanistan,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan, and its respect for Afghanistan's cultural and historical heritage,

Reiterating its deep concern over the continuing violations of international humanitarian law and of human rights, particularly discrimination against women and girls, and over the significant rise in the illicit production of opium, and stressing that the capture by the Taliban of the Consulate-General of the Islamic Republic of Iran and the murder of Iranian diplomats and a journalist in Mazar-e-Sharif constituted flagrant violations of established international law,

Recalling the relevant international counter-terrorism conventions and in particular the obligations of parties to those conventions to extradite or prosecute terrorists,

Strongly condemning the continuing use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and planning of terrorist acts, and reaffirming its conviction that the suppression of international terrorism is essential for the maintenance of international peace and security,

Deploring the fact that the Taliban continues to provide safe haven to Usama bin Laden and to allow him and others associated with him to operate a network of terrorist training camps from Taliban-controlled territory and to use Afghanistan as a base from which to sponsor international terrorist operations,

Noting the indictment of Usama bin Laden and his associates by the United States of America for, *inter alia*, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania and for conspiring to kill American nationals outside the United States, and

noting also the request of the United States of America to the Taliban to surrender them for trial (S/1999/1021),

Determining that the failure of the Taliban authorities to respond to the demands in paragraph 13 of resolution 1214 (1998) constitutes a threat to international peace and security,

Stressing its determination to ensure respect for its resolutions,

Acting under Chapter VII of the Charter of the United Nations,

1. *Insists* that the Afghan faction known as the Taliban, which also calls itself the Islamic Emirate of Afghanistan, comply promptly with its previous resolutions and in particular cease the provision of sanctuary and training for international terrorists and their organizations, take appropriate effective measures to ensure that the territory under its control is not used for terrorist installations and camps, or for the preparation or organization of terrorist acts against other States or their citizens, and cooperate with efforts to bring indicted terrorists to justice;

2. *Demands* that the Taliban turn over Usama bin Laden without further delay to appropriate authorities in a country where he has been indicted, or to appropriate authorities in a country where he will be returned to such a country, or to appropriate authorities in a country where he will be arrested and effectively brought to justice;

3. *Decides* that on 14 November 1999 all States shall impose the measures set out in paragraph 4 below, unless the Council has previously decided, on the basis of a report of the Secretary-General, that the Taliban has fully complied with the obligation set out in paragraph 2 above;

4. *Decides* further that, in order to enforce paragraph 2 above, all States shall:

(a) Deny permission for any aircraft to take off from or land in their territory if it is owned, leased or operated by or on behalf of the Taliban as designated by the Committee established by paragraph 6 below, unless the particular flight has been approved in advance by the Committee on the grounds of humanitarian need, including religious obligation such as the performance of the Hajj;

(b) Freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban, as designated by the Committee established by paragraph 6 below, and ensure that neither they nor any other funds or financial resources so designated are made available, by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorized by the Committee on a case-by-case basis on the grounds of humanitarian need;

5. *Urges* all States to cooperate with efforts to fulfil the demand in paragraph 2 above, and to consider further measures against Usama bin Laden and his associates;

6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

(a) To seek from all States further information regarding the action taken by them with a view to effectively implementing the measures imposed by paragraph 4 above;

(b) To consider information brought to its attention by States concerning violations of the measures imposed by paragraph 4 above and to recommend appropriate measures in response thereto;

(c) To make periodic reports to the Council on the impact, including the humanitarian implications, of the measures imposed by paragraph 4 above;

(d) To make periodic reports to the Council on information submitted to it regarding alleged violations of the measures imposed by paragraph 4 above, identifying where possible persons or entities reported to be engaged in such violations;

(e) To designate the aircraft and funds or other financial resources referred to in paragraph 4 above in order to facilitate the implementation of the measures imposed by that paragraph;

(f) To consider requests for exemptions from the measures imposed by paragraph 4 above as provided in that paragraph, and to decide on the granting of an exemption to these measures in respect of the payment by the International Air Transport Association (IATA) to the aeronautical authority of Afghanistan on behalf of international airlines for air traffic control services;

(g) To examine the reports submitted pursuant to paragraph 9 below;

7. *Calls upon* all States to act strictly in accordance with the provisions of this resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of coming into force of the measures imposed by paragraph 4 above;

8. *Calls upon* States to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed by paragraph 4 above and to impose appropriate penalties;

9. *Calls upon* all States to cooperate fully with the Committee established by paragraph 6 above in the fulfilment of its tasks, including supplying such information as may be required by the Committee in pursuance of this resolution;

10. *Requests* all States to report to the Committee established by paragraph 6 above within 30 days of the coming into force of the measures imposed by paragraph 4 above on the steps they have taken with a view to effectively implementing paragraph 4 above;

11. *Requests* the Secretary-General to provide all necessary assistance to the Committee established by paragraph 6 above and to make the necessary arrangements in the Secretariat for this purpose;

12. *Requests* the Committee established by paragraph 6 above to determine appropriate arrangements, on the basis of recommendations of the Secretariat, with competent international organizations, neighbouring and other States, and parties concerned with a view to improving the monitoring of the implementation of the measures imposed by paragraph 4 above;

13. *Requests* the Secretariat to submit for consideration by the Committee established by paragraph 6 above information received from Governments and public sources on possible violations of the measures imposed by paragraph 4 above;

14. *Decides* to terminate the measures imposed by paragraph 4 above once the Secretary-General reports to the Security Council that the Taliban has fulfilled the obligation set out in paragraph 2 above;

15. *Expresses* its readiness to consider the imposition of further measures, in accordance with its responsibility under the Charter of the United Nations, with the aim of achieving the full implementation of this resolution;

16. *Decides* to remain actively seized of the matter.

Resolution No. 1373 (2001)

**Adopted by the Security Council at its 4385th meeting,
on September 28, 2001**

The Security Council,

Reaffirming its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall:
 - (a) Prevent and suppress the financing of terrorist acts;

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. Decides also that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. Calls upon all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. Notes with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. Declares that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. Directs the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. Expresses its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. Decides to remain seized of this matter.

Resolution 1390 (2002)

**Adopted by the Security Council at its 4452nd meeting,
on January 16, 2002**

The Security Council,

Recalling its resolutions 1267 (1999) of 15 October 1999, 1333 (2000) of 19 December 2000 and 1363 (2001) of 30 July 2001,

Reaffirming its previous resolutions on Afghanistan, in particular resolutions 1378 (2001) of 14 November 2001 and 1383 (2001) of 6 December 2001,

Reaffirming also its resolutions 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001, and *reiterating* its support for international efforts to root out terrorism, in accordance with the Charter of the United Nations,

Reaffirming its unequivocal condemnation of the terrorist attacks which took place in New York, Washington and Pennsylvania on 11 September 2001, expressing its determination to prevent all such acts, *noting* the continued activities of Usama bin Laden and the Al-Qaida network in supporting international terrorism, and expressing its determination to root out this network,

Noting the indictments of Usama bin Laden and his associates by the United States of America for, inter alia, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania,

Determining that the Taliban have failed to respond to the demands in paragraph 13 of resolution 1214 (1998) of 8 December 1998, paragraph 2 of resolution 1267 (1999) and paragraphs 1, 2 and 3 of resolution 1333 (2000),

Condemning the Taliban for allowing Afghanistan to be used as a base for terrorists training and activities, including the export of terrorism by the Al-Qaida network and other terrorist groups as well as for using foreign mercenaries in hostile actions in the territory of Afghanistan,

Condemning the Al-Qaida network and other associated terrorist groups, for the multiple criminal, terrorist acts, aimed at causing the deaths of numerous innocent civilians, and the destruction of property,

Reaffirming further that acts of international terrorism constitute a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* to continue the measures imposed by paragraph 8 (c) of resolution 1333 (2000) and *takes note* of the continued application of the measures imposed by paragraph 4 (b) of resolution 1267 (1999), in accordance with paragraph 2 below, and *decides* to terminate the measures imposed in paragraph 4 (a) of resolution 1267 (1999);

2. *Decides* that all States shall take the following measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000) to be updated regularly by the Committee established pursuant to resolution 1267 (1999) hereinafter referred to as “the Committee”;

(a) Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons’ benefit, by their nationals or by any persons within their territory;

(b) Prevent the entry into or the transit through their territories of these individuals, provided that nothing in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals and this paragraph shall not apply where entry or transit is necessary for the fulfilment of a judicial process or the Committee determines on a case by case basis only that entry or transit is justified;

(c) Prevent the direct or indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities;

3. *Decides* that the measures referred to in paragraphs 1 and 2 above will be reviewed in 12 months and that at the end of this period the Council will either allow these measures to continue or decide to improve them, in keeping with the principles and purposes of this resolution;

4. *Recalls* the obligation placed upon all Member States to implement in full resolution 1373 (2001), including with regard to any member of the Taliban and the Al-Qaida organization, and any individuals, groups, undertakings and entities associated with the Taliban and the Al-Qaida organization, who have participated in the financing, planning,

facilitating and preparation or perpetration of terrorist acts or in supporting terrorist acts;

5. *Requests* the Committee to undertake the following tasks and to report on its work to the Council with its observations and recommendations;

(a) to update regularly the list referred to in paragraph 2 above, on the basis of relevant information provided by Member States and regional organizations;

(b) to seek from all States information regarding the action taken by them to implement effectively the measures referred to in paragraph 2 above, and thereafter to request from them whatever further information the Committee may consider necessary;

(c) to make periodic reports to the Council on information submitted to the Committee regarding the implementation of this resolution;

(d) to promulgate expeditiously such guidelines and criteria as may be necessary to facilitate the implementation of the measures referred to in paragraph 2 above;

(e) to make information it considers relevant, including the list referred to in paragraph 2 above, publicly available through appropriate media;

(f) to cooperate with other relevant Security Council Sanctions Committees and with the Committee established pursuant to paragraph 6 of its resolution 1373 (2001);

6. *Requests* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement the measures referred to in paragraph 2 above;

7. *Urges* all States, relevant United Nations bodies, and, as appropriate, other organizations and interested parties to cooperate fully with the Committee and with the Monitoring Group referred to in paragraph 9 below;

8. *Urges* all States to take immediate steps to enforce and strengthen through legislative enactments or administrative measures, where appropriate, the measures imposed under domestic laws or regulations against their nationals and other individuals or entities operating on their territory, to prevent and punish violations of the measures referred to in paragraph 2 of this resolution, and to inform the Committee of the adoption of such measures, and *invites* States to report the results of all related investigations or enforcement actions to the Committee unless to do so would compromise the investigation or enforcement actions;

9. *Requests* the Secretary-General to assign the Monitoring Group established pursuant to paragraph 4 (a) of resolution 1363 (2001), whose mandate expires on 19 January 2002, to monitor, for a period of 12 months, the implementation of the measures referred to in paragraph 2 of this resolution;

10. *Requests* the Monitoring Group to report to the Committee by 31 March 2002 and thereafter every 4 months;

11. *Decides* to remain actively seized of the matter.

Recognising the vital importance of taking action to combat the financing of terrorism, the FATF has agreed these Recommendations, which, when combined with the FATF Forty Recommendations on money laundering, set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts.

I. Ratification and implementation of UN instruments

Each country should take immediate steps to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism. Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373.

II. Criminalizing the financing of terrorism and associated money laundering

Each country should criminalise the financing of terrorism, terrorist acts and terrorist organisations. Countries should ensure that such offences are designated as money laundering predicate offences.

III. Freezing and confiscating terrorist assets

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.

IV. Reporting suspicious transactions related to terrorism

If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that

¹ Adopted by the FATF Extraordinary Plenary at Washington D.C., October 30, 2001.

funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

V. International cooperation

Each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations.

Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations, and should have procedures in place to extradite, where possible, such individuals.

VI. Alternative remittance

Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.

VII. Wire transfers

Countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related message through the payment chain.

Countries should take measures to ensure that financial institutions, including money remitters, conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information (name, address and account number).

VIII. Non-profit organizations

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- (i) by terrorist organisations posing as legitimate entities;

- (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

**2.1 CRIMINAL JUSTICE MEASURES AND INTERNATIONAL
CO-OPERATION*****I. Criminalisation of ML and FT***

1. The jurisdiction should have ratified and fully implemented the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention), the UN International Convention for the Suppression of the Financing of Terrorism 1999, and the UN Convention Against Transnational Organized Crime 2000 (Palermo Convention), as well as other regional AML/CFT conventions (e.g. the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime), where applicable. Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373. (see FATF 1, 35, I).

2. Each jurisdiction should criminalise money laundering on the basis of the Palermo and Vienna Conventions (see FATF 4).

- 2.1 The offence of ML may extend not only to those persons who have committed ML, but also to persons who have committed both the laundering and the predicate offence.
- 2.2 It should not be necessary that a person be convicted of a predicate offence to establish that assets were the proceeds of a predicate offence and to convict any person of laundering such proceeds.
- 2.3 Predicate offences for ML should extend to all serious offences, including drug trafficking and FT offences. (see FATF 4, II) It is possible to identify ML predicate offences by list or generically, including by length of penalty.
- 2.4 The offence of ML should extend to any type of property that directly or indirectly represents the proceeds of crime.

¹ Sections related to the financing of terrorism, wherein all italics are in the original. Endorsed by the International Monetary Fund, the World Bank, and the Financial Action Task Force. For complete text, see <http://www.imf.org/external/np/mae/aml/2002/eng/110802.pdf>.

- 2.5 The predicate offences for ML should extend to conduct that occurred in another country, and which would have constituted a predicate offence had it occurred domestically.
3. FT should be criminalised on the basis of the Convention for the Suppression of the Financing of Terrorism (see FATF II).
 - 3.1 The FT offence should also apply when the terrorists or terrorist organisations are located in another jurisdiction or when the terrorist acts take place in another jurisdiction (see FATF II).
4. The offences of ML and FT should apply at least to those individuals or legal entities that knowingly engage in ML or FT activity. Laws should provide that the intentional element of the offences of ML and FT may be inferred from objective factual circumstances. (see FATF 5).
 - 4.1 If permissible under the jurisdiction's legal system, the offences of ML and FT should extend to legal entities (e.g., companies, foundations) (see FATF 6).
5. Laws should provide for effective, proportionate and dissuasive criminal, civil or administrative sanctions for ML and FT.
6. *Legal means and resources should be adequate to enable an effective implementation of ML and FT laws.*

II. Confiscation of proceeds of crime or property used to finance terrorism

7. Laws should provide for the confiscation of laundered property², proceeds from, and instrumentalities used in or intended for use in the commission of any ML or predicate offence, and property of corresponding value. Laws should provide for the confiscation of property that is the proceeds of, or used in, or intended or allocated for use in FT. (see FATF 7, III).
 - 7.1 Laws and other measures should provide for the freezing and/or seizing of property that is, or may become, subject to confiscation. Such laws or measures may provide that the initial application to freeze or seize property can be made on an ex parte basis.
 - 7.2 If permissible under the jurisdiction's legal system, States should consider laws that provide for the confiscation of the property of organisations that are found to be primarily

² Property should include property that is income or profit derived from the proceeds of crime [footnote in original].

criminal in nature (i.e. organisations whose principal function is to perform or assist in the performance of illegal activities).

- 7.3 Laws should provide for confiscation of property of corresponding value, in the event that property that is subject to confiscation is not available (see FATF 7, III).
- 7.4 If permissible under the jurisdiction's legal system, jurisdictions should consider laws which allow for confiscation without conviction (*civil forfeiture*), in addition to the system of confiscation triggered by a criminal conviction.
8. Law enforcement agencies, the FIU or other competent authorities should be given adequate powers to identify and trace property that is, or may become, subject to confiscation or is suspected of being the proceeds of crime or used for FT (see FATF 7, III).
9. Laws should provide protections for the rights of bona fide third parties. Such protections should be consistent with the standards provided in the Palermo Convention and Strasbourg Convention, where applicable (see FATF 7).
10. In addition to confiscation and criminal sanctions, if permissible under the jurisdiction's legal system, there should be authority to void contracts or render them unenforceable where parties to the contract knew or should have known that as a result of the contract the authorities would be prejudiced in their ability to recover financial claims resulting from the operation of AML/CFT laws (see FATF 7).
11. *Authorities should keep statistics on the amounts of property frozen, seized, and confiscated relating to ML, the predicate offences and FT (see FATF 7, 38)*
12. *Training should be provided to administrative, investigative, prosecutorial, and judicial authorities for enforcing laws related to the freezing, seizure, and confiscation of property.*
13. Laws and other measures should provide for freezing without delay of funds or other property of terrorists, those who finance terrorism and terrorist organisations, in accordance with the United Nations resolutions relating to the prevention and suppression of FT (e.g., U.N.SCRs 1267, 1269, 1390) (see FATF III)
 - 13.1 *Authorities should keep statistics on the amounts of property frozen relating to FT and the number of individuals or entities whose property have been frozen.*
14. Competent authorities should have the power to identify and freeze the property of suspected terrorists, those who finance terrorism and terrorist

organisations, even where the names of such persons do not appear on the list(s) maintained by the relevant committees of the U.N. Security Council.

15. If permissible under the jurisdiction's legal system, the jurisdiction should consider establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used in the management of seized and confiscated property, as well as for law enforcement, health, education or other appropriate purposes (see Interpretative Note to FATF 38).

16. If permissible under the jurisdiction's legal system, the jurisdiction should consider asset sharing mechanisms to enable it to share confiscated property with other jurisdictions, particularly when confiscation is directly or indirectly the result of co-ordinated law enforcement actions. Unless otherwise agreed, such reciprocal sharing arrangements should not impose conditions on jurisdictions receiving the shared property. (see FATF 38, Interpretative Note to FATF 38).

[...]

V. International Co-operation

34. There should be laws and procedures allowing the provision of the widest possible range of mutual legal assistance in AML/CFT matters, whether requiring the use of compulsory measures or not, and including the production of records by financial institutions and other persons, the search of persons and premises, seizure and obtaining of evidence for use in AML/CFT investigations and prosecutions and in related actions in foreign jurisdictions (see FATF 3, 32, 34, 36, 37, 38, 40, I and V).

34.1 There should be appropriate laws and procedures to provide effective mutual legal assistance in AML/CFT investigations or proceedings where the requesting jurisdiction is seeking: (i) the production or seizure of information, documents, or evidence (including financial records) from financial institutions, other entities, or natural persons; searches of financial institutions, other entities, and domiciles; (ii) the taking of witnesses' statements; and (iii) identification, freezing, seizure, or confiscation of assets laundered or intended to be laundered, the proceeds of ML and assets used for or intended to be used for FT, as well as the instrumentalities of such offences, and assets of corresponding value (see FATF 34, 37, 38, V).

34.2 Assistance should be provided in investigations and proceedings where persons have committed both the money laundering and the predicate offence as well as in investigations and proceedings where persons have committed the money laundering offence only (see FATF 33).

35. *The provision of mutual legal assistance should be used to the fullest extent possible to give effect to requests for assistance from foreign authorities relative to ML and predicate offence investigations, prosecutions, confiscations, extraditions, and other actions and proceedings.*

35.1 *To the greatest extent possible, differing standards in the requesting and in the requested jurisdiction concerning the intentional elements of the offence under domestic law should not affect the ability to provide mutual legal assistance (see FATF 33).*

35.2 *The authorities should give timely and effective follow up to requests for mutual legal assistance (see FATF 37, 38).*

35.3 *Authorities should keep statistics on all mutual legal assistance and other requests that are made or received, relating to ML, the predicate offences and FT, including details of the nature and result of the request.*

36. International co-operation should be supported through the use of conventions, treaties, agreements or arrangements, whether bilateral or multilateral (see FATF 3, 34).

37. There should be arrangements in place for law enforcement authorities to exchange information regarding the subjects of investigations with their international counterparts, based on agreements in force and by other mechanisms for co-operation. *The authorities should record the number, source, and purpose of the request for such information exchange, as well as its resolution (see FATF 34, V).*

38. Co-operative investigations, including controlled delivery, with other countries' appropriate competent authorities should be authorised, provided that adequate safeguards are in place e.g. a need for judicial authorisation (see FATF 3, 36).

39. *There should be arrangements for co-ordinating seizure and forfeiture actions, including, where permissible, authorising the sharing of confiscated assets with other countries when confiscation is directly or indirectly a result of co-ordinated law enforcement actions (see FATF 38, 39).*

40. There should be laws and procedures to extradite individuals charged with a ML or FT offence or related offences (see FATF 3, 40, V).

40.1 Where a jurisdiction does not extradite its own nationals pursuant to extradition requests, that jurisdiction should, at the request of the jurisdiction seeking extradition, and in accordance with the general principles relating to mutual assistance, submit the case without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request.

41. *Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations, and should have procedures in place to extradite, where possible, such individuals. (FATF V).*

42. *Relevant authorities should be provided adequate financial, human or technical resources to ensure adequate oversight and to conduct investigations and to respond promptly and fully to requests for assistance received from other countries.*

Title I. Definitions¹

For the purposes of this law:

1. “Funds” and “property” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such assets, including but not limited to bank credits, traveler’s checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit.²
2. “State or government facility” means any permanent or temporary facility or conveyance that is used or occupied by representatives of a state, members of a government, the legislature or judiciary, or by officials or employees of a state or any other public authority or entity, or by employees or officials of an intergovernmental organization in connection with their official duties.³
3. “Proceeds” means any funds derived from or obtained, directly or indirectly, through the commission of an offense set forth in Article I-2.⁴
4. “Convention” means the International Convention for the Suppression of the Financing of Terrorism, opened for signature on January 10, 2000.

¹ The structure of the law, as well as some of its provisions, particularly Title IV on international cooperation, are adapted from the Model Legislation on Laundering, Confiscation, and International Cooperation in Relation to the Proceeds of Crime (1999) established by the United Nations Office on Drugs and Crime. The drafter will find other provisions in that model legislation that can be included in this law.

² Article 1, paragraph 1 of the Convention.

³ Article 1, paragraph 2 of the Convention.

⁴ Article 1, paragraph 3 of the Convention.

Title II. Offenses

Article II-1. Financing of Terrorism⁵

1. Any person commits the offense of the financing of terrorism who by any means, directly or indirectly, [unlawfully and willfully],⁶ provides or collects funds, or tries to provide or collect funds [**Option:** , or provides or tries to provide financial or other services]⁷ with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) an act which constitutes an offense within the scope of and as defined in one of the treaties listed in the annex to the Convention on the suppression of the financing of terrorism, and to which [*name of the country adopting the law*] is a party;

(b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act.

2. **Variante 1:**⁸ [For an act to constitute an offense in the sense of paragraph 1, it shall not be necessary that the funds were actually used to carry out an offense referred to in paragraph 1, subparagraph (a) or (b).] **Variante 2:** [The offense exists independently of the eventual occurrence of an act referred to in paragraph 1, subparagraph (a) or (b)].

3. Any person also commits an offense if that person:⁹

(a) participates as an accomplice in an offense as set forth in paragraph 1 or 3 of this article;

⁵ Article 2 of the Convention.

⁶ These terms appear in the text of the Convention but seem redundant. An offense is necessarily unlawful and there does not seem to be any case where the financing of terrorism could be lawful. As for the willful nature of the crime, this refers to the intention to commit the offense, which is covered in the definition of the offense itself.

⁷ This options extends the definition of the financing of terrorism under the Convention to include the requirement stipulated under Article 1(d) of Security Council Resolution 1373 (2001).

⁸ The first variante repeats the language of Article 2 of the Convention. The second variante is a simpler formulation, borrowed from Article 421-2-2 of the French penal code.

⁹ Article 2, paragraph 5 of the Convention.

(b) organizes or directs others to commit an offense as set forth in paragraphs 1 or 3 of this article.

(c) contributes to the commission of one or more offenses as set forth in paragraphs 1 or 3 of this article by a group of persons acting with a common purpose, when this contribution is made with full knowledge of the intention of the group to commit an offense as set forth in paragraph 1 of this article or when its aim is to facilitate the criminal activity of the group or to serve its purposes, and that activity or purpose involves the commission of an offense as set forth in paragraph 1 of this article;¹⁰

Article II-2. Justifications Not Allowed

No consideration of a political, philosophical, ideological, racial, ethnic, religious, or other similar nature may be taken into account in order to justify the commission of any of the aforementioned offenses.¹¹

Title III. Coercive Measures^[12]

Chapter 1. Punishment of Offenses

Section 1. Penalties Applicable

Article III-1. Financing of Terrorism

The penalty of imprisonment of ... to ... and a fine of ... to ... is imposed on anyone who commits a terrorism financing offense.

An attempt to commit a terrorism financing offense is punishable **Option 1:** [as if the offense had itself been committed] **Option 2:** [by a penalty reduced by a *[fraction]* in relation to the main penalty].

Complicity in an offense, its organization, orders given and assistance provided for its commission are punishable as if the offense had itself been committed.

¹⁰ Article 2, paragraph 5 of the Convention.

¹¹ Article 6 of the Convention.

¹² The structure of this title and the next is borrowed from the Model Legislation on Laundering, Confiscation, and International Cooperation in Relation to the Proceeds of Crime (1999) developed by the United Nations Office on Drugs and Crime. The drafter will find other provisions in this model legislation that can be included in this law.

Article III-2. Association or Conspiracy to Commit Terrorism Financing

The same penalties apply to participation in an association or conspiracy to commit the offenses referred to in Article I-2.

Article III-3. Penalties Applicable to Corporate Entities

When a terrorism financing offense is committed by an agent or representative under their management or control, corporate entities, other than the state, are punished by a fine equal to [*a multiple— for example, five times*] the fine specified for natural persons, without prejudice to the conviction of the latter as perpetrators or accomplices of the offense.

Corporate entities may additionally be:

- (a) banned permanently or for a maximum period of five years from directly or indirectly carrying on certain business activities;
- (b) ordered to close permanently or for a maximum period of five years their premises that were used for the commission of the offense;
- (c) dissolved if they were created for the purpose of committing the offense;
- (d) required to publicize the judgment in the press or any other audiovisual media.

Article III-4. Aggravating Circumstances

Variant (a): The penalty imposed under Articles II-1, II-2, and II-3 may be increased to imprisonment of ... to ... and a fine of ... to ...:

Variant (b): The penalty imposed under Articles II-1, II-2, and II-3 may be increased by ... [*one third or other proportion determined on the basis of the general penal system in force*]:

when the offense is perpetrated in the context of a criminal organization.

Article III-5. Mitigating Circumstances

The general system of mitigating circumstances provided in [...provisions of the criminal code on mitigating circumstances] is applicable to the offenses provided for under Article I-2.

Section 2. Confiscation

Article III-6. Confiscation

In the event of a conviction for an offense referred to in Article I-2, an order is issued for confiscation of the funds and assets used or intended to be used

124 APPENDIX VII

to commit the offense, the funds and assets that are the subject of the offense, as well as the proceeds of the offense.

The confiscation order specifies the funds and assets concerned and contains the necessary details to identify and locate them.

When the funds and assets to be confiscated cannot be produced, confiscation may be ordered for their value.

Anyone who claims to have a right over the assets or funds that are the subject of a confiscation order may appeal to the jurisdiction that issued the order within one year of the date of that order.

Article III-7. Nullity of Certain Instruments

Any instrument executed free of charge or for a consideration *inter vivos* or *mortis causa*, the purpose of which is to safeguard property from confiscation measures as provided in this section, is void.

In the case of the nullification of a contract involving payment, the buyer is reimbursed only for the amount actually paid.

Article III-8. Disposal of Confiscated Property

Confiscated funds accrue to the state, which may allocate them to a fund for combating organized crime or terrorism, or for compensating the victims of the offenses associated with terrorism, or their families. They remain encumbered, up to their value, by any rights *in rem* lawfully established in favor of third parties.

In cases where confiscation is ordered under a judgment by default, the confiscated funds accrue to the state and are realized in accordance with the relevant procedures on the subject. However, if the court, ruling on an application to set aside such judgment, acquits the person prosecuted, it orders restitution of the value of the funds confiscated by the state, unless it is established that such property represents the proceeds of a crime or offense.

Chapter 2. Freezing of Funds in Application of United Nations Security Council Resolutions

Article III-9. Freezing of Funds

The [*Prime Minister, Minister of Finance, Minister of Foreign Affairs, Minister of Justice*] may, by administrative decision, order the freezing of

funds and assets of individuals and organizations designated by the United Nations Security Council acting under Chapter VII of the United Nations Charter.¹³ This decision is published in the ... [*name of the official journal*].

Article III-10. Procedure for Disputing Administrative Measures to Freeze Funds

Any individual or organization whose funds have been frozen pursuant to Article II-9 and feels that they were included on the list as the result of an error may seek to have their name removed from the list by submitting a request to this effect within thirty days of the publication of the list to the minister who ordered the freezing, indicating all factors that could demonstrate the error. The minister's decision with respect to this request cannot be appealed.

Chapter 3. On Freezing, Provisional Measures, and Seizure in Criminal Matters

Article III-11. On Provisional Measures

[...*name of the judicial authority competent to order provisional measures*] may, ex officio or at the request of the public prosecutor's office [**Option:** or a competent agency], order any provisional measures at state expense, including the freezing of funds and financial transactions involving assets, regardless of their nature, that can be seized or confiscated.

The lifting of these measures can be ordered at any time at the request of the public prosecutor's office or, after notice from the latter, at the request of the competent agency or the owner.

Article III-12. Seizure¹⁴

[...*name of competent judicial authorities and officials responsible for the detection and suppression of terrorism financing offenses*] may seize assets associated with the offense that is the subject of investigation, in particular funds used or intended to be used to commit the offenses referred to in

¹³ Security Council Resolutions 1267 (1999), 1333 (2000), and 1390 (2002). According to the FATF definition, freezing (also called block or restraint) occurs when a competent government or judicial authority takes control of the funds involved and prevents their original owner from accessing or transferring them. However, the funds remain the property of the original owner and may continue to be administered by the financial institution or other management arrangement designated by the owner.

¹⁴ According to the FATF definition, seizure occurs when the competent government or judicial authority takes control of the funds in question. The funds remain the property of their original owner, although the competent authority may still keep possession of them and provide for their administration or management.

Article I-2, as well as the proceeds of these offenses, and all evidence facilitating their identification.

Title IV. Jurisdiction of the Courts of ... [*name of the country adopting the law*]¹⁵

Article IV-1. Jurisdiction of the Courts

The criminal law of ... [*name of the country adopting the law*] is applicable to the offenses indicated in Article I-2 when:

- (a) the offense was committed in its territory;
- (b) the offense was committed on board a vessel flying its flag or an aircraft registered pursuant to its laws at the time the offense was committed;
- (c) the offense was committed by one of its nationals;
- (d) the offense was committed outside its territory by someone now present in its territory, in all cases where [*...name of the country adopting the law*] does not extradite such a person to a state requesting extradition for the same offense;
- (e) the offense was directed to or resulted in the commission of an offense indicated in Article I-2, paragraph 1, subparagraph (a) or (b), in its territory or against one of its nationals;
- (f) the offense was directed to or resulted in the commission of an offense indicated in Article I-2, paragraph 1, subparagraph (a) or (b), against a government facility of that state located outside its territory, including its diplomatic or consular premises;
- (g) the offense was directed to or resulted in the commission of an offense indicated in Article I-2, paragraph 1, subparagraph (a) or (b), in an attempt to compel that state to do or abstain from doing any act;
- (h) the offense was committed by a stateless person who has his or her habitual residence in the territory of that state.
- (i) the offense was committed on board an aircraft operated by the government of that state.

¹⁵ Adapted from Article 7 of the Convention. To the extent that the general legal provisions of the country adopting the law include within the competence of that country's criminal law any of the cases listed here, such cases may be omitted from the special law. The Convention makes jurisdiction compulsory in the cases indicated in subparagraphs (a) through (d). It is optional in cases (e) through (i).

Article IV-2. Territorial Jurisdiction

The court of [name of capital city] is competent to hear cases involving offenses committed outside the national territory.

Title V. International Cooperation

Chapter 1. General Provisions

Article V-1. General Provisions¹⁶

The authorities of [*...name of the country adopting the law*] agree to cooperate as much as possible with those of other states for the purposes of information exchange, investigation, and proceedings, provisional measures and confiscations of instruments and proceeds associated with laundering, for purposes of extradition as well as purposes of mutual technical assistance.

Chapter 2. Measures Relating to Persons Under Investigation

Article V-2. Investigations

When the public prosecutor's office is informed that the perpetrator or presumed perpetrator of an offense indicated in Article I-2 may be located in its territory, it takes the necessary steps to investigate the facts brought to its notice.

Article V-3. Special Measures

If the public prosecutor's office feels that circumstances warrant, it takes appropriate steps to ensure the presence of that person for purposes of prosecution or extradition, when necessary requesting that a preliminary investigation be opened and that the person subject to investigation be placed under judicial control or in detention.

Article V-4. Right of Communication

Anyone with respect to whom the measures indicated in Article V-3 are applied is entitled to:

- (a) communicate without delay with the nearest representative of the state where he or she is a citizen or with someone otherwise qualified to protect his or her rights or, in the case of a stateless person, the country where he or she customarily maintains a residence;

¹⁶ Article 12 of the Convention.

- (b) be visited by a representative of that state;
- (c) be informed of the rights afforded him or her under subparagraphs (a) and (b) of this paragraph.

When the public prosecutor's office receives the request from a state that has established its jurisdiction over the offense in accordance with Article 7, paragraphs 1 (b) and 2 (b) of the Convention, it makes the necessary arrangements to ensure that the person detained under Article IV-3 can be visited by a representative from the International Red Cross.

Article V-5. Notification to Competent States

When the person who is the subject of the investigation indicated in Article IV-2 has been detained, the public prosecutor's office immediately informs, directly or through the Secretary General of the United Nations, the states that have established their jurisdiction over the offense and, if deemed appropriate, any other interested states, of the detention as well as of the circumstances justifying the detention. The public prosecutor promptly informs said states of the conclusions of the investigation and indicates to them whether it intends to exercise its jurisdiction.

Chapter 3. Requests for Judicial Cooperation

Article V-6. Purpose of Requests for Cooperation

At the request of a foreign state, requests for cooperation relating to the offenses indicated in Article I-2 of this law are executed in accordance with the principles set forth in this title. Cooperation may specifically include:

- gathering evidence or taking depositions;
- providing assistance to make detained persons or others available to the judicial authorities of the requesting state in order to give evidence or assist in investigations;
- serving judicial documents;
- carrying out searches and seizures;
- examining objects and sites;
- providing information and evidentiary items;
- providing originals or certified copies of relevant files and documents, including bank statements, accounting documents, and records showing the operations of a company or its business activities.

Article V-7. Refusal to Execute Requests

1. A request for cooperation may be refused only:¹⁷

(a) if there are serious grounds for believing that the measures being requested or the decision being sought are directed at the person in question solely on account of that person's race, religion, nationality, ethnic origin, political opinions;¹⁸

(b) if it was not made by a competent authority according to the legislation of the requesting country or if it was not transmitted in the proper manner;

(c) if the offense to which it relates is the subject of criminal proceedings or has already been the subject of a final judgment in the territory of ... [*name of the country adopting the law*].

2. Bank secrecy may not be invoked as grounds for refusing to comply with the request.

3. The public prosecutor's office may appeal a court's decision to refuse compliance within [...] days following such decision.

4. The government of [*name of the country adopting the law*] promptly informs the foreign government of the grounds for refusing to comply with the request.

Article V-8. Request for Investigatory Measures

Investigatory measures are undertaken in conformity with the legislation of ... [*name of the country adopting the law*] unless the competent foreign authorities have requested that a specific procedure compatible with the legislation of ... [*name of the country adopting the law*] be followed.

A judicial officer or public official appointed by the competent foreign authority may attend the execution of the measures, depending on whether they are carried out by a judicial officer or by a public official.

Article V-9. Request for Provisional Measures

A court that is requested by a competent foreign authority to order provisional measures orders such measures in accordance with the legislation of ... [*name of the country adopting the law*]. It may also take a measure whose effects correspond most closely to the measures sought. If

¹⁷ Only the case indicated in paragraph (a) is specified in the Convention. The other cases are mentioned as examples. The drafter will find other topics in the model legislation mentioned above.

¹⁸ Article 15 of the Convention (which also covers extradition).

the request is worded in general terms, the court orders the most appropriate measures provided for under the legislation.

Should it refuse to comply with measures not provided for under the legislation of ... [*name of the country adopting the legislation*], the court receiving the request to carry out the provisional measures ordered abroad may replace them with measures provided for under that legislation and whose effects correspond most closely to the measures whose execution is being sought.

The provisions relating to the lifting of provisional measures as set forth in Article II-11, paragraph 2 of this law are applicable.

Article V-10. Request for Confiscation

In the case of a request for judicial cooperation in order to issue a confiscation order, the court rules after referring the matter to the prosecuting authority. The confiscation order must apply to funds used or intended to be used to commit a terrorism financing offense or that constitute the proceeds of such an offense, and that are located in the territory of ... [*name of the country adopting the law*].

The court receiving the request for the enforcement of a confiscation order issued abroad is bound by the findings as to facts on which the order is based and may refuse to grant the request solely on one of the grounds stated in Article IV-7.

Article V-11. Disposal of Confiscated Goods

The state ... [*name of the country adopting the law*] has the power to dispose of funds confiscated in its territory at the request of foreign authorities.

However, the state may reach agreements with foreign states providing for the sharing, systematically or on a case-by-case basis, of funds derived from confiscations ordered upon request.

Chapter 4. Extradition

Article V-12. Requests for Extradition

In the case of a request for extradition, the provisions of the Convention, procedures and principles not contrary to the Convention and set forth in an extradition treaty in force between the requesting state and ... [*name of the country adopting the law*] as well as the provisions of this law apply.

Article V-13. Security Measures

If it feels that the circumstances warrant, the public prosecutor's office takes appropriate steps to ensure the presence of the person covered by the request for extradition, when necessary asking the court receiving the request for extradition to place him or her under judicial control or in detention.

Article V-14. Double Criminality

Under this law, extradition shall be carried out only if the offense giving rise to extradition or a similar offense is provided for under the legislation of the requesting state and of ... [*name of the country adopting the law*].

Article V-15. Mandatory Grounds for Refusal

Extradition is not granted:

- (a) If there are serious grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex, or status, or that that person's position may be prejudiced for any of those reasons;¹⁹
- (b) If a final judgment has been rendered in ... [*name of the country adopting the law*] in respect of the offense for which extradition was requested;
- (c) if the person whose extradition is requested has, under the legislation of either country, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;
- (d) if the person whose extradition is requested has been or would be subjected in the requesting state to torture or cruel, inhuman, or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in Article 14 of the International Covenant on Civil and Political Rights;

Article V-16. Optional Grounds for Refusal

Extradition may be refused:

- (a) if prosecution in respect of the offense for which extradition is requested is pending in ... [*name of the country adopting the law*] against the person whose extradition is requested;

¹⁹ Article 15 of the Convention (which also covers judicial cooperation).

(b) if the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting state by an extraordinary or ad hoc court or tribunal;

(c) if ... [*name of the country adopting the law*], while also taking into account the nature of the offense and the interests of the requesting state, considers that, in the circumstances of the case, the extradition of the person in question would be incompatible with humanitarian considerations in view of the age, health, or other personal circumstances of that person.

(d) if extradition is sought to enforce a final sentence that was rendered in the absence of the person concerned, who has not been able to provide for his or her own defense for reasons beyond his or her control;

(e) if ... [*name of the country adopting the law*] has established its jurisdiction over the offense pursuant to Article III-1 of this law;

Options:

(f) if the person whose extradition is requested is subject to the death penalty in respect of the crime of which he or she is accused in the requesting country, unless that country gives sufficient assurances that the penalty will not be carried out;

(g) if the person whose extradition is requested is a national of ... [*name of the country adopting the law*].

Article V-17. Aut dedere aut judicare [the duty to extradite or prosecute in international law]

If ... [*name of the country adopting the law*] refuses to extradite, it refers the matter to its competent authorities so that proceedings may be instituted against the person concerned in respect of the offense that gave rise to the request.

Article V-18. Surrender of Property

Within the limits authorized under national legislation and without prejudice to the rights of third parties, all property found in the territory of ... [*name of the country adopting the law*] that has been acquired as a result of the offense committed or that may be required as evidence is surrendered to the requesting state if extradition is granted, if requested by that state.

The property in question may, if the requesting state so requests, be surrendered to the requesting state even if the extradition agreed to cannot be carried out.

Should that property be subject to seizure or confiscation in the territory of ... [*name of the country adopting the law*], the state may temporarily retain it or hand it over.

Where national legislation or the rights of third parties so require, any property so surrendered is returned to ... [*name of the country adopting the law*] free of charge, after the completion of the proceedings, if ... [*name of the country adopting the law*] so requests.

Chapter 5. Provisions Common to Requests for Mutual Assistance and Requests for Extradition

Article V-19. Political Nature of the Offense

For the purposes of this law, the offenses indicated in Article I-2 shall not be considered offenses of a political nature, offenses connected with a political offense, offenses inspired by political motives, or fiscal offenses.

Article V-20. Transmission of Requests

Requests sent by foreign authorities with a view to establishing laundering offenses or enforcing or ordering provisional measures or confiscations, or for purposes of extradition are transmitted through diplomatic channels. In urgent cases, such requests may be sent through the International Criminal Police Organization (ICPO/Interpol) or directly by the foreign authorities to the judicial authorities of ... [*name of the country adopting the law*], either by post or by any other more rapid means of transmission leaving a written or materially equivalent record. In such cases, in the absence of notice given through diplomatic channels, requests are not immediately executable.

Requests and their annexes shall be accompanied by a translation in a language acceptable to ... [*name of the country adopting the law*].

Article V-21. Content of Requests

Requests shall specify:

1. the authority requesting the measure;
2. the requested authority;
3. the purpose of the request and any relevant contextual remarks;
4. the facts in support of the request;
5. any known details that may facilitate identification of the persons concerned, in particular marital status, nationality, address, and occupation;
6. any information necessary to identify and locate the persons, instrumentalities, proceeds, or property in question;

7. the text of the statutory provision establishing the offense or, where applicable, a statement of the law applicable to the offense and an indication of the penalty incurred for the offense.

In addition, requests shall include the following particulars in certain specific cases:

(1) in the case of requests for the taking of provisional measures, a description of the measures sought;

(2) in the case of requests for the making of a confiscation order, a statement of the relevant facts and arguments to enable the judicial authorities to order the confiscation under domestic law;

(3) in the case of requests for the enforcement of orders relating to provisional measures or confiscations:

(a) a certified true copy of the order, and a statement of the grounds on the basis of which the order was made if they are not indicated in the order itself;

(b) a document certifying that the order is enforceable and not subject to ordinary means of appeal;

(c) an indication of the extent to which the order is to be enforced and, where applicable, the amount of the sum to be recovered on the item or items of property;

(d) where necessary and if possible, any information concerning third-party rights of claim on instrumentalities, proceeds, property, or other things in question.

(4) in the case of requests for extradition, if the person has been convicted of an offense: the original or a certified true copy of the judgment or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable and the extent to which the sentence remains to be served.

Article V-22. Handling of Requests

The Minister of Justice of ... [*name of the country adopting the law*], after verifying that the request has been made in the proper manner, forwards it to the public prosecutor's office at the place where the investigations are to be conducted or where the proceeds or property in question are situated or where the person whose extradition is being requested is located.

The public prosecutor's office refers the matter to the officials competent to deal with requests for investigation or to the court competent to deal with requests relating to provisional measures, confiscations, or extradition.

A magistrate or public official appointed by the competent foreign authority may attend the execution of the measures, depending on whether they are carried out by a magistrate or by a public official.

Article V-23. Additional Information

The Ministry of Justice or the public prosecutor's office may, ex officio or at the request of the court to which the matter is referred, request, through diplomatic channels or directly, that the competent foreign authority provide all additional information necessary for complying with the request or facilitating compliance therewith.

Article V-24. Requirement of Confidentiality

Where a request requires that its existence and substance be kept confidential, such requirement shall be observed except to the extent necessary to give effect to the request. If that is not possible, the requesting authorities shall be promptly informed to that effect.

Article V-25. Postponement

The public prosecutor's office may postpone referring the matter to the police authorities or to the court only if the measures or order sought could interfere with ongoing investigations or proceedings. It shall immediately inform the requesting authority accordingly through diplomatic channels or directly.

Article V-26. Simplified Extradition Procedure

With regard to the offenses provided for under this law, ... [*name of the country adopting the law*] may grant extradition after receipt of a request for provisional arrest, provided that the person whose extradition is requested explicitly consents thereto.

Article V-27. Restriction on the Use of Evidence for Other Purposes

The communication or use, for investigations or proceedings other than those specified in the foreign request, of evidentiary facts contained therein is prohibited on pain of invalidation of such investigations or proceedings, except with the prior consent of the foreign government.

Article V-28. Allocation of Costs

Costs incurred in complying with requests provided for under this title are borne by the state of ... [*name of the country adopting the law*] unless otherwise agreed with the requesting country.

Title VI. Miscellaneous Measures

Chapter 1. Nonprofit Associations and Organizations

Article VI-1. Registration Procedure

Any nonprofit association or organization that wishes to collect or receive, grant or transfer funds must be entered in the registry [of associations] [of nonprofit organizations] in accordance with methods defined by decree.

The initial application for registration includes the names, surnames, addresses and telephone numbers of all persons given responsibility for the operations of the association, particularly the President, Vice-President, General Secretary, Members of the Board of Directors, and Treasurer, as applicable. Any change in the identity of those responsible must be reported to the authority charged with maintaining the registry.

Article VI-2. Donations

Any donation made to an association or organization indicated in the preceding article in an amount equal to or greater than an amount established by decree is recorded in a record maintained for the purpose by the association or organization, containing the full details on the donor, the date, the nature, and the amount of the donation. The record is kept for a period of [...] years and is submitted at the request of any authority responsible for the oversight of nonprofit organizations and, when requested, to judicial police officials responsible for a criminal investigation.

[When the donor of an amount in excess of that amount wishes to remain anonymous, the record may omit the identification but the association or organization is required to disclose his or her identity at the request of judicial police officials responsible for a criminal investigation.]

Article VI-3. Compulsory Statements

Any cash donation in an amount equal to or greater than a sum established by decree is the subject of a statement filed with the [financial investigation unit] following procedures defined by decree.

Any donation is also subject to a statement filed with the [financial investigation unit] when the funds are suspected of being related to a terrorist operation or the financing of terrorism.

Article VI-4. Accounting and Bank Accounts

Nonprofit associations or organizations are required to keep accounts in accordance with provisions in effect and to submit their financial statements for the preceding year to the authorities designated for this purpose within [...] months following the close of their financial year.

Nonprofit associations or organizations are required to deposit in a bank account at an authorized banking institution all sums of money that are submitted to them as donations or in the context of the transactions they are called upon to carry out.

Article VI-5. Banned Associations

Notwithstanding the conduct of criminal proceedings, the minister of [...] may, by administrative ruling, order a temporary ban on or the dissolution of nonprofit associations or organizations that, with full knowledge of the facts, encourage, promote, organize, or commit the offenses indicated in Article I-2 of this law.

A decree establishes the conditions for application of these provisions.

Article VI-6. Penalties

Any violation of the provisions of this chapter is punishable by one of the following penalties:

- (a) a fine of no more than [...];
- (b) a temporary ban on the activities of the association or organization of no more than [...];
- (c) the dissolution of the association or organization.

Chapter 2. Alternative Funds Transfer Systems

Article VI-7. **Option 1:** [Authorization to operate] **Option 2:** [Entry in the registry]²⁰

1. Any individual or corporate entity not authorized as a financial institution in the sense of the law ... [*banking law and laws on other financial institutions*] or any other applicable law that carries out, on behalf of or in the name of another individual or corporate entity, operations to transfer funds or assets in the sense of the following paragraph as a principal or essential activity, regularly or periodically or in addition to another activity, must **Option 1:** [be authorized to do so by ... [*name of the authority designated for this purpose*]] **Option 2:** [be entered in a registry opened for this purpose by ... [*name of the authority designated for this purpose*]].

²⁰ The standard set by FATF Special Recommendation VI consists of the alternative of a system of prior authorization or entry in a registry.

2. A funds or asset transfer system consists of a financial service that accepts cash, checks, or any other instruments of payment or stores of value at a given location and pays an equivalent sum in cash or any other form to a beneficiary located in another geographic area by means of a method of communication, a message, transfer, or compensation (clearing) system to which the funds or asset transfer system belongs. Transactions carried out through these services may involve one or more intermediaries and a third party who receives the final payment.²¹

3. The following provisions of the law ... [*reference to the law on money laundering*] are applicable to the transfer services indicated in paragraphs 1 and 2.²²

article ... [*provisions on client identification*];

article ... [*provisions on suspicious transaction reports*]; and

article ... [*provisions on retaining documents*]

article ... [*other provisions*]

4. The methods for applying this article are established by decree.

Article VI-8. Penalties

1. The penalty of imprisonment of ... to ... and a fine of ... to ... is imposed on those who carry out fund transfers in the sense of paragraphs 1 and 2 without **Option 1:** [having been authorized to do so in advance] **Option 2:** [being entered in the registry indicated in paragraph 1].²³

2. The attempt to commit an offense referred to in the preceding paragraph is punished as if the crime itself had been committed [**variant:** is punished with a penalty reduced by [*fraction*] with respect to the principal penalty.

3. Complicity is punished like the offense itself.

4. Corporate entities may additionally be:

(a) banned permanently or for a maximum period of five years from directly or indirectly engaging in certain professional activities;

²¹ The definition is taken from the FATF *Guidance Notes*.

²² The Interpretative Note to Recommendation VI notes that all FATF recommendations on money laundering, particularly recommendations 10 through 21 and 26 through 29 should be extended to include alternative fund transfer systems.

²³ The option used shall be the same as in Article V-7.

(b) ordered to close permanently or for a maximum period of five years their premises that were used for the commission of the offense;

(c) dissolved if they were created for the purpose of committing the offense;

(d) ordered to pay a maximum fine of [...]

5. A fine of ... to ... is imposed on those who carry out fund transfers in the sense of paragraphs 1 and 2 above without complying with the provisions of paragraph 3. Corporate entities may also receive a maximum fine of ... to ... and, in the case of a repeated offense, the penalties indicated in paragraph 4.

Chapter 3. Information Accompanying Wire Transfers

Article VI-9. Information Accompanying Wire Transfers²⁴

1. All cross-border wire transfers must be accompanied by precise information on the person ordering the transfer, particularly his or her name, and as applicable, account number. In the absence of an account number, a unique reference number accompanies the transfer.

2. All domestic wire transfers must include the same information as in the case of cross-border transfers, unless all information concerning the person ordering the transfer can be made available to the financial institutions of the beneficiary and the competent authorities in some other way.

3. The methods for implementing this article are established by decree.

²⁴ These provisions are based on the Interpretative Note to FATF Special Recommendation VII.

Arrangement of Sections¹

1. Definitions
2. Offenses
3. Liability of Legal Entities
4. Jurisdiction
5. Investigations
6. Rights of an Offender
7. Notification of Other States
8. Freezing of Funds
9. Forfeiture
10. Sharing of Forfeited Funds
11. Giving Effect to United Nations Security Council Resolutions
12. Extradition
13. Mutual Legal Assistance
14. Temporary Transfer
15. Alternative Remittance Systems
16. Refusal of Applications for Registration and Revocation of the Registration of Charities Linked to Terrorist Groups

Section 1. Definitions

In this Part:

(1) the term “funds” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit;

(2) the term “state or government facility” means any permanent or temporary facility or conveyance that is used or occupied by representatives of a state, members of a government, the legislature, or the judiciary, or by officials or employees of a state or any other public authority or entity or by

¹ Except as otherwise noted, the examples are adapted from the Terrorism Financing Act 2002-6 [Barbados].

employees or officials of an intergovernmental organization in connection with their official duties;

(3) the term “proceeds” means any funds derived from or obtained, directly or indirectly, through the commission of an offense set forth in Section 2;

(4) the term “provides” includes giving, donating, and transmitting;

(5) the term “collects” includes raising and receiving;

(6) the term “treaty” means:

(a) the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970;

(b) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971;

(c) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973;

(d) the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979;

(e) the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on March 3, 1980;

(f) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on February 24, 1988;

(g) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988;

(h) the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on March 10, 1988; or

(i) the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997;

(7) the term “national of [*country*]” has the meaning given that term in [*reference to the appropriate section of the nationality or citizenship act*];

(8) the term “state” has the same meaning as that term has under international law, and includes all political subdivisions thereof; and

142 APPENDIX VIII

(9) the term “Court” means [*name of the court charged with considering and issuing freezing and forfeiture orders*].

Section 2. Offenses

(1) A person commits an offense under this section if that person, by any means, directly or indirectly, unlawfully and willfully provides or collects funds with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part, in order to carry out—

(a) an act which constitutes an offense within the scope of a treaty specified in subsection (6) of Section 1, or

(b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

(2) A person commits an offense under this section if that person attempts or conspires to commit an offense under subsection (1).

(3) A person commits an offense under this section if that person—

(a) participates as an accomplice in an offense set forth in subsection (1) or (2);

(b) organizes or directs other to commits an offense as set forth in subsection (1) or (2);

(c) contributes to the commission of one or more of the offenses as set forth in subsection (1) or (2) by a group of persons acting with a common purpose, provided, however, that such contribution is intentional and—

(i) is made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offense set forth in subsection (1) or (2); or

(ii) is made in the knowledge of the intention of the group to commit an offense as set forth in subsection (1) or (2).

(4) A person commits an offense under this section if that person, directly or indirectly, makes available funds, financial assets or economic resources or financial or other related services—

(a) intending that they be used by, or knowing or having reasonable grounds to believe that they will be used, in whole or in part, for benefiting any person who is carrying out or facilitating, or is intending to carry out or facilitate, an offense set out in subsection (1) or (2); or

(b) knowing or having reasonable grounds to believe that, in whole or in part, they will be used by or benefit persons or entities carrying out or

facilitating, or intending to carry out or facilitate, an offense set out in subsection (1) or (2).²

(5) For an act to constitute an offense set forth in this section, it shall not be necessary that the funds or other resources were actually used to carry out an offense set forth in paragraph (a) or (b) of subsection (1).

Section 3. Liability of Legal Entities

Where an offense set forth in Section 2 is committed by a person responsible for the management or control of a legal entity located in [*country*] or organized under the laws of [*country*], that entity, in circumstances where the person committed the offense while acting in that capacity, is guilty of the offense, notwithstanding—

(a) any criminal liability that may have been incurred by an individual that was directly involved in the commission of the offense; or

(b) any civil or administrative sanction that may have been imposed by law on the entity.

Section 4. Jurisdiction

EXAMPLE ONE

Where a person is alleged to have committed an offense under Section 2, proceedings in respect of that offense may be commenced in [*country*], where the alleged offense—

(a) was committed by a national of [*country*];

(b) was committed on board a vessel flying the flag of [*country*];

(c) was committed on board an aircraft that—

(i) was operated by the government of [*country*]; or

(ii) was registered in [*country*];

(d) was directed toward or resulted in the carrying out of an offense under Section 2 in [*country*] or against a national of [*country*];

(e) was directed toward or resulted in the carrying out of an offense under Section 2 against a state or government facility of [*country*] outside [*country*], including diplomatic or consular premises of [*country*];

² Subsection (4) is intended to respond to the provisions of paragraph 1(d) of Resolution 1373 (2001); it is adapted from Article 4 of The Terrorism (Suppression of Financing) Act 2002 [Singapore].

144 APPENDIX VIII

(f) was directed toward or resulted in the carrying out of an offense under Section 2 committed in an attempt to compel [country] to do or refrain from doing any act; or

(g) was committed by a stateless person who is ordinarily resident in [country].

EXAMPLE TWO³

(1) Any person who, outside [country], commits an offense referred to in Section 2, is deemed to commit such offense in [country] if—

(a) the offense is committed on board a vessel flying the flag of [country] or an aircraft registered under the laws of [country], at the time the offense is committed;

(b) the offense is committed by a national of [country];

(c) the offense is directed toward or results in the carrying out of an offense referred to in Section 2 in [country] or against a national of [country];

(d) the offense is directed toward or resulted in an offense referred to in Section 2 committed against [country] or a facility of the government of [country] abroad, including diplomatic or consular premises of [country];

(e) the offense is directed toward or resulted in an offense referred to in Section 2 committed in an attempt to compel [country] to do or abstain from doing any act;

(f) the offense is committed by a stateless person who has his or her habitual residence in the territory of [country]; or

(g) the offense is committed on board an aircraft which is operated by the Government of [country].

EXAMPLE THREE⁴

Courts shall have jurisdiction over the offenses in Section 2 in the following circumstances:

(1) the offense takes place in [country] and—

(a) is committed by a person who is a national of another state or a stateless person;

³ Adapted from the Criminal Code, Section 7 (3.73) [Canada].

⁴ Adapted from Title 18, USC 2339C (b) [U. S.].

- (b) on board a vessel flying the flag of another state or an aircraft which is registered under the laws of another state at the time the offense is committed;
 - (c) on board an aircraft which is operated by the government of another state;
 - (d) is committed by a person who is found outside [country];
 - (e) was directed toward or resulted in the carrying out of an offense set forth in subsections (a) or (b) of predicate act against—
 - (i) a national of another state; or
 - (ii) another state or a government facility of such state, including its embassy or other diplomatic or consular premises of that state;
 - (f) was directed toward or resulted in the carrying out of a predicate act committed in an attempt to compel another state or international organization to do or abstain from doing any act; or
 - (g) was directed toward or resulted in the carrying out of a predicate act--
 - (i) outside [country]; or
 - (ii) within [country], and either the offense or the predicate act was conducted in, or the results thereof affected, interstate or foreign commerce;
- (2) the offense takes place outside [country] and—
- (a) is committed by a person who is a national of [country] or is a stateless person whose habitual residence is in [country];
 - (b) is committed by a person who is found in [country]; or
 - (c) was directed toward or resulted in the carrying out of a predicate act against--
 - (i) any property that is owned, leased, or used by [country] or by any department or agency of [country], including an embassy or other diplomatic or consular premises of [country];
 - (ii) any person or property within [country];
 - (iii) any national of [country] or the property of such national; or
 - (iv) any property of any legal entity organized under the laws of [country], including any of its states, districts, commonwealths, territories, or possessions;
- (3) the offense is committed on board a vessel flying the flag of [country] or an aircraft which is registered under the laws of [country] at the time the offense is committed;

(4) the offense is committed on board an aircraft which is operated by [country]; or

(5) the offense was directed toward or resulted in the carrying out of an act referred to in Section 2 committed in an attempt to compel [country] to do or abstain from doing any act.

Section 5. Investigations

(1) [Where any person has reasonable grounds to suspect that funds or financial services are related to or are to be used to facilitate an offense under this Part, it shall be the duty of that person to report the matter to the [Commissioner of Police].]

(2) Where information is received from any source in or outside [country] that a person who has committed or which is alleged to have committed an offense under this part may be present in [country], the [Commissioner of Police] shall take such measures as may be necessary to investigate the facts contained in the information.

(3) Where on investigation it is found that the person referred to in subsection (2) is in [country], the [Commissioner of Police] shall make a report to the [Director of Public Prosecutions] who shall take such measures as are necessary to prosecute or extradite the offender as the circumstances warrant.

(4) Where any person referred to in subsection (1) fails to report as required under that subsection, that person is guilty of an offense and is liable on conviction to a fine of [amount] or imprisonment for a term of [number] years.

Section 6. Rights of an Offender

A person against whom measures referred to in Section 5, subsection (3) are taken is entitled to—

(a) communicate without delay with the nearest appropriate representative of—

(i) the state of which the person is a national;

(ii) the state which is otherwise entitled to protect that person's rights;
or

(iii) where that person is stateless, the state in which that person ordinarily resides;

(b) be visited by a representative of the relevant state referred to in subsection (1); and

(c) be informed of the rights referred to in subsections (a) and (b).

Section 7. Notification of Other States

Where a person is taken into custody as a result of an investigation undertaken under Section 5, the [Director of Public Prosecutions] shall inform the [Attorney General] who shall—

- (a) notify, through the Secretary-General of the United Nations, the state which established jurisdiction in respect of an application brought under Section 8 or 9, of the detention of that person and of the circumstances that warranted the detention; and
- (b) communicate the final outcome of the proceedings to the Secretary-General for transmission of the information to the other state.

Section 8. Freezing of Funds

(1) Subject to subsection (4), the court may, where it is satisfied on the application by the [Director of Public Prosecutions] that

- (a) a person has been charged or is about to be charged with an offense under section 2; or
- (b) a request has been made by the appropriate authority of another state in respect of a person
 - (i) who has been charged or is about to be charged with an offense in respect of an act described in Section 3 or 4; or
 - (ii) in respect of whom there is reasonable suspicion that the person has committed an offense referred to in subparagraph (i);

make an order, in this part referred to as a freezing order, freezing the funds in the possession of or under the control of that person.

(2) An application for a freezing order under subsection (1) may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating

- (a) where the person referred to in subsection (1) has been charged, the offense for which he is charged;
- (b) where the person has not been charged, the grounds for
 - (i) believing that the person committed the offense, or
 - (ii) having a reasonable suspicion that the person committed the offense;
- (c) a description of the funds in respect of which the freezing order is sought;
- (d) the name and address of the person who is believed to be in possession of the funds; and

(e) the ground for believing that the funds are related to or are used to facilitate an offense referred to in subsection (1) and that the funds are subject to the effective control of the person.

(3) Where the court makes an order under subsection (1), the court shall require that

(a) the order be published within such time and manner as the court directs;

(b) the applicant, within 21 days of the making of the order, serve notice of the order together with a copy of the order on any person whom, in the opinion of the court, appears to have an interest in the funds referred to in subsection (2); and

(c) the person referred to in paragraph (b) or any other person who appears to have an interest in the funds, be afforded an opportunity to be heard by the court within such time as the court determines, unless in respect of paragraph (b) the court is of the opinion that giving such notice would result in the disappearance, dissipation, or reduction in the value of the funds.

(4) Where an application for a freezing order made under subsection (1) is made as a result of a request from another state, the court shall not make the order unless it is satisfied that reciprocal arrangements exist between [*country*] and that other state whereby that other state is empowered to make a similar order in respect of a request for a freezing order from [*country*].

(5) The court may, in making an order under subsection (1), give directions with regard to

(a) the duration of the freezing order; and

(b) the disposal of the funds for the purpose of

(i) determining any dispute relating to the ownership of or other interest in the funds or any part thereof;

(ii) its proper administration during the period of the freezing order;

(iii) the payment of debts incurred in good faith prior to the making of the order;

(iv) the payment of moneys to the person referred to in subsection (1) for reasonable subsistence of that person and family; or

(v) the payment of the costs of the person referred to in subparagraph (iv) to defend criminal proceedings against him.

(6) Notwithstanding subsection (5), a freezing order made under this section shall cease to have effect at the end of the period of 6 months after the order was made where the person against whom the order was made has not been charged with an offense under Section 2 within that period.

(7) an order made under subsection (1) may be renewed for a period not exceeding 6 months in each particular case, but in no case shall the entire period exceed 18 months.

(8) A freezing order granted by the court under this section shall not prejudice the rights of any third party acting in good faith.

(9) Where the court makes an order for the administration of frozen funds the person charged with the administration of the funds is not liable for any loss or damage to the funds or for the costs of proceedings taken to establish a claim to the funds or to an interest in the funds unless the court in which the claim is made is of the opinion that the person has been guilty of negligence in respect of the taking of custody of the funds.

Section 9. Forfeiture

(1) Where a person is convicted of an offense under Section 2, the Director of public prosecutions may apply to the court for a forfeiture order against the funds that are the subject of the offense.

(2) The court may upon application by the [*Director of Public Prosecutions*], forfeit any funds of an offense of terrorism or any funds of that person that are the subject of a freezing order, unless it is proved that the funds did not derive from the commission by that person of an offense under Section 2.

(3) For the purposes of subsection (2) the burden of proof lies on the person who owns, or is in possession or control of the funds.

(4) In determining whether or not any funds are derived from an offense under section 2, the standard of proof required for the purposes of subsection (2) is the same as in criminal proceedings and for the purposes of subsection (3) is the same as in civil proceedings.

(5) In making a forfeiture order the court may give directions

(a) for the purpose of determining any dispute as to the ownership of or other interest in the funds or any part thereof; and

(b) as to the disposal of the funds.

(6) Upon application to the court by a person against whom a forfeiture order has been made under this section the court may order that an amount deemed by the court to be the value of the funds so ordered to be forfeited, be paid by that person to the court upon satisfactory payment of that sum by that person the funds so ordered to be forfeited shall be returned to him.

Section 10. Sharing of Forfeited Funds

(1) The government of [*country*] may, pursuant to any agreement with any other state, share with that state on a reciprocal basis, the funds derived from forfeiture pursuant to this Act.

(2) Funds referred to under subsection (1) may be utilized by the government of [country] to compensate victims of the offenses referred to in this Act.

Section 11. Giving Effect to United Nations Security Council Resolutions

Where the Security Council of the United Nations decides, in pursuance of Article 41 of the Charter of the United Nations, on the measures to be employed to give effect to any of its decisions and calls upon the government of [country] to apply those measures, the minister responsible for foreign affairs may, by order published in the gazette, make such provisions as may appear to him or to her necessary or expedient to enable those measures to be effectively applied.

Section 12. Extradition

(1) The offenses described in Section 2 shall be deemed to be extraditable offenses under the Extradition Act, and accordingly, the provisions of that Act shall apply to, and in relation to, extradition in respect to those offenses.

(2) Where there is, on the date on which this Act comes into operation, an extradition arrangement in force between the government of [country] and a state party to the Convention, such arrangement shall, for the purposes of the Extradition Act, be deemed to include provision for extradition in respect of the offenses described in Section 2.

(3) Where there is no extradition arrangement between the government of [country] and a state party to the Convention, the minister [of Foreign Affairs] may, by order published in the gazette, treat the Convention, for the purposes of the Extradition Act, as an extradition arrangement between the government of [country] and such state party to the Convention providing extradition in respect of the offenses set out in Section 2.

(4) Where the government of [country] accedes to a request by a state party to the Convention for the extradition of a person accused of an offense set out in Section 2, the act constituting such offense shall, for the purpose of the Extradition Act, be deemed to have been committed not only in the place where it was committed, but also within the jurisdiction of the requesting state.

(5) Notwithstanding anything in the Extradition Act, an offense set out in Section 2 shall, for the purpose of that Act, be deemed not to be a fiscal offense or an offense of a political character or an offense connected with a political offense or an offense inspired by political motives, for the purpose only of the extradition of a person accused of any such offense as between the government of [country] and a state party to the Convention.

Section 13. Mutual Legal Assistance

Notwithstanding anything in [the Mutual Assistance Act] [this Criminal Code], a request by a state party to the Convention for mutual assistance in respect of an offense set out in Section 2 shall not be refused solely on the ground that:

- (a) the rendering of such assistance would result in a violation of the laws relating to banking secrecy; or
- (b) such offense is a fiscal offense; or
- (c) such offense is a political offense or an offense connected with a political offense or an offense inspired by political motives.

Section 14. Temporary Transfer

(1) Where [*country*] approves a request from a state party to the Convention seeking the temporary transfer of a person in custody in [*country*] to the state party to the Convention to testify or assist an investigation or proceeding relating to an offense set out in Section 2, the [*Attorney General*] may make an application to the court for a transfer order.

(2) The application shall specify:

- (a) the name and location of the detained person;
- (b) the period of time for which the person is to be transferred;
- (c) the *country* to which the person is to be transferred;
- (d) the person or class of person into whose custody the person is to be delivered for purpose of the transfer; and
- (e) the purpose of the transfer.

(3) If the judge hearing an application brought pursuant to sub-section 1 is satisfied that the detained person consents to the transfer and the transfer is for a fixed period, the judge shall make a transfer order, including any conditions he or she considers appropriate.

(4) Notwithstanding any provision in the [*Immigration Act or other similar legislation*], where a request has been made by [*country*] for a person detained in a state party to the Convention, to be temporarily transferred to [*country*] to testify or assist an investigation or proceeding relating to an offense set out in Section 2 [*of the Criminal Code*], the [*Minister, Attorney General, or other appropriate authority*] may authorize the detained person to enter [*country*] to remain in a fixed location or locations for a specified period of time.

(5) The [*Minister, Attorney General, or other appropriate authority*] may vary the terms of an authorization issued under subsection 4.

152 APPENDIX VIII

(6) A person who is in [country] pursuant to a request by [country] shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in [country] in respect of any acts or convictions anterior to his or her departure from the territory of the state party to the Convention from which such person was transferred.

Section 15. Alternative Remittance Systems⁵

(a) Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined an amount not exceeding [...] or imprisoned not more than [...] years, or both.

(b) As used in this section--

(1) the term “unlicensed money transmitting business” means a money transmitting business which—

(A) is operated without a money transmitting license issued by [authority] whether or not the defendant knew that the operation was required to be licensed or that the operation was so punishable; or

(B) otherwise involves the transportation or transmission of funds that are known to the defendant to have been derived from a criminal offense or are intended to be used to be used to promote or support unlawful activity;

(2) the term “money transmitting” includes transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier.

Section 16. Refusal of Applications for Registration and the Revocation of the Registration of Charities Linked to Terrorist Groups⁶

(1) The [Minister of Finance] may sign a certificate refusing or revoking the registration of a charity, based on information received including any security or criminal intelligence reports, where there are reasonable grounds to [believe] [suspect] that an applicant for registration as a registered charity (in this section referred to as “the applicant”) or a registered charity has made, is making or is likely to make available any resources, directly or indirectly, to a terrorist group.

⁵ Adapted from 18 U.S.C. § 1960.

⁶ Adapted from the Commonwealth Secretariat’s *Model Legislative Provisions on Measures to Combat Terrorism*, pp. 32–33.

- (2) A copy of the signed certificate shall be served on the applicant or the registered charity, personally or by registered letter sent to its last known address, with a copy of the certificate.
- (3) The certificate or any matter arising out of it shall not be subject to review or be restrained, prohibited, removed, set aside or otherwise dealt with except in accordance with this section.
- (4) Within (30) thirty days of receipt of the copy of the notice under subsection (2), the applicant or the registered charity may make an application to the [*High Court*] to review the decision of the minister.
- (5) Upon the filing of an application under subsection (4), a judge of that court shall –
 - (a) examine in chambers the information, including any security or criminal or intelligence reports considered by the [*Minister of Finance*] before signing the certificate and hear any other evidence or information that may be presented by or on behalf of those ministers (whether or not such information is admissible in a court of law), and may, on the request of the minister, hear all or part of that evidence or information in the absence of the applicant or registered charity or any counsel representing the applicant or registered charity, if the judge is of the opinion that disclosure of the information would be prejudicial to national security or endanger the safety of any person,
 - (b) provide the applicant or the registered charity with a statement summarizing the information available to the judge so as to enable the applicant or registered charity to be reasonably informed of the circumstances giving rise to the certificate, without disclosing any information the disclosure of which would, in the judge's opinion, be prejudicial to national security or endanger the safety of any person,
 - (c) provide the applicant or the registered charity with a reasonable opportunity to be heard; and
 - (d) determine whether the certificate is reasonable on the basis of all the information available to the judge or, if found not reasonable, quash it.
- (6) A determination under subsection (5) shall not be subject to appeal or review by any court.
- (7) Where the judge determines, under subsection (5) that a certificate is reasonable, or if no application is brought upon the expiry of (30) thirty days from the date of service of the notice, the minister shall cause the certificate to be published in the gazette.
- (8) A certificate determined to be reasonable under subsection (5), shall be deemed for all purposes to be sufficient grounds for the refusal of the

application for the registration of the charity referred to in the certificate or the revocation of the registration of the charity referred to in the certificate.

(9) Where the judge determines that the certificate is not reasonable, he or she shall order the registration or continued registration of the charity.

Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism *Official Journal L 344*, 28/12/2001 P. 0070 – 0075 (preamble omitted)

Article 1

For the purpose of this Regulation, the following definitions shall apply:

1. “Funds, other financial assets and economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.

2. “Freezing of funds, other financial assets and economic resources” means the prevention of any move, transfer, alteration, use of or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management.

3. “Financial services” means any service of a financial nature, including all insurance and insurance-related services, and all banking and other financial services (excluding insurance) as follows:

Insurance and insurance-related services

(i) Direct insurance (including co-insurance):

(A) life assurance;

(B) non-life;

(ii) Reinsurance and retrocession;

(iii) Insurance intermediation, such as brokerage and agency;

(iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

(v) Acceptance of deposits and other repayable funds;

(vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(vii) Financial leasing;

156 APPENDIX IX

- (viii) All payment and money transmission services, including credit, charge and debit cards, travellers' cheques and bankers' drafts;
 - (ix) Guarantees and commitments;
 - (x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (A) money market instruments (including cheques, bills, certificates of deposits);
 - (B) foreign exchange;
 - (C) derivative products including, but not limited to, futures and options;
 - (D) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements;
 - (E) transferable securities;
 - (F) other negotiable instruments and financial assets, including bullion;
 - (xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
 - (xii) Money brokering;
 - (xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 - (xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
 - (xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) to (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
4. For the purposes of this Regulation, the definition of "terrorist act" shall be the one contained in Article 1(3) of Common Position 2001/931/CFSP.
5. "Owning a legal person, group or entity" means being in possession of 50 % or more of the proprietary rights of a legal person, group or entity, or having a majority interest therein.
6. "Controlling a legal person, group or entity" means any of the following:
- (a) having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person, group or entity;

- (b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person, group or entity who have held office during the present and previous financial year;
- (c) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person, group or entity, a majority of shareholders' or members' voting rights in that legal person, group or entity;
- (d) having the right to exercise a dominant influence over a legal person, group or entity, pursuant to an agreement entered into with that legal person, group or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person, group or entity permits its being subject to such agreement or provision;
- (e) having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right;
- (f) having the right to use all or part of the assets of a legal person, group or entity;
- (g) managing the business of a legal person, group or entity on a unified basis, while publishing consolidated accounts;
- (h) sharing jointly and severally the financial liabilities of a legal person, group or entity, or guaranteeing them.

Article 2

1. Except as permitted under Articles 5 and 6:

- (a) all funds, other financial assets and economic resources belonging to, or owned or held by, a natural or legal person, group or entity included in the list referred to in paragraph 3 shall be frozen;
- (b) no funds, other financial assets and economic resources shall be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity included in the list referred to in paragraph 3.

2. Except as permitted under Articles 5 and 6, it shall be prohibited to provide financial services to, or for the benefit of, a natural or legal person, group or entity included in the list referred to in paragraph 3.

3. The Council, acting by unanimity, shall establish, review and amend the list of persons, groups and entities to which this Regulation applies, in accordance with the provisions laid down in Article 1(4), (5) and (6) of Common Position 2001/931/CFSP; such list shall consist of:

- (i) natural persons committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;
- (ii) legal persons, groups or entities committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;

- (iii) legal persons, groups or entities owned or controlled by one or more natural or legal persons, groups or entities referred to in points (i) and (ii); or
- (iv) natural legal persons, groups or entities acting on behalf of or at the direction of one or more natural or legal persons, groups or entities referred to in points (i) and (ii).

Article 3

1. The participation, knowingly and intentionally, in activities, the object or effect of which is, directly or indirectly, to circumvent Article 2 shall be prohibited.
2. Any information that the provisions of this Regulation are being, or have been, circumvented shall be notified to the competent authorities of the Member States listed in the Annex and to the Commission.

Article 4

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy and to the provisions of Article 284 of the Treaty, banks, other financial institutions, insurance companies, and other bodies and persons shall:
 - provide immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 2 and transactions executed pursuant to Articles 5 and 6:
 - to the competent authorities of the Member States listed in the Annex where they are resident or located, and
 - through these competent authorities, to the Commission,
 - cooperate with the competent authorities listed in the Annex in any verification of this information.
2. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.
3. Any information directly received by the Commission shall be made available to the competent authorities of the Member States concerned and to the Council.

Article 5

1. Article 2(1)(b) shall not apply to the addition to frozen accounts of interest due on those accounts. Such interest shall also be frozen.
2. The competent authorities of the Member States listed in the Annex may grant specific authorisations, under such conditions as they deem appropriate, in order to prevent the financing of acts of terrorism, for
 - (1) the use of frozen funds for essential human needs of a natural person included in the list referred to in Article 2(3) or a member of his family,

including in particular payments for foodstuffs, medicines, the rent or mortgage for the family residence and fees and charges concerning medical treatment of members of that family, to be fulfilled within the Community;

(2) payments from frozen accounts for the following purposes:

(a) payment of taxes, compulsory insurance premiums and fees for public utility services such as gas, water, electricity and telecommunications to be paid in the Community; and

(b) payment of charges due to a financial institution in the Community for the maintenance of accounts;

(3) payments to a person, entity or body person included in the list referred to in Article 2(3), due under contracts, agreements or obligations which were concluded or arose before the entry into force of this Regulation provided that those payments are made into a frozen account within the Community.

3. Requests for authorisations shall be made to the competent authority of the Member State in whose territory the funds, other financial assets or other economic resources have been frozen.

Article 6

1. Notwithstanding the provisions of Article 2 and with a view to the protection of the interests of the Community, which include the interests of its citizens and residents, the competent authorities of a Member State may grant specific authorisations:

- to unfreeze funds, other financial assets or other economic resources,
- to make funds, other financial assets or other economic resources available to a person, entity or body included in the list referred to in Article 2(3), or
- to render financial services to such person, entity or body,

after consultation with the other Member States, the Council and the Commission in accordance with paragraph 2.

2. A competent authority which receives a request for an authorisation referred to in paragraph 1 shall notify the competent authorities of the other Member States, the Council and the Commission, as listed in the Annex, of the grounds on which it intends to either reject the request or grant a specific authorisation, informing them of the conditions that it considers necessary in order to prevent the financing of acts of terrorism.

The competent authority which intends to grant a specific authorisation shall take due account of comments made within two weeks by other Member States, the Council and the Commission.

Article 7

The Commission shall be empowered, on the basis of information supplied by Member States, to amend the Annex.

Article 8

The Member States, the Council and the Commission shall inform each other of the measures taken under this Regulation and supply each other with the relevant information at their disposal in connection with this Regulation, notably information received in accordance with Articles 3 and 4, and in respect of violation and enforcement problems or judgments handed down by national courts.

Article 9

Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are infringed. Such sanctions shall be effective, proportionate and dissuasive.

Article 10

This Regulation shall apply:

1. within the territory of the Community, including its airspace,
2. on board any aircraft or any vessel under the jurisdiction of a Member State,
3. to any person elsewhere who is a national of a Member State,
4. to any legal person, group or entity incorporated or constituted under the law of a Member State,
5. to any legal person, group or entity doing business within the Community.

Article 11

1. This Regulation shall enter into force on the day of its publication in the Official Journal of the European Communities.
2. Within a period of one year from the entry into force of this Regulation, the Commission shall present a report on the impact of this Regulation and, if necessary, make proposals to amend it.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 December 2001.