



**Financial Action Task Force**  
Groupe d'action financière

**GUIDANCE REGARDING THE IMPLEMENTATION OF  
FINANCIAL PROVISIONS OF UNITED NATIONS  
SECURITY COUNCIL RESOLUTIONS TO COUNTER THE  
PROLIFERATION OF WEAPONS OF MASS DESTRUCTION**

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# Guidance Regarding the Implementation of Financial Provisions of United Nations Security Council Resolutions to Counter the Proliferation of Weapons of Mass Destruction

## I. INTRODUCTION

### Objectives

1. This guidance is intended to:
  - (a) assist jurisdictions in implementing the targeted financial sanctions contained in United Nations Security Council Resolutions (UNSCRs) relating to the prevention of weapons of mass destruction (WMD) proliferation – currently, S/RES/1718(2006), S/RES/1737(2006) and S/RES/1747(2007);
  - (b) assist jurisdictions in implementing the activity-based financial prohibitions contained in UNSCRs relating to the prevention of WMD proliferation – currently, S/RES/1695(2006) and S/RES/1737(2006); and
  - (c) establish a framework for further study of broad-based measures to combat WMD proliferation financing under S/RES/1540(2004) and S/RES/1673(2006).
2. It should be stressed that this guidance is without prejudice to existing guidance in this area, and is not intended to replace other measures or obligations that may already be in place for dealing with funds or other assets, or WMD proliferation items or technology.
3. This guidance is not binding and is not directly related to any of the Financial Action Task Force (FATF) 40+9 Recommendations, and therefore it is not relevant to the FATF mutual evaluation or assessment process.

### Background: Relevant UNSCRs

4. The UNSCRs identified above in paragraph 1 differ in the specific obligations they create for United Nations (UN) Member States, particularly with respect to:
  - (a) the nature of the financial measures required (e.g., targeted financial sanctions or activity-based financial prohibitions);
  - (b) the targets of those measures and the authorities responsible for identifying such targets; and
  - (c) the responsibilities of jurisdictions and their nationals, including financial institutions, in implementing those measures.

*S/RES/1695(2006)*

5. Pursuant to paragraph 4 of S/RES/1695(2006), jurisdictions are required, “in accordance with their national legal authorities and legislation and consistent with international law, to exercise vigilance and prevent the procurement of missiles or missile-related items, materials, goods, and technology from the DPRK [Democratic People’s Republic of Korea], and the transfer of any financial resources in relation to DPRK’s missile or WMD programmes.”

6. In this respect, each individual jurisdiction should exercise vigilance and should consider having the authorities and capabilities to prevent any financial transfer related to the direct or indirect supply, sale or transfer to the DPRK of the items, materials, equipment, goods and technology which could contribute to such programmes, as specified in S/RES/1718(2006).

*S/RES/1718(2006)*

7. Paragraph 8(a)(i) and (ii) of S/RES/1718(2006) specifies the goods and technology the supply, sale or transfer of which is prohibited because they could contribute to DPRK's missile or WMD programmes.

8. Paragraph 8(c) of S/RES/1718(2006) prohibits the provision of technical training, advice, services and assistance related to the provision, manufacture, maintenance or use of the prohibited goods and technology.

9. Pursuant to paragraph 8(d) of S/RES/1718(2006), jurisdictions shall, "in accordance with their respective legal processes, freeze immediately the funds, other financial assets and economic resources which are on their territories[...], that are owned or controlled, directly or indirectly, by the persons or entities designated by the 1718 Committee or by the Security Council as being engaged in or providing support for, including through other illicit means, DPRK's nuclear-related, other weapons of mass destruction -related and ballistic missile-related programmes, or by persons or entities acting on their behalf or at their direction, and ensure that any funds, financial assets, or economic resources are prevented from being made available by their nationals or by any persons or entities within their territories, to or for the benefit of such persons or entities."

10. The 1718 Committee and the United Nations Security Council (UNSC) are the authorities that are responsible for designating the persons and entities subject to the asset freezing measures and to whom unlicensed funds, or other assets and economic resources shall not be made available. According to S/RES/1718(2006), all UN Member States should have the authorities and capabilities to implement these asset freezing measures, and ensure that any funds or other assets and economic resources are prevented from being made available to such persons and entities designated by the 1718 Committee or the UNSC, as well as those acting on their behalf or at their direction.<sup>1</sup>

*S/RES/1737(2006)*

11. Pursuant to paragraph 6 of S/RES/1737(2006), jurisdictions "shall also take the necessary measures to prevent the provision to Iran of any technical assistance or training, financial assistance, investment, brokering or other services, and the transfer of financial resources or services, related to the supply, sale, transfer, manufacture or use of the prohibited items, materials, equipment, goods and technology".<sup>2</sup>

12. Pursuant to paragraph 12 of S/RES/1737(2006), jurisdictions "shall freeze the funds, other financial assets and economic resources which are on their territories [. . .], that are owned or controlled by the persons or entities designated in the Annex to S/RES/1737(2006), as well as those of additional persons or entities designated by the Security Council or by the 1737 Committee as being engaged in, directly associated with or providing support for Iran's proliferation sensitive nuclear activities or the development of nuclear weapon delivery systems, or by persons or entities acting on

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<sup>1</sup> When the UNSC acts under Chapter VII of the UN Charter, Member States are obligated to carry out its decision. (see Article 25 of the UN Charter).

<sup>2</sup> See paragraphs 3-4 of S/RES/1737(2006) for the specified prohibited items, materials, equipment, goods and technology that are covered.

their behalf or at their direction, or by entities owned or controlled by them, including through illicit means [ . . . ], and ensure that any funds, financial assets, or economic resources are prevented from being made available by their nationals or by any persons or entities within their territories, to or for the benefit of these persons and entities.”

13. With respect to paragraph 6 of S/RES/1737(2006), each individual jurisdiction should have the authorities and capabilities to prevent the provision to Iran of the prohibited technical or financial assistance or services described in paragraph 11 above.

14. With respect to paragraph 12 of S/RES/1737(2006), the 1737 Committee and the UNSC are the authorities responsible for designating the persons and entities subject to the asset freezing measures and to whom unlicensed funds or other assets shall not be made available. According to S/RES/1737(2006), all UN Member States should have the authorities and capabilities to implement these asset freezing measures, and ensure that any funds or other assets and economic resources are prevented from being made available to such designated persons and entities<sup>3</sup>, as well as those acting on their behalf or at their direction, or those owned or controlled by them.

*S/RES/1747(2007)*

15. Pursuant to paragraph 4 of S/RES/1747(2007), jurisdictions are required to extend the asset freezing measures, and economic and financial prohibitions of paragraph 12 of S/RES/1737(2006) described above to the persons and entities listed in Annex I of S/RES/1747(2007).<sup>4</sup>

## **Definitions**

16. For the purposes of this FATF guidance, the following definitions apply and are provided for the purposes of clarification:

- (a) The term *freeze* means to prohibit the transfer, conversion, disposition or movement of funds or other assets on the basis of, and for the duration of the validity of, an action initiated by a competent authority or a court under a freezing mechanism. The frozen funds or other assets remain the property of the person(s) or entity(ies) that held an interest in the specified funds or other assets at the time of the freezing and may continue to be administered by the financial institution or other arrangements designated by such person(s) or entity(ies) prior to the initiation of an action under a freezing mechanism.
- (b) The phrase *funds or other assets* means financial assets, property 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 funds or other assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets.
- (c) The phrase *designated persons and entities* refers to those persons and entities designated by:
  - (i) the 1718 Committee or the UNSC, in the case of S/RES/1718(2006); or
  - (ii) the 1737 Committee or the UNSC, in the case of S/RES/1737(2006), S/RES/1747(2007) or subsequent related resolutions, and includes those persons and entities listed in the annexes of S/RES/1737(2006) and S/RES/1747(2007).

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<sup>3</sup> See footnote 1.

<sup>4</sup> See footnote 1.

- (d) The phrase *activity-based financial prohibitions* refers to the following activities which jurisdictions must prohibit in accordance with S/RES/1737(2006), or which jurisdictions may consider prohibiting consistent with S/RES/1695(2006):
- (i) **S/RES/1695(2006):** under paragraph 4 of S/RES/1695(2006), the transfer of any financial resources in relation to DPRK's missile or WMD programmes;
  - (ii) **S/RES/1737(2006):** under paragraph 6 of S/RES/1737(2006), the provision to Iran of any technical assistance or training, financial assistance, investment, brokering or other services, and the transfer of financial resources or services, related to the supply, sale, transfer, manufacture or use of the prohibited items, materials, equipment, goods and technology specified in paragraphs 3 and 4 of S/RES/1737(2006).

## II. TARGETED FINANCIAL SANCTIONS

### Identifying and designating persons or entities financing or supporting WMD proliferation

17. In order to comply with and fulfil the preventive intent of the relevant UNSCRs, it is necessary for jurisdictions to be in a position to identify any related suspicious activity and for UN Member States to propose additional persons and entities, as appropriate, to the relevant UN Committees for designation.

18. Jurisdictions should have appropriate legal authorities and procedures, and should consider establishing or identifying a competent authority or authorities, to solicit and consider information from all relevant sources to identify, and to collect as much identifier information<sup>5</sup> as possible about, persons and entities that, based on reasonable grounds, or a reasonable basis, to suspect or believe, meet the following criteria for designation:

- (a) **S/RES/1718(2006):** Any person or entity:
  - (i) engaged in DPRK's nuclear-related, other WMD-related and ballistic missile-related programs, including through illicit means;
  - (ii) providing support for DPRK's nuclear-related, other WMD-related and ballistic missile-related programs, including through illicit means;
  - (iii) acting on behalf of or at the direction of any person or entity designated under subsection (i) or subsection (ii) of this subparagraph; or
  - (iv) owned or controlled, directly or indirectly, by any person or entity designated under subsection (i) or subsection (ii) of this subparagraph.
- (b) **S/RES/1737(2006):** Any person or entity:
  - (i) engaged in Iran's proliferation sensitive nuclear activities or the development of nuclear weapon delivery systems;
  - (ii) directly associated with or providing support for Iran's proliferation sensitive nuclear activities or the development of nuclear weapon delivery systems;

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<sup>5</sup> Relevant identifier information may include, but is not limited to: alternate names and spelling, date of birth, place of birth, address, nationality, and identification or passport numbers.

(iii) acting on behalf of or at the direction of any person or entity designated under subsection (i) or subsection (ii) of this subparagraph; or

(iv) owned or controlled by any person or entity designated under subsection (i) or subsection (ii) of this subparagraph, including through illicit means.

19. UN Member States should also have appropriate legal authorities and procedures within their legal framework, and should consider identifying a competent authority, to:

(a) propose to the 1718 Committee or the UNSC designation of those persons and entities that meet the designation criteria of S/RES/1718(2006) described in subparagraph 18(a) above; and

(b) propose to the 1737 Committee or the UNSC designation of those persons and entities that meet the criteria of S/RES/1737(2006) described in subparagraph 18(b) above.

20. Every effort should be made to ensure that designations include as much unique identifying information as possible that could be used to distinguish between the designated persons or entities and persons or entities not targeted by sanctions. Jurisdictions proposing designations at the United Nations should cooperate fully with jurisdictions holding targeted assets to ensure that sanctions are implemented against appropriate parties. For persons or entities with the same or similar name as designated persons or entities, which are inadvertently affected by a freezing mechanism, jurisdictions should implement publicly known procedures to unfreeze the funds or other assets of such persons or entities in a timely manner upon verification that the person or entity involved is not a designated person or entity.

### **Freezing and prohibiting dealing in funds or other assets of designated persons and entities**

21. In order to comply with and fulfil the preventive intent of the relevant UNSCRs, jurisdictions should have appropriate authorities and procedures to freeze without delay the funds or other assets of designated persons and entities, without prior notice to such designated persons and entities. Persons or entities holding such funds or other assets should be required by law or regulation to comply with freezing measures.

22. In order to comply with and fulfil the preventive intent of the relevant UNSCRs, jurisdictions should also ensure that any funds or other assets are prevented from being made available by their nationals or by any persons or entities within their territories, to or for the benefit of designated persons or entities, unless licensed, authorized or notified in accordance with the relevant UNSCRs.

23. In order to facilitate compliance with the measures described in paragraphs 21 and 22, jurisdictions should identify a competent authority or authorities to:

(a) ensure efficient and effective systems for publishing the names of designated persons and entities and for communicating these names to the financial sector and other high risk industries without delay upon designation;

(b) provide clear guidance to assist the private sector and financial institutions and other persons or entities that may be holding funds or other assets of designated persons and entities in fulfilling their obligation to comply with freezing measures; and

(c) effectively monitor and enforce compliance with the measures described in paragraphs 21 and 22, including through investigation and the imposition of civil, administrative or criminal sanctions for failure to comply with such measures.

24. Where a bank or other financial institution is designated for purposes of applying financial sanctions, jurisdictions should undertake a number of additional measures and safeguards in order to:

(i) ensure that sanctions are implemented effectively and robustly; (ii) prevent any prohibited

payments; (iii) preserve the rights of innocent third parties; and (iv) co-operate internationally with other competent authorities within their legal framework. Jurisdictions may also want to consider measures to prevent asset flight. The annex to this guidance provides further guidance regarding such additional measures and safeguards.

### **Post-freezing reporting and investigation**

25. Jurisdictions should ensure that information available from the private sector in freezing funds or other assets of designated persons and entities is effectively utilised by appropriate authorities by:

- (a) developing procedures, within their legal framework, to ensure that competent authorities receive, share, and act on information gathered from the private sector related to the freezing of funds or other assets, including sharing such information internationally to the extent appropriate; and
- (b) to the extent appropriate, providing at a minimum general feedback to and developing a dialogue with financial institutions indicating how financial information relating to the reporting of frozen funds or other assets is generally being used to support actions against WMD proliferation financing.

### **De-listing, unfreezing and providing access to frozen funds or other assets**

26. Jurisdictions should implement publicly known procedures to consider de-listing requests based upon satisfaction of certain criteria consistent with international obligations and applicable legal principles. For persons and entities designated under S/RES/1718(2006), such procedures should be in accordance with any applicable guidelines or procedures adopted by the 1718 Committee. For persons and entities designated under S/RES/1737(2006) or S/RES/1747(2007), such procedures should be in accordance with any applicable guidelines or procedures adopted by the 1737 Committee. In general, de-listing may be appropriate if persons or entities no longer meet the criteria for listing under S/RES/1718(2006), and S/RES/1737(2006) as indicated in paragraph 18 of this guidance. It should be noted that jurisdictions cannot de-list persons that have not been de-listed by the UN.

27. Jurisdictions should unfreeze the funds or other assets of de-listed persons and entities without delay.

28. Where jurisdictions have determined that funds or other assets, which are otherwise subject to freezing pursuant to the obligations under S/RES/1718(2006) or S/RES/1737(2006) and S/RES/1747(2007), are necessary for basic expenses (e.g., for the payment of certain types of fees, expenses and service charges) or for extraordinary expenses, or for payments owed pursuant to obligations incurred prior to the date of designation of the relevant party (e.g., liens, judgments or contracts), jurisdictions should authorise access to such funds or other assets in accordance with the procedures set out in S/RES/1718(2006) and S/RES/1737(2006), respectively. It should be noted that these procedures require a UN Member State to notify the relevant UN Committee of the intention to authorize access to such funds or other assets. Access to frozen funds or assets for basic or extraordinary expenses cannot be granted in the event of a negative decision by the relevant UN Committee.

29. Where the provisions of paragraph 28 above involve funds or other assets owned or held by a designated financial institution, jurisdictions should undertake a number of additional measures and safeguards to ensure that only permitted payments are made. The annex to this guidance provides further guidance regarding such additional measures and safeguards.



30. Jurisdictions should provide for a mechanism through which a person or an entity that is the target of a freezing mechanism can challenge that measure with a view to having it reviewed by a competent authority or a court.

### III. ACTIVITY-BASED FINANCIAL PROHIBITIONS

31. Jurisdictions should take steps to comply with and fulfil the preventive intent of current obligations to implement activity-based financial prohibitions contained in paragraph 6 of S/RES/1737(2006). In doing so, jurisdictions should consider developing guidance addressed to their financial institutions regarding:

- (a) the identification of customers, financial products and services, and transactions that present heightened risks of exposing financial institutions to activity-based financial prohibitions contained in paragraph 6 of S/RES/1737(2006); and
- (b) the development of reasonable and effective controls to mitigate these risks through enhanced diligence, scrutiny and monitoring, as appropriate.

Consultation with financial institutions in the development of such guidance can improve its applicability and effectiveness in implementation.

32. The FATF will also work with jurisdictions to identify, develop and share information useful in developing and implementing the guidance described in paragraph 31 above, including by, for example:

- (a) developing definitions of *technical assistance or training, financial assistance and investments, brokering or other services* for the purposes of complying with paragraph 6 of S/RES/1737(2006);
- (b) identifying the types of information that financial institutions should reasonably be expected to collect, when acting on behalf of a customer (*e.g.*, an importer, exporter and intermediary), and taking into account the type of financial products or services being used in the transaction (*e.g.*, letters of credit, wire transfers and open accounts);
- (c) determining the scope of the obligations of financial institutions with respect to the collection and further use of information potentially relating to activity-based financial prohibitions;
- (d) identifying what mechanisms could be used to make additional information (*e.g.*, particularly intelligence and export control information) available to financial institutions in order to assist them in assessing the risk of proliferation financing more effectively; and
- (e) developing a list of suitable red flag indicators related to proliferation financing and engaging in other typologies work in order to develop a greater understanding of the threat of WMD proliferation financing.

The FATF will continue to focus on these issues and will examine all of the above-mentioned options to determine whether they are possible, feasible and effective with a view to continue facilitating a harmonized, effective and workable approach for jurisdictions to implement their obligations regarding activity-based financial prohibitions under paragraph 6 of S/RES/1737(2006).

#### IV. FURTHER STUDY OF BROAD-BASED MEASURES TO COMBAT WMD PROLIFERATION FINANCE UNDER S/RES/1540(2004)

33. There are financial provisions within paragraphs 2<sup>6</sup> and 3(d)<sup>7</sup> of S/RES/1540(2004)'s mandatory Chapter VII obligations that merit further examination by the FATF.

34. S/RES/1673(2006) reiterates the requirements of S/RES/1540(2004) and emphasizes the importance for all jurisdictions to implement fully that resolution, including provisions regarding the financing of WMD proliferation.

35. The FATF, in collaboration with the United Nations 1540 Committee, will conduct further study to:

- (a) identify the ongoing threat of the financing of WMD proliferation;
- (b) analyse the effectiveness of existing measures to counter the threat of the financing of WMD proliferation, and
- (c) identify measures (*e.g.*, criminalisation measures, broader sanctions, activity-based financial prohibitions or controls or examining the use of financial intelligence) that could be considered in combating WMD proliferation finance within the framework of existing UNSCRs, such as S/RES/1540(2004).

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<sup>6</sup> Paragraph 2 of S/RES/1540(2004): “*Decides also* that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them.”

<sup>7</sup> Paragraph 3(d) of S/RES/1540(2004): “*Decides also* that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall . . . [e]stablish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation.”

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# FINANCIAL SANCTIONS AGAINST A FINANCIAL INSTITUTION DESIGNATED UNDER UNITED NATIONS SECURITY COUNCIL RESOLUTIONS RELATING TO PREVENTION OF WMD PROLIFERATION

## I. INTRODUCTION

1. A number of additional issues arise where a bank or other financial institution is designated for the purpose of financial sanctions. This annex deals with the case of a designated bank in particular under UNSCR 1737/1747. Similar considerations apply in respect of other designated financial institutions.
2. When financial sanctions are imminent, competent authorities may wish to consider other regulatory measures within their legal framework to prevent asset flight and overall risks on financial and payment systems and protect the position of counter-parties acting in good faith.
3. Where implementing financial sanctions against a designated bank, competent authorities should ensure that the sanctions are implemented effectively and robustly by preventing new banking business and restricting any prohibited payments. Within a framework of robust controls competent authorities should seek to protect third parties from the impact of sanctions to the extent possible, for example by making use of exemptions that allow for payments due under contracts concluded before the bank was designated. Such payments should, however, be closely monitored.
4. The application of financial sanctions affects the liquidity and/or solvency of a designated financial institution, increases the risks of insolvency over time, and raises immediate issues of prudential concern. In such circumstances, the jurisdiction's insolvency or similar procedures, if applicable, should be applied in accordance with national laws and subject to the requirements of financial sanctions. This may involve the appointment of an administrator or auditor.

## II. APPLICATION OF THE SANCTIONS

5. Where a bank has been designated, competent authorities should seek to implement financial sanctions as quickly as possible. In so doing, they should take a number of immediate actions:
  - (a) **Determine whether the designated bank has a presence in their jurisdiction.** A bank may have a presence by being constituted within that jurisdiction, because it has a branch there or because it owns or controls an entity in the jurisdiction (e.g. a subsidiary). The authorities should also determine whether the designated bank has accounts in a bank located in its territory.
  - (b) **Consider whether the designation of the bank will cause fit-and-proper concerns relating to the bank's directors or senior management, and consider whether the designation of the bank will cause other regulatory concerns,** such as systemic risks (e.g. other banks suffering an adverse effect) or other market impacts (e.g. a run of creditors on the bank or potential disturbances in the payment systems). Such a determination may lead authorities to consider the appointment of an administrator or auditor, or other appropriate action.

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### III. PAYMENTS MADE BY THE DESIGNATED BANK

6. No payments should be made by a designated bank except where authorised by competent authorities which are actually implementing the financial sanctions.

7. In determining authorisation on the basis of the relevant United Nations Security Council resolution (UNSCR), competent authorities should consider:

- (a) What payments should in principle be authorised; and
- (b) What safeguards should be built into the authorisation regime to ensure that only permitted payments are made, including what type of monitoring and scrutiny should be conducted.

#### A. Safeguards

8. Competent authorities should put in place robust safeguards to ensure that only permitted payments are made. This should include, at a minimum:

- (a) Pre-vetting of all payments made by the bank under authorisation by competent authorities or, if legislation allows for it, independent bodies, such as auditors, acting at the request of the competent authorities and under their supervision.
- (b) Regular reporting by the bank, verified by the administrator/auditor, if applicable, to the competent authority on all payments made and received by the bank.

#### B. Payments due under prior contracts

9. Competent authorities should consider how to deal with payments due under prior contracts.

10. For example, paragraph 15 of S/RES/1737(2006) specifies that the sanctions measures shall not prevent a designated person or entity from making payments due under contracts entered into prior to listing, where the relevant states have determined that the contract is not related to items, assistance or services prohibited under the Resolution and that the payment is not directly or indirectly received by a designated person or entity. This includes the transfer of funds between the head office, branches or accounts of the bank necessary for such payments. Under para. 15 of S/RES/1737(2006), states are required to notify the United Nations (UN) sanctions committee of their intention to authorise payments due under prior contracts 10 working days before issuing an authorisation.

11. In order to prevent new banking business with a designated financial institution, countries should not permit payments under discretionary facilities such as overdrafts or revolving facilities, such that a designated financial institution cannot continue to be a vehicle for future commercial contracts.<sup>8</sup>

12. Competent authorities should consider whether prior contracts that have been amended after the designation of the respective bank should be treated as prior contracts for sanctions purposes (e.g., the renewal of a lease), or whether the changes to the contract are sufficiently substantive that they should be treated as new contracts. Competent authorities should be aware that third parties may wish to consider alternative financing arrangements.

13. Where the designated entity has a branch, the competent authority where the branch is located may allow the designated entity to transfer funds between branches or offices in order to

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<sup>8</sup> This provision should not be interpreted as permitting a designated financial institution to refuse to pay debts owed to third parties acting in good faith.

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14. make payments due under prior contract to third parties acting in good faith, on its behalf or on behalf of its head office. In this case, the competent authority of the jurisdiction where the branch is located should exercise appropriate vigilance when granting such an authorisation.

### **C. Other payments: Basic and extraordinary expenses**

15. UN resolution 1737 has the effect of preventing the designated bank from conducting new business and competent authorities should bear this in mind when considering whether to authorise other payments.

16. Nonetheless, competent authorities may need to consider authorising certain basic and extraordinary expenses that do not create new banking obligations but are necessary in order to ensure an orderly wind down of the bank's obligations under prior contracts to third parties acting in good faith, including non-designated account holders.

17. Basic expenses requests will require the absence of a negative decision by the UN Sanctions Committee, and extraordinary expenses will require prior approval by the Committee.

#### **(i) Basic expenses**

18. In the case of UNSCR 1737, paragraph 13(a) specifies that sanctions measures do not apply to funds, other financial assets or economic resources that relevant states have determined to be necessary for basic expenses, including e.g. payment for rent or mortgage, salaries, taxes, insurance premiums, public utility charges or for payment of professional fees such as legal services.

#### **(ii) Extraordinary expenses**

18. In the case of UNSCR 1737, paragraph 13(b) specifies that the sanctions measures do not apply to funds, other financial assets or economic resources that relevant states have determined to be necessary for extraordinary expenses and that the UN Sanctions Committee has approved.

19. Extraordinary expenses include *inter alia* any expenses in connection with ancillary transactions of a subsidiary or a branch of the bank not covered by paragraph 15 of UNSCR 1737 that are necessary to ensure an orderly wind down of the bank's obligations under prior contracts to third parties acting in good faith or for expenses necessary to ensure the protection of such third parties. Examples of such extraordinary expenses might include:

- (a) Expenses in connection with ancillary transactions that are necessary to allow the bank to repatriate or transfer its assets within the banking group or from other financial institutions (e.g., transactions to align currency reserves in order to repatriate or transfer assets);
- (b) Where appropriate, allowing a subsidiary to "set off" against a parent bank's frozen assets held by the subsidiary;
- (c) Expenses in connection with certain foreign exchange transactions to allow the bank to meet its obligations under prior contracts (e.g., to allow for payment under prior contracts in the currency called for by the contract at issue);
- (d) The fees of an administrator or auditor.

### **IV. PAYMENTS DUE TO THE DESIGNATED BANK**

20. Paragraph 14 of S/RES/1737(2006) allows payments to be made to the frozen accounts of a designated person or entity provided that the payment is due under a prior contract, agreement

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or obligation. Third parties may not require an authorisation from a competent authority to make such payments so long as it is into a frozen account.

21. In principle, competent authorities should permit these payments to be made, as long as they are payments due under prior contracts, agreements or obligations and do not create new banking obligations, as this will help the bank to meet its prior obligations to third parties. However, competent authorities will need to ensure that payments made to the bank are properly frozen in the same way as the bank's existing assets, and are subject to close monitoring and scrutiny by the competent authorities.

### **V. CROSS-JURISDICTIONAL CO-OPERATION**

22. Jurisdictions containing branches or subsidiaries of a designated bank should communicate with each other to ensure that sanctions are being applied in a consistent and effective manner across jurisdictions.

23. There should be a need for wider co-operation between competent authorities regarding payments to and from designated banks that cross jurisdictional boundaries. The aim should be to ensure that permitted payments can move as efficiently as possible, subject to proper controls, [recording and monitoring] and that any prohibited payments are quickly identified and prevented. The cooperation between jurisdictions may include coordinated exemption notifications to the UN sanctions committee.