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**ASIA/PACIFIC GROUP  
ON MONEY LAUNDERING**

**APG 2<sup>nd</sup> MUTUAL EVALUATION REPORT ON  
Indonesia**

**Against the FATF 40 Recommendations (2003) and 9 Special  
Recommendations**

**Adopted by the APG Plenary  
9 July 2008**



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<b>R.2</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Apparent conflict between Indonesian laws establishing criminal liability for legal persons may hinder implementation.</li> <li>• Statistics do not demonstrate that the offence is effectively implemented at this point.</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Clear statistics were not maintained and shared between agencies on the numbers of investigations, prosecutions and convictions for the ML offence.</li> </ul>

## 2.2 CRIMINALISATION OF TERRORIST FINANCING (SRII)

### 2.2.1 DESCRIPTION AND ANALYSIS

194. Terrorist financing is addressed in Law Number 15 Year 2003 Concerning Stipulation of Government Regulation in Lieu of Law Number 1 Year 2002 Concerning Combating Criminal Acts of Terrorism. Government Regulation in Lieu of Legislation Number 1 Year 2002 concerning Combating Criminal Acts of Terrorism came into force on 18 October 2002. The Regulation was superseded by Law Number 15 Year 2003, which had the effect of enacting the contents of the above mentioned regulation as law and which came into effect on 4 April 2003. This law shall be referred to as the Anti-Terrorism Law in this report.

195. Chapter III of the Anti-Terrorism Law sets out the offences of Criminal Acts of terrorism. Articles 6 – 10 set out the offences of Acts of terrorism and Articles 11, - 13 subsequently outline the offences of TF.

#### **Article 11 (Funding terrorism)**

Any person who intentionally provides or collects funds with the objective that they be used or there is a reasonable likelihood will be used partly or wholly for criminal acts of terrorism as stipulated in Articles 6, 7, 8, 9 and 10.

#### **Article 12 (Assets for terrorism)**

Any person who intentionally provides or collects assets with the objective that they be used or there is a reasonable likelihood will be used partly or wholly for:

- a. committing any unlawful act of receiving, possessing, using, delivering, modifying or discarding nuclear materials, chemical weapons, biological weapons, radiology, micro-organism, radioactivity or its components that causes death or serious injuries or causes damage to assets;
- b. stealing or seizing nuclear materials, chemical weapons, biological weapons, radiology, micro-organism, radioactivity or its components;
- c. embezzling or acquiring illegally nuclear materials, chemical weapons, biological weapons, radiology, micro-organism, radioactivity or its components;
- d. requesting nuclear materials, chemical weapons, biological weapons, radiology, micro-organism, radioactivity or its components;
- e. threatening to:
  - 1) use such nuclear materials chemical, biological weapons, radiology, micro-organism, radioactivity or its components to cause death or injuries or damage to properties; or
  - 2) commit criminal acts as stipulated in b with the intention to force another person, an international organization, or another country to take or not to take an action;
- f. attempting to commit any criminal act as stipulated in a, b or c; and
- g. participating in committing any criminal act as stipulated in a to f.

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### **Article 13 (Assisting and facilitating terrorism)**

Any person who intentionally provides assistance to any perpetrator of criminal acts of terrorism by:

- a. providing or lending money or goods or other assets to any perpetrator of criminal acts of terrorism;
- b. harbouring any perpetrator of any criminal act of terrorism; or
- c. hiding any information on any criminal act of terrorism.

Sentence: Minimum 3 (three) years imprisonment and maximum 15 (fifteen) years imprisonment.

### **Scope of the offences**

196. The criminalisation of funding terrorist acts is addressed at Article 11 and 12 of the Anti-Terrorism Law. Article 11 addresses the collection and provision of 'funds' for terrorist acts. It does not cover indirect provision or collection. Article 11 is limited to funds (which is limited to money and other negotiable instruments) and does not cover assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form (see also paragraph 195 below).
197. Article 12 of the Anti-Terrorism Law provides for the collection and provision of the more widely defined 'assets', to support terrorist acts related to nuclear materials, chemical and biological weapons etc.
198. Article 13 of the Anti-Terrorism Law covers "persons who provide assistance to perpetrators" of criminal acts of terrorism. This covers providing funds and other assets. The term perpetrator is not defined. This appears to tie the offence to the perpetrator of a specific criminal act of terrorism, rather than an individual terrorist "who may not have committed any such act".
199. Indonesia does not create an offence of providing funds to an individual or entity listed by the UN 1267 Committee as a terrorist.
200. Article 13 of the Anti-Terrorism Law applies to "any person who intentionally provides assistance" to any perpetrator of criminal acts of terrorism". Article 13 only partially criminalises the provision of assets to terrorist organisations as defined in the FATF standards. Article 13 appears to cover any group of terrorists that: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; and (ii) participates as an accomplice in terrorist acts. The Article would not appear to cover a person who (i) organises or directs others to commit terrorist acts; or (ii) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.
201. The Anti-Terrorism Law variously uses the terms "funds" and "assets" when defining the scope of the TF offence. The term funds is not defined in law the Anti-Terrorism Law and is interpreted in its common meaning as limited to money and other negotiable instruments. Assets are defined in the law as any movable or immovable, tangible or intangible objects. This definition does not meet the requirement in the UN TF Convention to include coverage of legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets.

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202. The TF offence appears to require that funds were actually used to carry out or attempt carry out a criminal act of terrorism. Article 11 of the Anti-Terrorism Law requires that the funds were provided or collected with the objective that they be used or that there is a reasonable likelihood that they will be used partly or wholly for a criminal act of terrorism.
203. Offences of attempting to commit the present TF offences are available. Article 53 of the Penal Code sets out general provisions relating to attempt. Article 53(1) indicates that:
- 53 (1) Attempt to commit a crime is punishable if the intention of the offender has revealed itself by a commencement of the performance and the performance is not completed only because of circumstances independent of his will.
204. Offences of aiding and abetting the commission of TF offences are available in the Penal Code. "Participation in Punishable Acts" (Aiding & Abetting) as defined in Articles 55 & 56 of the *Penal Code* cover all the types of conduct set out in Article 2(5) of the UN Terrorist Financing Convention, that is participating as an accomplice in a TF offence, organising or directing others to commit such an offence, and acting in common purpose with others to further the commission of such an offence.
205. The Anti-terrorism Law also includes provisions for attempt and aiding and abetting in Articles 14-16.

### **Article 14 [Inciting others to terrorism]**

Any person who plans and/or incites another person to commit any criminal act of terrorism as defined in Articles 6, 7, 8, 9, 10, 11 and 12. Sentence: Death penalty or life imprisonment.

### **Article 15 [Planning and attempting terrorism]**

Any person who conducts any plot, attempt, or assistance to commit any criminal act of terrorism as stipulated in Articles 6, 7, 8, 9, 10, 11 and 12. Sentence: The same penalty as the perpetrator of said criminal act of terrorism.

### **Article 16 [Facilitating terrorism outside Indonesia]**

Any person outside the territory of the Republic of Indonesia who provides any assistance, facilitation, means or information for the committing of any criminal act of terrorism. Sentence: The same penalty as the perpetrator of said criminal act of terrorism as stipulated in Articles 6, 7, 8, 9, 10, 11 and 12.

206. The above provisions in the Anti-Terrorism Law do not support application of those offences for Article 13 TF offences. Prosecutors would be required to rely on the general provisions for ancillary offences in the Criminal Code.
207. Chapter III of the Anti Terrorism Law outlines a range of Criminal Acts of Terrorism at , Articles 6-19. Article 6 of the Anti-Terrorism Law provides a basic definition of a criminal act of terrorism as:
- "Any person who intentionally uses violence or the threat of violence to create a widespread atmosphere of terror or fear in the general population or to create mass casualties, by forcibly taking the freedom, life or property of others or causes damage or destruction to vital strategic installations or the environment or public facilities or international facilities."
208. The offences in Chapter III of the Anti-Terrorism Law do not comprehensively include the classes of acts prescribed by Article 2.1(a) where the purpose of such act, by its nature or

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context, is to compel a government or an international organization to do or to abstain from doing any act.

209. Article 8 of the Anti-Terrorism Law further defines “criminal acts of terrorism” related to aviation security. The provision in article 8 appear to be in keeping with the obligations to cover offences in the Convention for the Suppression of Unlawful Seizure of Aircraft (1970), the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971) and 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, (1988).
210. Article 9 extends a criminal act of terrorism to offences related to explosives, firearms and ammunition. Articles 10 and 12 extend a criminal act of terrorism to biological weapons, radiology, micro-organisms radioactivity and nuclear weapons. These provisions are in keeping with the obligations to cover offences in the UN International Convention for the Suppression of Terrorist Bombings (1997) and the Convention on the Physical Protection of Nuclear Material (1980).
211. The extended definitions of the offence of “criminal act of terrorism” available in the Anti-Terrorism Law do not appear to cover financing of activities which are offences set out in the UN Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973), the UN Convention against the Taking of Hostages (1979) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988).
212. The TF offences are capable of application where the act of financing takes place in a different country to the one in which the terrorist group is located or the terrorist act did/will occur.

### ***Mental elements***

213. Article 11 of the Anti-Terrorism Law creates an offence with knowledge, intention or reasonable grounds to believe that it will be used to commit a terrorist act or fund a perpetrator of a terrorist offence. Article 13 limits the knowledge element to “intentionally”, but does not include “reasonable grounds to believe” or other elements that would support it being proven by objective factual circumstances.

### ***Liability***

214. The Anti-Terrorism Law establishes criminal liability for legal persons in relation to terrorism and TF offences in the law. The definitions in the law for “person” include corporate liability. A “person” is defined in the law as any individual or group of persons, either civilian, military or police, who is responsible individually or as a corporation. A corporation is defined in the law as an organised group of persons and/or properties, whether or not in the form of a legal entity.
215. The TF offences apply to both natural and legal persons and do not preclude parallel criminal, civil or administrative proceedings. Article 17 of the Anti-Terrorism Law provides for criminal liability of corporations for criminal acts of terrorism including the TF offences. A criminal act of terrorism shall be deemed to have been committed by a corporation if the criminal act is committed by persons who, based on their work relationship or other relationships, act in the environment of such corporation either individually or jointly. In the

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event the criminal act is committed by or on behalf of a corporation, the prosecution and sentencing thereof shall be carried out against such a corporation or the management thereof.

216. As indicated in the section of this report dealing with FATF Recommendation 2, Indonesia's Penal Code (Law 2/1945) does not recognise criminal liability for legal persons of any description or type, whether a body of persons, corporate and unincorporated. There is a concern that the apparent conflict between the Penal Code and the corporate criminal liability established in Law 15/2003 creates a problem and may be impossible to prove or proceed against in a prosecution.

### ***Mental elements***

217. In the case of natural persons, sanctions available in the Anti-Terrorism Law for TF are limited to imprisonment, but the available terms appear to be dissuasive with a maximum of 15 years and a minimum of three years. The high minimum term of imprisonment hinders the application of proportionate sanctions.
218. Article 18 of the Anti-Terrorism Law provides for sanctions against legal persons. Fines are available up to an amount of Rp.1,000,000,000,000 (US\$100 million). A problem arises with effectiveness as administrative penalties only arise once a corporation is convicted of a criminal act of terrorism. A corporation involved in any criminal act of terrorism may be dissolved, its license to operate revoked and declared a banned corporation.

### **Recent Developments**

219. Since the onsite visit a number of defendants have been charged with terrorist financing offences and a number of convictions have been recorded. While each of the three convictions achieved in early 2008 were against natural persons, in the matter of **AINUL BAHRI** (adjudicated on 16 April 2008) the court found him guilty of a number of terrorism offences, but the courts findings raised a number of issues regarding the operation of corporate criminal liability under the Anti-Terrorism Law.
220. The case against **AINUL BAHRI** demonstrated his liability for various terrorist acts, including terrorist financing. The court established that he was an office holder of **Al Jamaah Al Islamiyah (JI)**. As part of its adjudication in the case, the court made findings against both **AINUL BAHRI** and the corporate entity, **JI**. It should be noted that **JI** was not charged with any terrorist offence, but the judgement appears to apportion criminal liability to **JI** and applies sanctions against legal person **JI**.

## **JUDGMENT**

**CRIMINAL NUMBER: 2189/Pid.B/2007/PN.Jkt.Sel.**

**South Jakarta District Court, 16 April 2008**

Considering articles of laws mentioned:

### **TO ADJUDICATE**

- I. To announce that a defendant of **AINUL BAHRI als. YUSRON MAHMUDI als. etc** concerned is proved guilty legally and assures that a defendant has been guilty to commit a crime:
1. illegally in controlling, maintaining, hiding firearms, ammunition, explosive materials mentioned to commit a crime;

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2. intentionally to provide assistance and facilities to terrorists in term of financing;
3. intentionally to provide assistance and facilities against terrorists by hiding terrorists concerned and information on the criminal act of terrorism.
- II. To announce that Al Jamaah Al Islamiyah as a corporation whose one of managers is a defendant is proved guilty legally and assures that it has been guilty to commit a criminal act of terrorism;
- III. To punish a defendant with 15 (fifteen) years of imprisonment;
- IV. To determine period of arrest that has been served by a defendant minus whole sentencing imposed;
- V. To determine that a defendant shall remain in custody;
- VI. To punish Al Jamaah Al Islamiyah as a corporation whose one of managers is a defendant with a fine of Rp. 10,000,000 (ten million rupiah);
- VII. To determine Al Jamaah Al Islamiyah as a corporation whose one of managers is a defendant is prohibited corporation;

### **Recommendation 32 (terrorist financing investigation/prosecution data)**

221. The following table summarises information on the number of investigations and prosecutions for AML for the 2003 – 2007 period:
222. Indonesian authorities were unable to provide accurate statistics on the number of TF investigations undertaken, the number of TF charges laid, the number of TF prosecutions or the amounts of funds involved.

### **Effectiveness**

223. In recent years, Indonesia has taken effective actions to arrest over 400 persons and secured over 300 convictions for terrorist acts. Despite these serious terrorism and TF threats in Indonesia, there has been very limited use of the TF offence to go after the funding of such widespread terrorism threats. As of the date of the onsite visit, only one conviction had been secured for TF.
224. There have been a number of cases investigated and charges laid, but as of the date of the onsite visit, only one conviction of the TF offence, in 2004, has been carried forward by the courts. This case involved the financing of the bombing of the Jakarta Marriott Hotel in August 2003. The defendant received a four year prison sentence. In general, the TF offence has not been used to investigate and prosecute TF related to known and identified terrorist groups with a presence in Indonesia.
225. In a number of cases police had captured those responsible for funding terrorist acts, but the individuals were also directly involved in carrying out terrorist acts. In those cases, the indictment stage the prosecutors' office charged the TF offence, however the judge decided to only indict the defendant on the more serious charge of terrorist acts, which carries a higher sentence than the TF offence.
226. Given the lack of use of the offence, it is clear that implementation of these provisions has not been effective.



## 2.2.2 RECOMMENDATIONS AND COMMENTS

227. Indonesia should revise the TF offences to ensure that they are in keeping with the UN TF Convention and the FATF standards. In particular the offence should clearly cover:

- all required terrorist acts as outlined in the TF convention;
  - the widest range of assets;
  - direct and indirect collection and provision of assets;
  - funding to individual terrorists;
  - provision of assets to terrorist organisations; and
  - the ability for the knowledge element to be able to be proven by objective factual circumstances.
- The Anti-Terrorism Law should be amended to include effective, proportionate and dissuasive sanctions, including monetary sanctions for natural persons and effective administrative sanctions for corporations.
  - The Anti-Terrorism Law should be amended to remove the obligation that funds for the TF offence must be linked to a specific terrorist act.
  - Indonesia should ensure that the possible conflict regarding corporate criminal liability is resolved. This may involve amending the Penal Code (Law 2/1945) and Criminal Procedure Code or by some other means.
  - The TF offence should be vigorously pursued, with authorities considering adopting an approach where all indictments of TF offences should be Cumulative Indictments which require a verdict on the TF offence.
  - Authorities should implement the TF offences within the Anti-Terrorism Law to prosecute and sanction TF of identified terrorist groups and individuals with a presence in Indonesia.

## 2.2.3 COMPLIANCE WITH SPECIAL RECOMMENDATION II

	Rating	Summary of factors underlying rating
SR.II	PC	<ul style="list-style-type: none"> <li>• The scope of property that is covered by the TF offence is not consistent with requirements in the TF Convention.</li> <li>• Indirect collection and provision of funds is not covered</li> <li>• Collecting for or providing funds to a terrorist organisation is not comprehensively covered.</li> <li>• Corporate criminal liability may be impeded in practice by a conflict with the Penal Code and Criminal Procedure Code.</li> <li>• The knowledge element is not, in all cases, able to be proven by objective factual circumstances.</li> <li>• There offence has not been effectively pursued and statistics do not demonstrate effective implementation of the offence.</li> </ul>

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<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Statistics are poorly kept for TF investigations, prosecutions, convictions and sanctions.</li><li>• NB this is a composite rating and does not derive solely from the factors listed here.</li></ul>
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**2.3 CONFISCATION, FREEZING AND SEIZING OF PROCEEDS OF CRIME (R.3)**

**2.3.1 DESCRIPTION AND ANALYSIS**

228. Limited forfeiture, freezing and seizing of criminal proceeds and instruments, is possible pursuant to measures within the Criminal Procedure Code, laws creating specific predicate offences and the AML Law.

229. Laws exist for the seizure and confiscation of property in relation to offences of ML, narcotics trafficking, customs offences, tax offences and corruption:

- there is provision for seizing and/or confiscation proceeds of crime under various specific Acts, such as the AML Law, Article 32, *Customs Law Article 62*, the Narcotics Law Articles 69 & 77, the *Corruption Laws*, Article 38B, and the tax Collection Law 19/ 1997 Articles 12 to 28; and
- Articles 38 to 49 and 128 to 130 of the *Criminal Procedure Code* permit a district court to make orders for confiscation of any property which has been used for the commission of any offence, or in relation to which any offence appears to have been committed.

230. Indonesia does not have a comprehensive 'Proceeds of Crime' Law or an 'Assets Forfeiture Law', however a Draft Assets Forfeiture Bill is being prepared.

231. In the absence of a comprehensive proceeds of crime law, Indonesia has conducted asset forfeiture based on Article 44-46 of the Criminal Procedures Code. Seized or forfeited property is managed by State Storehouse for Seized Goods/Marshall Services (Rupbasan – Depkumham), under the Ministry of Law and Human Rights and is governed in Article 30 of the Criminal Procedure Code (KUHAP) and other regulations related to Rupbasan.

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offences and including the seizing and confiscation of legitimate assets of equivalent value to the proceeds.

- making the standard of proof for confiscation the reverse onus civil standard in all confiscation matters.
- Specifically providing for confiscation of indirect proceeds.

### 2.3.3 COMPLIANCE WITH RECOMMENDATIONS

	Rating	Summary of factors underlying rating
R.3	PC	<ul style="list-style-type: none"><li>• Comprehensive measures to trace, freeze and seize the widest range of property that represents proceeds of crime are not yet in place.</li><li>• Statistics do not show effective implementation of the existing provisions for provisional measures and confiscation.</li></ul>
R.32	PC	<ul style="list-style-type: none"><li>• Consolidated statistics were not available in relation to implementation of measures to freeze, seize and confiscate the proceeds of crime.</li><li>• NB this is a composite rating and does not derive solely from the factors listed here.</li></ul>

## 2.4 FREEZING OF FUNDS USED FOR TERRORIST FINANCING (SR.III)

### 2.4.1 DESCRIPTION AND ANALYSIS

261. The UN Al-Qaida and Taliban Sanctions Committee formed pursuant to United Nations Security Council Resolution 1267 (1999) (UNSCR 1267) lists a number of Indonesians, including a number of residents of Indonesia. Sixteen Indonesians and two Indonesian-based non-profit entities are listed on the UNSCR 1267 Consolidated List.

262. Indonesia lacks an effective system or legal powers to give effect to its obligations to freeze assets held in Indonesia of persons and other entities included on the 1267 Committee Consolidated List. In addition, no extraordinary procedure in line with the Special Recommendation III requirements have been elaborated in Indonesia to deal with national lists based on United Nations Security Council Resolution 1373 (2001) (UNSCR 1373).

263. Indonesia has no law or effective procedures to freeze terrorist assets without delay and without prior notice. Indonesia relies on the investigative process and upon existing measures under the Criminal Procedures Code to freeze funds of entities listed on the UNSCR 1267 Consolidated List and to freeze assets of persons in accordance with UNSCR 1373. Indonesia does take steps to distribute the UNSCR 1267 Consolidated list. The inter-agency process to issue freeze orders based on suspicion of a criminal offence, includes the Foreign Ministry, Attorney General, and BI and takes several weeks from UN designation to bank notification.

#### **S/RES/1267(1999)**

264. Indonesia has not established the necessary authority to freeze without delay the funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with UNSCR 1267.

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265. Indonesia adopts a judicial process for freezing terrorist assets, which is not able to freeze UNSCR 1267-list assets without delay as required under the FATF standards. Indonesia's process requires POLRI or the AGO to establish sufficient evidence of a specific criminal offence of terrorism or TF offence under Indonesian law before they are able to freeze terrorist assets. The phrase "without delay", for the purposes of UNSCR 1267, means, ideally, within a matter of hours of a designation by the Al-Qaida and Taliban Sanctions Committee.
266. The only measures available in Indonesia to implement SRIII are related to powers to seize "evidence" of a specific terrorist act. It is not a crime to be a listed terrorist in Indonesia. The limited available measures are:
- the general power of seizure conferred by sections 39-49 of the Criminal Procedure Code, whereby police may seize property found in circumstances which create suspicion that an offence has been committed;
  - AML Law, Article 32, which authorises the freezing of property; and
  - Article 29 (i) of the of the Anti-Terrorism Law , that is law 15/2003 Government Regulation in Lieu of Legislation Number 1 Year 2002 Concerning Combating Criminal Acts Of Terrorism.
267. None of these laws is able to operate effectively as a mechanism for freezing without delay and forfeiture of funds associated with designated terrorist entities. The context of Articles 38-49 of the Criminal Procedure Code indicates that it is restricted to goods which are suspected of having been stolen, or the proceeds of sale of such goods. It is unlikely to be capable of applying to the property of persons who may have committed terrorist acts. In addition Articles 38-49 do not confer power to seize property in the absence of a suspicion that an offence has been committed. This means that they cannot authorise the seizure of property on the basis only that it is property of a terrorist entity, outside the context of specific terrorist acts. Similar restrictions apply to the AML Law Article 32 provision.
268. Article 29 (i) of the of the Anti-Terrorism Law holds that
- Investigators, public prosecutors or judges shall be authorised to order banks and other financial institutions to freeze the assets of any individual whose assets are known or reasonably suspected to be the proceeds of any criminal act connected to terrorism.
269. Article 29 of the Anti-Terrorism Law is under Chapter V of the Regulation, which is headed "CHAPTER V - INVESTIGATION, PROSECUTION AND INQUIRY DURING THE COURT TRIAL". Article 29 only applies to steps that can be taken during criminal investigations or court proceedings. This provision is only available to freeze assets in the context of specific terrorist acts. This does not provide for effective freezing of terrorist assets without delay as understood under UNSCR 1267 or UNSCR 1373.

### ***UNSCR 1373 and freezing mechanisms of other jurisdictions***

270. There is no national mechanism to designate persons in the context of UNSCR 1373, nor a comprehensive mechanism in place to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions.

***Jointly held property and derivative property***

271. No system of laws is available to seize assets wholly or jointly owned and controlled by UNSCR 1267 or UNSCR 1373 designated persons. There is no law to seize from designated persons funds or other assets derived or generated from designated persons, terrorists or those who finance terrorism.

***Communication with and guidance for the financial sector***

272. While the UNSCR 1267 Consolidated List is regularly published on the PPAATK web site, Indonesian authorities have not provided clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms. BI and AGO circulate the UNSCR 1267 Consolidated List to all banks operating in Indonesia, however this inter-agency process is too complex and inefficient to send out asset-freezing instructions in a timely manner. In addition, no clear instructions are provided to financial institutions as to what will happen when assets are discovered. Banks also note that without very specific information, the preponderance of similar names and vague addresses, along with lack of a unique identifier in Indonesia, make identifying the accounts very difficult.

***De-listing, unfreezing, access to frozen funds and challenges to freezing orders***

273. Indonesia does not have any provisions relating to considering de-listing, unfreezing funds of de-listed persons or of persons inadvertently affected by a freezing mechanism upon verification that the entity is not a designated person.

***Freezing, Seizing and Confiscation in other circumstances***

274. As mentioned above, Indonesia does have powers to freeze and confiscate terrorist related assets in the context of a criminal investigation of terrorist acts or TF.

275. As outlined above, Article 29 (i) of the of the Anti-Terrorism Law provides for investigators, public prosecutors or judges to freeze assets known or reasonably suspected to be the proceeds of any criminal act connected to terrorism.

276. Chapter III of the Anti-Terrorism Law sets out "Criminal Acts of Terrorism" which includes Articles 11, 12 and 13, the TF offences. Article 29 only applies to steps that can be taken during criminal investigations or court proceedings. This provision is only available to freeze assets in the context of specific terrorist acts.

277. The requirement for proof to the standard of "known or reasonably suspected" at Article 29 of the Anti-Terrorism Law is too high in the circumstances of obtaining information on these TF cases before a freezing order can be issued.

278. Provisions of the Criminal Code have application to seize property pursuant to TF offences committed under Articles 11, 12 and 13 of the Anti-Terrorism Law. The Criminal procedure Code Articles 38 to 46 can apply to a case of a TF asset on which information has been received.

279. Up until 2004 Indonesia took action to freeze accounts of 17 individuals and one corporate entity in relation to terrorism, although no forfeiture or confiscation has been undertaken. Indonesia did not have clear records of which of these 17 terrorism-related accounts were

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frozen using Criminal Code, Anti-Terrorism Law or AML Law provisions. While statistics provided show no funds were frozen in relation to these 17 entities, Indonesian authorities indicated that most of the frozen accounts had no money in them at the time of freezing, or if they did the amount was low at around Rp. 200,000,000 (approx US\$2000).

280. In December 2007 a number of defendants were charged with terrorist financing offences. Those matters were heard by the courts in early 2008 and in April 2008 three persons were convicted for terrorist TF offences. In the case of TAUFIK MASDUKI, the court ordered that in the light of the conviction, evidence of cash in the amount of Rp. 7,000,000 (approx US\$700) shall be forfeited to the state. This took place well after the onsite visit and has not been considered when determining the rating for Special Recommendation III.

### ***Protection of bona fide third parties***

281. Indonesia has no current law to protect the right of third parties in relation to TF matters. As such, third parties are left to their "right" to bring a civil action in relation to any seized property.

### ***Monitoring compliance***

282. Indonesia does not have laws and other measures to implement and monitor UNSCR 1267 and UNSCR 1373.
283. The Evaluation Team was told of no case in which any seizure of assets had been made in a case of TF offences Articles 11, 12 and 13 of the Anti-Terrorism Law. The Evaluation Team was advised of only one TF case having been prosecuted in Indonesia, but in that case there was no seizure of any "asset" associated with the TF offence. The view of the Evaluation Team is that there are insufficient mechanisms in place to allow seizing and freezing TF funds and other assets under current Indonesian law. This is demonstrated by the lack of cases where terrorist funds or any other terrorist assets were frozen or seized in a TF case in Indonesia.

### **Recommendation 32 (terrorist financing assets frozen and confiscated)**

284. Statistics are not well kept or available on the number amount and timing of terrorist-related assets frozen, confiscated or released. Up until 2004 POLRI had ordered the freezing of accounts owned by 17 individuals and one company suspected of connection with acts of terrorism. Clear statistics were not available to indicate which powers were exercised (Criminal Code, Anti-Terrorism Law or AML Law provisions) to freeze these 17 accounts.
285. Statistics provided show that while the accounts were frozen, no funds were frozen in relation to these 17 entities. Indonesian authorities did, however, indicate that most some of the frozen accounts may have had a small amount of funds in them at the time of freezing, at approximately Rp. 200,000,000 (approx US\$2000). It is not clear that these amounts remain frozen.
286. Two of the persons whose accounts were frozen are designated by the UNSC 1267 Taliban Al Qaeda Sanctions Committee. Both accounts remain frozen. POLRI indicates that there are two frozen accounts related to 1267 entities Parlindungan Siregar and Abdul Aziz (a.k.a Imam Samudra).

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287. One TF prosecution was carried forward by the courts in 2004, which involved the financing of the bombing of the Jakarta Marriott Hotel in August 2003. The defendant received a six year prison sentence, but no assets were frozen or confiscated in relation to this case.

**Table: Details of the 18 entities subject to account freezing relating to terrorism**

Name of Accounts frozen	1267 list	Amount frozen	TF offence	Conviction for Terrorism offences	Confiscation	Unfrozen
Ali Gufron alias Muklas	No	NIL	No	Death sentence for 2002 Bali bombing		
Parlindungan Siregar	Yes	NIL	No	No		
Hernianto		NIL	N	5 years-imprisonment for harbouring perpetrator of 2002 Bali bombing		
Siliwangi alias Sardona	No	NIL	N	6 years prison – support of 2003 JW Marriot Bombing		
Abdul Aziz alias Imam Samudra	Yes	NIL	N	Death sentence for 2002 Bali bombing		
Nasarudin bin Abdul Jaill	No	NIL	N	N		
Ramiah Nasution	No	NIL	N	N		
Susmiati	No	NIL	N	N		
Tursiak	No	NIL	N	N		
Syarifah	No	NIL	N	N		
Zarniyah	No	NIL	N	N		
Sujiati	No	NIL	N	N		
Fahjri	No	NIL	N	N		
Edi Indra alias M. Rais	No	NIL	Yes	6 years imprisonment - supporting 2003 JW Marriot bombing		
Utomo Pamungkas or Mubarak	No	NIL		Life – 2002 Bali bombing		
Muthmainah	No	NIL	N	N		
Husseian	No	NIL	N	N		
Faiz bin Abu Bakar Bafana	No	NIL	N	N		
PT. Yasa Edukatama	No	NIL	N	N		

288. While Indonesia has successfully prosecuted 367 terrorists in recent years, no statistics are available to show that any property was frozen or confiscated arising from any of the 367 successful terrorism prosecutions.

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### Effectiveness

289. Indonesia has not implemented UNSCR 1267 and UNSCR 1373 in a manner that meets the specific requirements of FATF Special Recommendation III. Specifically, Indonesia has no clear legal mechanism to trace and freeze assets of individuals or entities on the UNSCR 1267 list. In addition, there is no clear administrative or judicial process to implement both UNSCR 1267 and UNSCR 1373. While BI circulates the consolidated list to all banks operating in Indonesia, as noted above, in practice this inter-agency process is too complex and inefficient to send out asset-freezing instructions in a timely manner. In addition, no clear instructions are provided to financial institutions as to what will happen when assets are discovered. Banks also note that without very specific information, the preponderance of similar names and vague addresses, along with lack of a unique identifier in Indonesia, make identifying the accounts very difficult. Attempts to use a criminal process are confusing and ad hoc at best, and rely on lengthy investigation processes before consideration can be given to freeze assets.

### 2.4.2 RECOMMENDATIONS AND COMMENTS

290. Indonesia should establish clear legal mechanisms and administrative or judicial processes to trace and freeze without delay assets of entities included on the UNSCR 1267 Consolidated List.

291. Indonesia should establish clear legal mechanisms and administrative or judicial processes to implement its obligations under UNSCR 1373.

292. Indonesia should revisit its current communication and dissemination process related to UNSCR 1267 and implement effective laws and procedures to:

- give clear instructions and guidance to all relevant sectors, including the DNFBPs, on their obligations in this respect, defining in particular what assets the freezing orders target and their relation to the individuals and entities involved;
- ensure that there are efficient communication lines between law enforcement, supervisors, financial institutions and affected sectors in relation to SR III;
- ensure that there are sufficiently broad authorities to identify, designate and sanction elements covered under paragraphs 1(c) and 1(d) of UNSCR 1373;
- implement a screening procedure and authority responsible for evaluating foreign list-based requests;
- implement effective compliance monitoring by supervisory bodies for SR III within an adequate sanctioning framework;
- establish appropriate and publicly known procedures for de-listing, unfreezing or in any other way challenging the listing and freezing measure before a court or other designated authority; and
- enact regulations on (restricted) access to the frozen assets and protecting the rights of *bona fide* third parties.

293. Indonesia should establish effective mechanism to trace, freeze, seize and confiscate property terrorist assets and other property associated with TF offences in Indonesia.



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### 2.4.3 COMPLIANCE WITH SPECIAL RECOMMENDATION III

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none"> <li>• No effective system to implement UNSCR 1267, despite very serious terrorist threats and entities listed on the 1267 Committee consolidated list living openly in Indonesia and organisations listed on the consolidated list having a presence in Indonesia.</li> <li>• No effective system to implement UNSCR 1373</li> <li>• No effective mechanism to confiscate property associated with TF offences in Indonesia.</li> <li>• Statistics do not support effective implementation of SR.III</li> </ul>
R. 32	PC	<ul style="list-style-type: none"> <li>• Statistics on actions to freeze, seize or confiscate terrorist assets are not well kept.</li> <li>• NB this is a composite rating and does not derive solely from the factors listed here.</li> </ul>

## 2.5 THE FINANCIAL INTELLIGENCE UNIT AND ITS FUNCTIONS (R.26)

### 2.5.1 DESCRIPTION AND ANALYSIS

294. The PPATK (Pusat Pelaporan Dan Analisis Transaksi Keuangan), also known by its English terminology as the Indonesian Financial Transactions Reporting and Analysis Center (INTRAC), was established on 17 April 2002 under the AML Law (Article 18) with the authority to execute the Government policy on preventing and eradicating the crime of ML. PPATK, which is considered the pivotal agency in Indonesia's AML regime, became fully operational on 20 October 2003. Currently, PPATK maintains a single office located in Jakarta, but may establish additional regional offices if necessary.

295. The PPATK is led by a Head appointed under the authority of the AML Law. The Head is assisted by four Deputy Heads comprising the following divisions: (1) Research, Analysis and Inter-agency Cooperation, (2) Legal and Compliance, (3) Technology and Information, and (4) Administration. The responsibilities of the Head and Deputy Heads have been set out at a high level in Presidential Decree Number 81 Year 2003 concerning the Organizational Structure and Working Procedure of the PPATK.

296. The PPATK's primary function is to provide financial intelligence to law enforcement and provide inter-agency cooperation for preventing and eradicating ML and TF, as well as supporting a sound domestic financial system as part of Indonesia's AML regime. In carrying out this mission PPATK receives and analyses suspicious transaction reports (STRs), cash transaction reports (CTRs) and other information, as well as distributing the analysed reports to law enforcement agencies. The PPATK also encourages cooperation with domestic and international agencies with regards to preventing and eradicating ML and TF. In addition PPATK prepares and make recommendations to the government to provide direction for national policy in the area of prevention and eradication of ML, and other serious crimes.



## 2.2 *Criminalisation of Terrorist Financing (SR.II)*

### 2.2.1 *Description and Analysis*

211. The Act on the Punishment of Financing of Offences of Public Intimidation (Act No. 67 of 2002) (Terrorist Financing Act) entered into effect in 2002. Its Article 1 lists and defines terrorist acts as follows: “act carried out with the aim to intimidate the public, national or local governments, or foreign governments and other entities including foreign national or local governments, international organisations established pursuant to treaties or other international agreements”. The listed offences are: “murder, bodily injury by using an offensive weapon or any other means which is likely to harm body seriously, abduction or taking hostages; or involves criminal acts against aircraft, shipping, transportation, including trains and transportation infrastructures or public or private utility facilities operating for the benefit of the public, when such actions are carried out for purposes of public intimidation”. The definition includes offences from the Japanese Penal Code which reflect all of the offences listed in the Annex to the Terrorist Financing Convention pursuant to Article 2, paragraph 1a. However, it restricts the application of this law to instances in which such acts are carried out for purposes of public intimidation. Provisions relating to providing funds or attempting to provide funds for the purpose of the commission of the defined terrorist acts are in Article 2 and provisions relating to fund collection acts performed by individuals who plan or attempt to carry out criminal acts intended to intimidate the public, by soliciting, requesting, or other means for the commission of such criminal acts are in Article 3.

212. The Act on the Punishment of Financing of Offences of Public Intimidation has not been applied yet. Its scope is therefore judged on its wording, the context of the words in analogous laws and the Diet debate of the Act.

213. The offences listed in the Annex to the Terrorist Financing Convention pursuant to its Article 2, paragraph 1 a) will be considered “terrorist acts” under the Japanese law only if carried out for purposes of public intimidation, requiring a proof of such intent.

214. Article 2 of the Act provides punishment for offenders who “knowingly” provide “funds for the purpose of facilitating the commission” of a terrorist act. This wording differs from the requirements of Special Recommendation II, which indicates that terrorist financing offences should extend to any person who “wilfully” provides “or collects” funds “with the unlawful intention that they should be used or in the knowledge that they are to be used” by terrorists or terrorist organizations or to commit a terrorist act. The first deviation from the recommended scope of the offence is found in the term “knowingly” used in the Japanese Act, as opposed to the term “wilfully” which is used in the Convention. The second is with the Convention’s definition of “funds” to mean assets of every kind<sup>8</sup>.

215. The term knowingly appears more restrictive, as it requires actual knowledge of the use to which the funds are to be put, whereas “wilfully” would appear to be satisfied even if the perpetrator only had good reason to suspect such use. However, the Convention adds a second requirement in that the “wilful” provision of funds must be with the “intention that they should” or “knowledge that they are to” be used in such a fashion. The Convention therefore requires a degree of wilfulness with regard to the provision of funds, as well as either intent or knowledge regarding the terrorist use.

216. The Japanese Act punishes the knowing provision and collection of funds “for the purpose” of facilitating a terrorist act. However Special Recommendation II also requires that providing funds or, more specifically, assets of every kind for terrorist organizations and individual terrorist should be

<sup>8</sup> Article 1 – For the purpose 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 cheque, money orders, shares, securities, bonds, drafts, letters of credit.

criminalised. In addition, the indirect collection or provision of funds is not criminalised under the Japanese law.

217. Special Recommendation II demands criminalisation of the collection of funds for terrorist organisations. The Japanese law, in its Article 3 criminalises the collection of funds for terrorist purposes only if undertaken by the terrorists themselves, leaving fund collectors for terrorism who are not terrorists themselves outside of the scope of the criminal offence (unless and until they actually provide the funds to the terrorists in question, at which point they are punishable under Article 2 of the Act on the Punishment of Financing of Offences of Public Intimidation).

218. The scope of the Act on the Punishment of Financing of Offences of Public Intimidation Terrorist Financing Act is therefore more restrictive than the Special Recommendation II requires.

### *Definition of funds*

219. Article 2 of the Act on the Punishment of Financing of Offences of Public Intimidation, entitled "Provision of funds", deals with the provision of "funds for the purpose of facilitating the commission of an offence of public intimidation" (Article 3 of the Act punishes the "collection" of funds). The word "funds" used is the translation of the Japanese term "shikin". There is no legal or regulatory definition or exhaustive list of the scope of the word "shikin". The literal translation of "shikin" is "funds, capital". In other Japanese legal texts the word "shikin" is used and generally understood as meaning cash and monetary instruments easily convertible into cash, in particular the Foreign Exchange Act. By utilizing a term known in other laws and interpreted in a more narrow fashion than is required by SR. II, the scope of the provision misses aspects of terrorism support which involves assets other than funds.

220. Japanese officials advised the assessment team that they approached the obligation to freeze property that may be used for terrorist activities, as an integral part of the concept of "funds" in articles 2 and 3. Those articles criminalize the provision of "funds" (undefined-see Article 2) and the collection of "funds" (undefined-see Article 3). Japanese officials advised the assessment team they intended the concept of "funds" to include non-financial assets but the intended expansive definition is more theoretical than actual. The team was advised that the scope of the word "funds", both conceptually and in the opinion of the Minister of Justice as evidenced in a response to a question in the Diet debate on the law, is sufficient to include other assets or property.

221. The application of terms used in Japanese laws is up to the ministry under whose jurisdiction a law was created. In the case of the Act on the Punishment of Financing of Offences of Public Intimidation, this is the Ministry of Justice. In the deliberation of the law in question in the Diet, the Minister of Justice pointed out that "funds" are not limited to cash and other means of payment, but includes "other kinds of assets that are provided or collected with the intention of gaining such cash or other means of payment as a fruit or to be converted into such cash or other means of payment".

222. This definition seems to exclude assets that are provided regardless of cash or other means of payment or the ability to convert the asset to something akin to cash or other means of payment. Providing the simple use of real estate (without the ability to sublet the real estate in order to convert the use into cash), for example as a safe house or training ground, does not appear to fall under this definition. The definition in Article 1 of the International Convention for the Suppression of the Financing of Terrorism, mirrored by the Interpretative Note to SR II, defines "funds" as "assets of every kind, whether tangible or intangible, movable or immovable, however acquired, ..." without any concern to their convertibility into cash or other means of payment or ability to bear other "fruit" of any kind.

223. As the criminalization of the financing of terrorism does not include assets outside the scope of “funds”, other provisions, in particular those pertaining to seizure, are also impacted in instances where such assets are being provided to terrorist organizations.

224. The Act on the Punishment of Financing of Offences of Public Intimidation criminalises the financial support of terrorist acts without the need to establish a link with a specific terrorist act or the need to prove that the funds were actually used to further a terrorist act. The mere possession of the property by the perpetrator therefore does not constitute self-laundering, nor does its use. The initial perpetrator only commits a money laundering offence by attempting to hide the criminal origin of the proceeds, which is adequately covered by the Japanese Law. Japanese law does not, however, include criminal provisions regarding a conspiracy to commit any crime. Article 60 of the Japanese Penal Code (Punishment of Co-Principals) is seen by Japan to cover that type of criminal agreement. As a result it does not cover instances of conspiracy. While large groups of people may become criminally liable due to a common intent to provide their own property for a terrorist offence, it requires actions of at least one member of the group to raise the group to the level of an attempt to commit the agreed upon crime in order to incur criminal sanctions under Article 60 of the Penal Code or the offence covered by the Terrorist Financing Act. Absent an action which can be punished as an attempt by at least one member of the group, common planning and preparations to commit a crime are not punishable.

225. Attempts to finance terrorism, as criminalised in Article 2, paragraph 1 and Article 3, paragraph 1 of the Act on the Punishment of Financing of Offences of Public Intimidation, are criminalised by paragraph 2 of the respective Articles.

226. To punish the participation in terrorist financing, the Japanese legal system relies on the same provisions of the Japanese Penal Code which it relies on regarding money-laundering (see *supra*), i.e. Article 60 *et seq.* of the Penal Code. As Article 2, paragraph 5 of the Convention does not require the criminalisation of a conspiracy to commit a crime, these provisions adequately cover the required forms of participation with the exception of the definition of “funds”.

227. Under the Japanese Law, terrorist financing is a predicate offence for money laundering (see table of predicate offences, Rec. 1, paragraph 132). However, the attempt to finance terrorism (including the concealment of money intended for such use) does not fall under any of the predicate offences under the Japanese Law. This exemption does not apply where the funds which were concealed with the intent to finance terrorism were themselves derived from crime, as such an action would constitute a concealment of crime proceeds and therefore be punishable under Article 10 of the Act on the Punishment of Organized Crime but for the fact that the reference only refers to funds while, within the definition of crime proceeds other property is covered for other crimes.

228. However, where legitimate funds were collected in order to finance terrorism and the terrorist financing act has not progressed beyond the stage of an attempt, this attempt of terrorist financing is not considered a predicate offence for money laundering under Japanese law, as funds from a legitimate source conceptually fall outside of the scope of money laundering laws in Japan.

229. According to Article 5 of the Act on the Punishment of Financing of Offences of Public Intimidation, in connection with Articles 3 and 4.2 of the Japanese Penal Code, Japanese nationals shall be punished for acts of terrorist financing as provided for in the Act on the Punishment of Financing of Offences of Public Intimidation irrespective of the location in which the financing occurred, or where related terrorists were or are located or a related act of terrorism was planned, prepared or executed.

230. As far as proving the intentional element of an FT crime and the parallel application of criminal and administrative sanctions are concerned, the legal regime on terrorist financing relies on the same mechanisms as those employed regarding money laundering (see Rec. 2, elements 2 and 4, *supra*).

231. Regarding the application of criminal sanctions for terrorist financing to legal entities, Article 6 of the Terrorist Financing Act stipulates that “where a representative of a legal entity, or a proxy, an employee or any other servant of a legal entity or of a natural person has committed [an act of terrorist financing] with regard to the business of such legal entity or natural person, the legal entity or natural person shall, in addition to the punishment imposed upon the offender, be punished with the fine described in the relevant article”.

232. The sanctions imposed by Articles 2 and 3 of the Terrorist Financing Act for acts of terrorist financing are punishment with imprisonment for not more than ten years or a fine of not more than JPY 10 million (approximately EUR 61 000/USD 95 000).

**Statistics**

233. There have been few investigations and no arrests or indictments regarding terrorist financing in Japan and no statistics are available. Nevertheless, Japan has not been a victim of terrorist organisations or individual terrorists listed by the UN Resolutions. In addition, no Japanese citizens nor legal persons are listed on these list. Therefore, the low number of investigations and the absence of convictions cannot be considered as a negative finding. The effectiveness of the system therefore could not be assessed.

**2.2.2 Recommendations and Comments**

234. It is recommended that Japan expand its definition of “funds” under the Terrorist Financing Act to include movable and immovable assets, tangible or intangible, beyond the more limited, commercial meaning of the term “Shikin”, in line with the definition in Article 1, paragraph 1 of the Terrorist Financing Convention.

235. It is recommended that Japan criminalise the collection of funds (and other assets, see above) by non-terrorists for terrorist organizations or individual terrorists. In particular, this should allow the mechanisms of the money laundering and terrorist financing laws, especially their freezing and confiscation provisions, to apply to funds from legitimate sources collected for terrorist purposes.

236. It is recommended that Japan enact legislation which explicitly criminalise the collection and provision of funds, whether direct or indirect, to terrorist organisations, regardless of the purpose for which they are used.

**2.2.3 Compliance with Special Recommendation II**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>SR.II</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Limited definition of “funds”.</li> <li>• Failure to criminalize funds collection for terrorists by non-terrorists.</li> <li>• It is unclear in the law that indirect funds provision/collection is covered.</li> <li>• It is not explicitly clear in the law that funds collection or provision to terrorist organizations and individual terrorists for any other purposes than committing a terrorist act is criminalized.</li> </ul>

**2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)**

**2.3.1 Description and Analysis**

237. Criminal instrumentalities are subject to seizure, inspection, investigative and confiscation provisions in the Penal Code. Proceeds of crime are subject to broad seizure, inspection and investigative authority and, in addition, specialized freezing provisions, known in Japan as *securance*













