

Part VIII

Cross-border Transportation of Currency and Bearer Negotiable Instruments

Section 89 Obligation to [Declare/Disclose] Cross-border Transportation of Currency and Bearer Negotiable Instruments

- (1) Any person who enters or leaves [insert name of State] in possession of currency or bearer negotiable instruments [*option: or precious metals or precious stones*] or arranges for the transportation thereof into or out of [insert name of State] by any means shall:
- (1) *Variant 1:* declare currency and/or bearer negotiable instruments [*option: and/or precious metals or precious stones*] in a total amount equal to or above [the designated amount] in value.
- (2) *Variant 2:* disclose currency and/or bearer negotiable instruments [*option: and/or precious metals or precious stones*] upon request to [customs authorities, competent authority].
- (3) Such [*variant 1: declaration; variant 2: disclosure*] shall be recorded by the relevant [insert name of customs or other competent authority], which shall provide this information to [insert name of FIU].

Any person who fails to or falsely:

- (1) *Variant 1:* declares currency and/or any other bearer negotiable instrument [*option: and/or precious metals or precious stones*] in an amount equal to or above [the designated amount]
- (2) *Variant 2:* discloses currency and/or any other bearer negotiable instrument [*option: and/or precious metals or precious stones*] upon request by [insert name of customs or other competent authority]

when entering or leaving or transporting currency and/or bearer negotiable instruments into or out of [*option: and/or precious metals or precious stones*] [insert name of State] as required pursuant to subsection (1) commits an offence punishable by imprisonment of up to [insert number] years and a fine of up to [insert amount], or both.

Drafting note: Definitions. This part should be adopted in conjunction with Part II on preventive measures to combat money laundering and the terrorism financing.

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Definitions of ‘currency’, ‘bearer negotiable instrument’ and ‘proceeds’ are set out in Part II.

Definitions of ‘offence’, ‘terrorist act’, ‘terrorist organisation’ and ‘terrorist’ are set out in Part IV, Money Laundering and Terrorism Financing Offences.

‘Instrumentality’ is defined in Part V, Section 38.

‘Terrorist property’ is defined in Part VI, Section 66.

Those definitions will have to be incorporated in this part if it is adopted separately from the other parts.

FATF Recommendation 32. Part VII(A) sets out provisions to assist with the implementation of FATF Recommendation 32. This can be implemented either through a declaration system that requires all persons to make a declaration when moving specified assets or through a disclosure system that requires those moving specified assets in excess of a defined amount to make a disclosure upon request by competent authorities. The obligation to declare or disclose should apply both to travellers carrying cash or bearer negotiable instruments and to the cross-border transportation of such cash or bearer negotiable instruments by way of cargo, mail or any other means.

Additional items. Recommendation 32 does not require cross-border declarations regarding gold, other precious metals or precious stones. The interpretive note to Recommendation 32 makes it clear that such items may be covered under customs laws and regulations.

In considering whether to cover items of value in addition to currency and bearer negotiable instruments, drafters should be aware that the cross-border obligation should aim primarily to cover property for which there is no audit trail and property that may be used in connection with terrorist activities.

Section 90 Detention and Forfeiture of Currency and Other Bearer Negotiable Instruments

- (1) The [insert name of customs or other competent authority] may seize and detain in whole or in part the amount of the [*variant 1: non-disclosed or falsely disclosed; variant 2: non-declared or falsely declared*] currency and/or bearer negotiable instruments [*option: and/or precious metals or precious stones*]
 - (a) if there are reasonable grounds for suspecting that it or they is or are proceeds of an offence or are or represent an instrumentality used or intended for use in the commission of such an offence, or is or are terrorist property; or
 - (b) if there is a false [*variant 1: declaration; variant 2: disclosure*] or a failure to [*variant 1: declare; variant 2: disclose*].

- (2) Property detained under subsection (1) shall not be detained for more than [72] hours after seizure, unless a [insert name of deciding authority] orders its continued detention for a period not exceeding [three] months from the date of the original detention or seizure. The [insert deciding authority] may order such further detention upon being satisfied that:
- (a) there was a false declaration or disclosure or a failure to declare or disclose, or there are reasonable grounds for the suspicion referred to in subsection (1); and
 - (b) the continued detention of the property is justified while:
 - (i) its origin or derivation is further investigated; or
 - (ii) consideration is given to the institution in [insert name of State] or elsewhere of criminal proceedings against any person for an offence with which the seized item(s) is(are) connected.

Drafting note: It will be necessary to choose which authority will make the order under Section 90 and subsequent subsections, typically either a magistrate or specified court.

- (3) A [insert deciding authority] may subsequently order the continued detention of the seized property if satisfied of the matters in subsection (2) for further periods of three months but the total period of all detentions shall not exceed [two] years from the date of the first order made under that subsection.
- (4) Subject to subsection (5), property detained under this Section may be released in whole or in part to the person on whose behalf it was transported:
- (a) by order of a [insert deciding authority] that its continued detention is no longer justified, upon application by or on behalf of that person and after considering any representations of the [the department responsible for the detention application]; or
 - (b) by [insert name of customs or other competent authority], if satisfied that the continued detention of the seized property is no longer justified.
- (5) Property detained under this Section shall not be released if an application for restraint, confiscation or forfeiture of the property is pending under [insert reference to applicable provisions of domestic law (comparable to Part V and Part VI of the model provisions)], or if proceedings have been instituted in [insert name of State] or elsewhere against any person for an offence with which the property is connected, unless and until the proceedings on the application or the proceedings related to an offence have been concluded. If the application relates to property that is commingled with other property, the commingled property is subject to continued detention under this subsection.

- (6) Provided that notice is given to any person who has asserted an interest in the property and that person has been provided an opportunity to be heard, if application by the prosecutor has been made, the [insert name of deciding authority] shall order forfeiture of property which has been seized and detained under this Section if satisfied on the balance of probabilities that the property directly or indirectly represents the proceeds of an offence or an instrumentality used or intended for use in the commission of an offence, or is terrorist property.