



Republic of Nauru

**NAURU TARGETED FINANCIAL SANCTIONS
TERRORISM AND PROLIFERATION FINANCING
GUIDE**



**Financial Intelligence Unit
13 October 2023**

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NAURU TARGETED FINANCIAL SANCTIONS TERRORISM AND PROLIFERATION FINANCING GUIDE 2023

TABLE OF REVISIONS

The Nauru Targeted Financial Sanctions Terrorism and Proliferation Financing Guide 2023 was published on 10 August 2023.

Revision Date	Published
23 February 2024	20 March 2024

Glossary

AML-TFS Act means the *Anti-Money Laundering and Targeted Financial Sanctions Act 2023*;

AML-TFS (Record Keeping) Regulations 2023 means the *Anti-Money Laundering and Targeted Financial Sanctions (Record Keeping) Regulations 2023*;

AML-TFS (Suspicious Activity Report) Regulations 2023 means the *Anti-Money Laundering and Targeted Financial Sanctions (Suspicious Activity Report) Regulations 2023*;

AML-TFS PF Regulations means the *Anti-Money Laundering and Targeted Financial Sanctions (Financing of Terrorism and Proliferation Financing) Regulations 2023*;

CTTOC means the *Counter Terrorism and Transnational Organised Crime Act 2004*;

CTTOC TFS Regulations means the *Counter Terrorism and Transnational Organised Crime (Targeted Financial Sanctions) Regulations 2023*;

DNFBPs means designated non-financial businesses and professions;

Dual-used good means items that have both commercial, military or proliferation application. These goods could be part or components of a weapon or item. They may also help in the manufacture of weapons, whilst they are also used in daily activities of a trade. Example would be purchase of medication which is also used in detonators;

FATF means Financial Action Task Force;

FIU means the Nauru Financial Intelligence Unit;

MACMA means *Mutual Assistance in Criminal Matters Act 2004*;

POCA means the *Proceeds of Crime Act 2004*;

TFS means targeted financial sanctions; and

UNSC means United Security Council.

This Guide comes into effect on the date which appears on the Cover Page.

Introduction

This Guide refers specifically to ‘targeted financial sanctions’ (TFS). TFS are measures for asset freezing and prohibitions to prevent funds or other assets from being made available, directly or indirectly, for the benefit of specified entities or designated persons who are being sanctioned. The TFS is a creature of the United Nations Security Council. It is a measure which has been put in place by the UNSC to arrest terrorism and proliferation activities.

The whole purposes of the TFS is contained in the UNSC Resolutions is to:

- (a) freeze assets of those identified persons or entities to which sanctions apply;
- (b) travel sanctions of those persons identified or to whom the sanctions apply;
- (c) prevent the assets from entering into or transiting through any member countries’ territories; and
- (d) prevent direct or indirect supply, sale and transfer of weapons of mass destruction, arms or military equipment.

‘Sanction’ is the most important element of this requirement. This Guide helps the reader to understand what is required by reporting entities, supervisory authorities or any other competent authority of the requirements of various UNSC resolutions.

Purpose of the guide

The purpose of the Guide is to:

- (a) assist reporting entities in implementing TFS to inhibit any infiltration of terrorism or proliferation financing or other activities, through financial systems;
- (b) enable reporting entities to monitor compliance with targeted financial measures;
- (c) assist in the understanding of AML-TFS Act, CTTOC, POCA and various other regulations, in order to implement the same without extensive opinion sought on specific cases. The reporting entities should be able to unilaterally form opinions to implement any such sanctions within its internal assessments and advisory assistance; and
- (d) inform those identified as the target audience, as to the risks and vulnerabilities relating to proliferation and proliferation financing and any prospective harm that a reporting entity may cause to Nauru where it knowingly or unknowingly contributes in proliferation financing.

The financial and other sanctions have the purpose of:

- (a) denying the entities of persons identified from having access to key resources needed to carry out financing of terrorism or proliferation or other unlawful activities to support terrorist acts;
- (b) denying or disrupting individuals, groups, organisations or other sympathizing entities the means to support terrorism or supply of any proliferation financing or weapons;
- (c) preserving the form and value of any assets that has been misappropriated from a country until such period it is repatriated to the rightful owners or countries;
- (d) identifying individuals or entities involved in terrorist acts, financing and proliferation financing or activities so that their conduct is stigmatized in the community, which is used as a means to isolate entities, individuals and other associations;
- (e) implementing sanctions and providing a wider political message nationally and internationally of Nauru's position so that any intending terrorists or terrorist groups become aware of the restraints of law and consequences before even considering Nauru as a destination to operate or transit through; and
- (f) rehabilitating and reforming or providing such opportunities for reform for any persons and terrorist activities either financing, proliferation or as a sympathizer, to enable them to isolate from their terrorist activities, associations or groups.

Scope of proliferation guide

Proliferation applies to supervisory authorities, the FIU, NPOs, DNFBPs and reporting entities. The financial institutions which comply with the Basel Core Principles 12, in Core Principles of Effective Banking Supervision.

The Guide applies to all persons and entities regulated and supervised by Supervisory Authorities in Nauru. Therefore, it is important that all regulated entities from time to time must consult FIU to check on the applicability of the Guide and FATF *Recommendation 7*, to them.

Target Audience

This Guide is for:

- (a) reporting entities (including Financial Institutions and DNFBPs);
- (b) Supervisory Authorities;
- (c) Government departments and entities such as border control, judiciary, foreign affairs and trade and law enforcement agencies;
- (d) Nauru Chamber of Commerce for ensuring they know both their customers and suppliers;
- (e) Non-profit organisations which can be used for the purposes of facilitating and providing human resources, financial resources and other economic activities

which has collateral objectives of commencing, enhancing or supporting terrorist activities; and

- (f) DNFBPs who provide financial or legal advice, including the establishment of legal entities.

[Para (a) am per FATF IO9; IO10; IO11; R5 – R7, 23 Feb 2024]

Nauruan laws

This Guide is based on the legal framework which Nauru has put in place as a member of the United Nations to apply targeted financial sanctions to combat terrorist activities including terrorist and proliferation financing. These laws are:

- (a) AML-TFS Act;
- (b) AML-TFS PF Regulations;
- (c) AML-TFS (Record Keeping) Regulations 2023;
- (d) AML-TFS (Suspicious Activity Report) Regulations 2023;
- (e) CTTOC;
- (f) CTTOC TFS Regulations 2023;
- (g) POCA;
- (h) MACMA; and
- (i) Crimes Act 2016.

FATF Recommendations 6 and 7

‘6. Targeted financial sanctions related to terrorism and terrorist financing

** Countries should implement targeted financial sanctions regimes to comply with United Nations Security Council resolutions relating to the prevention and suppression of terrorism and terrorist financing. The resolutions require countries to freeze without delay the funds or other assets of, and to ensure that no funds or other assets are made available, directly or indirectly, to or for the benefit of, any person or entity either (i) designated by, or under the authority of, the United Nations Security Council under Chapter VII of the Charter of the United Nations, including in accordance with resolution 1267 (1999) and its successor resolutions; or (ii) designated by that country pursuant to resolution 1373 (2001).*

7. Targeted financial sanctions related to proliferation

** Countries should implement targeted financial sanctions to comply with United Nations Security Council resolutions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. These resolutions require countries to freeze without delay the funds or other assets of, and to ensure that no funds and other assets are made available, directly or indirectly, to or for the benefit of, any person or entity designated by, or under the authority of, the United Nations Security Council under Chapter VII of the Charter of the United Nations.*

Interpretive Notes

Like any other FATF Standards, *Recommendations 6 and 7* also have interpretive notes which is recommended for any person concerned to read, so that there is a better understanding of your obligation. The Interpretive Notes assist in understanding what is required to be done by the Recommendations. The Interpretive Notes are attached to this Guide for your further reading and understanding.

Assets

The assets covered by the TFS is defined in *Section 107* of the AML-TFS Act as follows:

'asset' means funds, property, financial assets and economic resources of every kind, whether tangible or intangible, corporeal or incorporeal, moveable or immovable, actual or potential, however acquired, including:

(a) currency, including virtual or digital currency;

(b) precious metals and precious stones;

(c) real property and chattels;

(d) vehicles, including vessels, aircraft and motor vehicles;

(e) oil and other natural resources;

(f) legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in or right to claim an asset, including bank credits, traveller's cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit;

(g) any other asset which potentially may be used to obtain funds, goods or services; and

(h) any interest, dividend, income or value accruing from, generated by or derived from an asset;'

The assets also include the assets which become part of the definition of **BENEFICIAL OWNERSHIP**¹. Just to assist in understanding this, the assets for beneficial ownerships include:

- (a) all assets that are owned or controlled by designated persons or entities which includes those not tied to particular terrorist or proliferation act, plot or threat;
- (b) all assets that are wholly or jointly owned or controlled by designated persons or entities;
- (c) assets derived or generated from funds owned by designated persons or entities. An example would be where interests generated from any investment of monies such as fixed deposit or in share markets; and

¹ See Guide on Beneficial Ownership – <http://naurugov.nr/government/departments/department-of-justice-and-border-control.aspx>

- (d) assets of persons or entities acting on behalf of or at the directions of the designated person or entities. The identification of the legal entities (corporations, partnerships and trusts) are contained in the *Beneficial Ownership (Identity and Declaration) Regulations 2023*. Also, see the Guide on Beneficial Ownership which gives examples of beneficial ownership. It also provides factual scenarios or circumstances by which ownership can be construed.

Rights of 3rd parties

Any freezing order granted or permitted under the AML-TFS Act or AML-TFS PF Regulations may apply without prejudice to the rights of 3rd parties. The 3rd parties may not be known, as such where a freezing order or payment is granted, the 3rd party has the right to apply to the Court to unfreeze the same, to the extent that it applies to him or her. The court in granting the application must be satisfied that:

- (a) the application has a legitimate legal interest in the funds or other assets; and
- (b) no participation, collusion or involvement with respect to a terrorist act or terrorism or proliferation financing is part of the proceedings to be imputed to the 3rd party.

Requirement for continuous monitoring

As a reporting entity or supervisory authority, you must continue to monitor on whether the terrorist or terrorist groups are attempting to use your systems or other associated systems for using Nauru as a destination or transit destination. For that purposes, you constantly monitor the UNSC Resolutions designation of persons and any updating of the Lists.

The FIU has an obligation to keep the List updated. The FIU is to also send the List to all the entities to register with the FIU for this purpose for the personal delivery of any updates.

The Law requires that you keep a List of the designated persons, so that your staff are able to have access to them when dealing with any business activities to avoid inadvertent involvement with terrorist activities.

What is proliferation?

The FATF definition of '*proliferation*' is:

'the illegal manufacture, acquisition-development, exports, transshipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and the means of delivery of related items.'

In the earlier purpose of legislating proliferation, it was noted that *if appropriate safeguards are not established, maintained and enforced for sensitive materials, technology, services and expertise, they can become accessible to individuals and entities seeking to profit from the acquisition and resale or for intended use of weapons of mass destruction programmes.*

What is proliferation financing?

The term '*proliferation financing*' is defined under *Regulation 4* of the AML-TFS PF Regulations as:

'the provision of funds or financial services used for the manufacture, acquisition, possession, development, export, transshipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons or any other weapons of mass destruction, and their means of delivery and related materials, including both technologies and dual-use goods used for non-legitimate purposes, in contravention of domestic laws or, where applicable, international obligations;'

This definition is identical to or resembles the definition in the FATF Standards. Unlike the precaution of proliferation discussed above, FATF Report *recognises that proliferation financing facilitates the movement and development of proliferation-sensitive items and can contribute to global instability and potentially catastrophic loss of life if weapons of mass destruction are developed and deployed.*

Understanding the term assists reporting entities and supervisory authorities in construing customers or clients who are possible proliferators.

A proliferator may be either a person or an entity who conducts proliferation financing. A proliferator and proliferation financing is regulated in Nauru through the AML-TFS Act and AML-TFS PF Regulations which domesticates the procedure for designation of individuals or entities that are involved in proliferation financing.

3 Stages of proliferation financing

A report by the Centre for New American Security (CNAS) identified the financial elements of proliferation, in particular weapons of mass destruction programme into 3 stages. That is:

- (a) programme fundraising sources;

A country which does not control proliferating activities, could possibly be raising finance for in-country costs;

- (b) Disguising the funds;

The proliferating countries move assets into international financial systems after using foreign exchange transactions or international trade.

- (c) Material and technology procurement;

The proliferating countries or its agents use these resources for procurement of materials and technology within the international financial system.

Understanding how proliferators operate

The proliferators operate globally, disguise their acquisitions as legitimate trade and by exploiting global commerce, especially using countries with weak export controls or free trade zones, to procure, ship or transfer by escaping the internationally accepted scrutiny.

In order for proliferators to operate, they work in networks. The proliferation networks normally consist of proliferators or their associates who:

- (a) use cash to trade in proliferation type procurement to circumvent or bypass recording systems;
- (b) abuse or misuse both formal and informal sector of international financial system by using legitimate process of payment through intermediaries and suppliers outside their network;
- (c) conduct financial transactions by using pseudonyms, or by using false front corporations (shell corporations), intermediaries and illegal trade brokers in the banking system; and
- (d) purchase of dual used goods which are proliferation sensitive. They are purchased in open market and make them appear legitimate to avoid any suspicion and proliferation.

What are the risks?

The risks associated with proliferation or proliferation financing needs to be assessed. The reporting entities should consider the following associated indicators for the purposes of assessing risk posed by proliferators and proliferation financing:

- (a) customer risk;

when opening accounts, there is a need to undertake ongoing due diligence process determine type of business the client is engaged in, consider any possible proliferation risks. An example is where a customer is involved in export and import business. It is important to note who would be the ultimate user of the import export product,

observing that it does not come on any of the persons or entities listed in the FIU High Risk Countries Guideline.

The matters or triggers to watch for customer risk are:

- parties are directly or indirectly involved in the supply, sale, delivery or purchase of dual-use, proliferation-sensitive or military goods particularly to high risk jurisdiction;
- parties are physically located in proliferating countries or they maintain a connection with such country;
- customers who may have entered or are having a joint venture or cooperation arrangements or agreements with designated countries or individuals;
- customer fails to provide complete due diligence or resists to provide additional information when short;
- customer may require substantial sum of funds of a transaction to be paid up front; and
- customer may purchase or sell goods where the freight cost is exceptionally high and unjustified.

(b) Geography;

It is important to understand the origins or associates of your clients or their businesses. Are they in any way linked to UN sanctioned countries? Equally whether there are any business dealings with persons who have geographical location of producing proliferating products.

The potential indicator of proliferation or proliferation financing within a country or jurisdiction may be ascertained where:

- the beneficial ownership laws are weak or lack any elaborate definition which makes determining beneficial ownership difficult;
- shipping of goods is through an unusual route which is inconsistent with the customers normal business activities;
- diplomats are used in certain countries to access the banking system;
- directors, shareholders or senior management staff are engaged or employed who are linked to the high-risk countries;
- the use of correspondent banking relationship with partners located in high-risk countries;

- the countries import and export laws for goods and services are weak and proper checks are not undertaken; and
- countries which have strong links with terrorist activities or organized crimes.

(c) Product risk;

The ultimate use of finance in proliferation is to buy products or substances which may be linked to weapons. In ordinary assessment they may look simple as daily consumable items but where mass volumes are purchased, due diligence must be given to their purpose. They may be used in the manufacture, production, preservation or supply of any of these military weapons, or weapons of mass destruction.

The indicators or triggers for product-based risk include:

- any transaction concerning dual used goods or military goods;
- description of goods imported or exported which are not given proper description or customs tariff details;
- production of goods entry document to customs with declared values of shipment was obviously undervalued in line with the shipping costs for those destinations;
- documents submitted do not appear to be genuine or at least represent some form of fraudulent or sham in nature;
- any transaction with a corresponding bank which has documented history for facilitating payments for high-risk countries, proliferating countries or where there is organised crime;
- transacting highly technical goods shipped to a country with low levels of technology;
- the use of personal accounts of persons to purchase industrial items to make it difficult for tracing of any records or appropriate accounting details; and
- the pattern of wire transfer or payment activity which are unusual or do not disclose any apparent purpose of payment.

(d) Duration of relationship;

The duration of relationship with the reporting entity is also important. The longer a customer remains with the reporting entity does not indicate that it is a safe entity. It is always important to conduct due diligence from time to time.

(e) Legal structure of entities;

A corporate structure is used as a means to disguise the real actors in play. It is important from time to time to undertake independent search of corporate registration, beneficial ownership data and other information registered with the Registrar of Corporation, Partnership and Trust.

(f) Volume of transaction;

The volume of transaction is equally important for the purposes of assessing the risk associated with the customer. The volume of transaction associated with the frequency of transaction with the customer or the other party.

Management of proliferation risk

The management of proliferation risk is recommended in the FATF Recommendations. It is a risk based approach that incorporates control to mitigate the risk within Nauru's AML/CFT framework. It is important to undertake an objective assessment of the potential risks posed by proliferation financing. Any consideration of risk must incorporate with it a foresight of potential risk. Appropriate policies and procedures of international standards must be implemented. Key staff members and where possible a broader category of other business associates are also given appropriate training to identify suspicious activities. A system for reporting suspicious activities must be prescribed by the reporting entities.

Nauru is a low risk jurisdiction for proliferation financing or activity. That being the case, any reporting entity should incorporate proliferation financing risks in its current business plan. There is no need to have an extensive policy in place but one must ensure that there are enough mechanisms to detect any suspicious activities. A timeline must be also set by the entities to ensure that a more comprehensive plan and strategy is established and put in place.

Last but not the least, the risk identified in the paragraph above, that is, the geographical customer and product based are also needed to be factored into this plan and strategy.

What are the reporting requirements?

As a reporting entity or supervisory authority, if you do come into possession or control of any assets of a listed person or entity, you must immediately report that to the FIU and also the Supervisory Authority in the case of a reporting entity.

It is for this purpose, it is important to have the List in such a place where customers are identified easily by the staff on a daily basis.

A routine reporting requirement for any terrorist activity is likely to be implemented in future. The routine reporting will be every 6 months. This will be undertaken even where there are no such suspicious activities. One of those reporting has already been undertaken as part of renewal of licences or other legislative requirements.

Who are the designated persons or entities?

These persons or entities are contained in the Anti-Money Laundering (High-Risk Countries) Guideline 2023. The countries listed as High Risk are:

- (a) North Korea;
- (b) Iran; and
- (c) Myanmar.

The designated persons are contained in the United Nations Security Council designated consolidated list. The FIU Notice has a link² to this List.

<http://naurugov.nr/government/departments/department-of-justice-and-border-control.aspx>

[Revised per FATF IO9; IO10; IO11; R5 – R7, 23 Feb 2024]

When are the Lists updated?

There is no fixed time for any updating of the Lists. However, the FIU will be aware of this because of its constant contact with the relevant authorities and the relevant UN bodies. The FIU works with the Foreign Affairs Department for implementation of any such variation for the List. You will expect that the FIU List is up to date when changes occur. The FIU will also bring it to your attention as and when the List is updated.

The responsibility for UNSCR 1267 and its successor resolutions and UNSCR 1373 is the Financial Intelligence Supervisor who holds the responsibility for updating the consolidated list.

[Para (a) am per FATF IO9; IO10; IO11; R5 – R7, 23 Feb 2024]

When a person is delisted

The process for delisting is provided for in the Regulations. The UNSCR can delist any entity or person. For that purpose there are various UNSC Committees that meet on a constant basis to consider delisting.

A person or group who meets the requirements for delisting in Nauru may apply to the Minister for de-listing. The Form for application for de-listing is *Form 4* of *Schedule 8* of the AML-TFS PF Regulations.

Asset freezing

An asset freezing requirement under Nauruan law and FATF *Recommendations 6 and 7* in summary basically requires prohibiting transfer, conversion, movement, disposition, assignment or pledging for securities of any assets that are owned or controlled by designated persons. The designated countries and terrorist groups are identified in the High-Risk Countries Guideline and the FIU Notice United Nations Security Council Consolidated List.

When freezing an asset, all it entails is in practical terms to prohibit the designated persons from having access to accounts or funds. You are required to ensure that all avenues of such access is blocked if it is within your control. The common element which may have very quick dissipation of assets where electronic payments or payments to credit cards are effected. It is important that appropriate authorities are also informed to put in mechanism to prevent the use of the methods for depleting the assets.

A reporting entity must immediate freeze assets of a client or customer who is a listed person. Normally you will receive a Notice or request from the FIU. You must also be aware that it may come from other Supervisory Authorities.

When to unfreeze assets?

Where you have any frozen assets, it is important to note that you do not have the liberty to unfreeze such assets. The important aspect to note is that:

- (a) where an asset is frozen by UNSC Resolutions through designation, unfreezing is only available when the UNSC changes its resolution;
- (b) where assets are frozen by an order of the court, no assets are to be released unless there is an order of the court requiring such action to be taken; and
- (c) where assets are frozen by an administrative act of the Minister, they remain frozen until the Minister unfreezes the same.

When can you authorise access to funds while there is a freezing order in place?

The general rule is that as a person or entity, you are prohibited from releasing any assets or funds which belong to a listed person or entity. This is more so, where you know that those assets are frozen are for listed persons or entities.

Legal or financial advisors may seek to release funds under the guise of listed persons, families or third parties' needs. The advice is, any such request should be referred to the FIU who should then refer it to the Minister for consideration.

Alternatively, to require the applicants to make such applications to the court or Minister respectively and based on the outcomes, any access can be authorised.

Legitimate circumstances when funds can be released?

There are recognised circumstances in which at least funds frozen can be released. However, they are not released unilaterally by you or your entity without prior approval. Despite this prerequisite, it is important to know these circumstances. They are:

- (a) payment of mortgage to a legitimate financial institute or lender;
- (b) payment of rent;
- (c) payment of taxes, duties and other statutory charges such as licence fees;
- (d) payment for basic needs such as food, water, other public utilities, medication and medical treatment; and
- (e) payment of reasonable professional fees or reimbursements where the professional bodies are registered and operating in Nauru.

The Minister may authorise the expenses from paragraphs (a) to (e) if a request is made. This is provided for under Regulation 53(1)(a) to (d) of the *Anti-Money Laundering and Targeted Financial Sanctions (Financing of Terrorism and Proliferation Financing) Regulations 2023*.

[Para (a) am per FATF; R6, 23 Feb 2024]

Extraordinary expenses

It is natural that there could be extraordinary expenses which cannot be classified as part of the basic expenses. These expenses may include:

- (a) expenses related to ancillary transactions which are necessary to allow a reporting entity to repatriate or transfer the assets within the financial group or from other reporting entities;
- (b) expenses to allow for settling against any financial groups, frozen assets held by the subsidiaries; and
- (c) expenses in relation to currency exchange.

In case of frozen assets relating to a person or entity designated by the UNSC, the FIU may notify the Minister or other supervisory authorities of the intention to authorise access to the frozen assets. The Minister may allow the same.

In any other circumstances, the assets can only be un-frozen if an approval is given by the relevant UNSC committee.

When can unfreezing of assets occur?

The UNSC may from time to time de-list a person or entity. This is done when the requirements of the UNSC Resolutions are met. As a result of such de-listing, the person's or entity's assets no longer need to be frozen. In such cases, the assets of the delisted persons or entities can be un-frozen on application to the Minister.

Alternatively, the assets may be unfrozen on an order of the Court; *Regulation 53* of the AML-TFS PF Regulations.

How to make an application for unfreezing

An application is required to be made to the Minister; *Regulation 45(5)*. The application should be made in *Form 2, Schedule 8* of the AML-TFS PF Regulations.

What happens if Minister declines a request for unfreezing?

When the Minister declines a request, the designated person or entity may appeal to the Supreme Court; *under Part 10* of the AML-TFS PF Regulations. The form of the application is contained in *Schedule 6, Forms 1 and 2*.

Travel bans and arms embargo

There is a general prohibition against a designated party, except any person who is a Nauruan, from entering into or transiting through Nauru unless there is some justifiable reason to allow. Where such reason exists, the Minister may allow entry into or transit through Nauru.

In addition, where there is a prohibition on any person, whether by conduct or otherwise, from selling or transferring, directly or indirectly or to a designated party, arms or related material of types such as:

- (a) weapons and ammunition;
- (b) military vehicles and equipment; and
- (c) paramilitary equipment and spare parts as long as the technical advice, assistance or training related to military activities.

Penalties for contravention

Any natural person that contravenes the *Part 7 of the AML-TFS Act or AML-TFS PF Regulations* commits an offence and upon conviction is liable to imprisonment for a term of 20 years or a fine of \$200,000 or both.

A body corporate can be fined of up to less than \$1,000,000.

Who to contact

This Guide is issued by the FIU. For any further queries, refer to:

- Rajas Swamy – Supervisor – FIU: rajasswamy@gmail.com
- Bernard Grundler – Assistant Supervisor – FIU: bernard.grundler@gmail.com

Interpretive Notes for *Recommendations 6 and 7*

INTERPRETIVE NOTE TO RECOMMENDATION 6 (TARGETED FINANCIAL SANCTIONS RELATED TO TERRORISM AND TERRORIST FINANCING)

A. OBJECTIVE

1. Recommendation 6 requires each country to implement targeted financial sanctions to comply with the United Nations Security Council resolutions that require countries to freeze, without delay, the funds or other assets, and to ensure that no funds and other assets are made available to or for the benefit of: (i) any person⁴ or entity designated by the United Nations Security Council (the Security Council) under Chapter VII of the Charter of the United Nations, as required by Security Council resolution 1267 (1999) and its successor resolutions⁷; or (ii) any person or entity designated by that country pursuant to Security Council resolution 1373 (2001).
2. It should be stressed that none of the obligations in Recommendation 6 is intended to replace other measures or obligations that may already be in place for dealing with funds or other assets in the context of a criminal, civil or administrative investigation or proceeding, as is required by Recommendation 4 (confiscation and provisional measures)⁸. Measures under Recommendation 6 may complement criminal proceedings against a designated person or entity, and be adopted by a competent authority or a court, but are not conditional upon the existence of such proceedings. Instead, the focus of Recommendation 6 is on the preventive measures that are necessary and unique in the context of stopping the flow of funds or other assets to terrorist groups; and the use of funds or other assets by terrorist groups. In determining the limits of, or fostering widespread support for, an effective counter-terrorist financing regime, countries must also respect human rights, respect the rule of law, and recognise the rights of innocent third parties.

⁴ Natural or legal person.

⁷ Recommendation 6 is applicable to all current and future successor resolutions to resolution 1267 (1999) and any future UNSCRs which impose targeted financial sanctions in the terrorist financing context. At the time of issuance of this Interpretive Note, (February 2012), the successor resolutions to resolution 1267 (1999) are resolutions: 1333 (2000), 1363 (2001), 1390 (2002), 1452 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1730 (2006), 1735 (2006), 1822 (2008), 1904 (2009), 1988 (2011), and 1989 (2011).

⁸ Based on requirements set, for instance, in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (the Vienna Convention) and the United Nations Convention against Transnational Organised Crime (2000) (the Palermo Convention), which contain obligations regarding freezing, seizure and confiscation in the context of combating transnational crime. Additionally, the International Convention for the Suppression of the Financing of Terrorism (1999) (the Terrorist Financing Convention) contains obligations regarding freezing, seizure and confiscation in the context of combating terrorist financing. Those obligations exist separately and apart from the obligations set forth in Recommendation 6 and the United Nations Security Council Resolutions related to terrorist financing.

B. IDENTIFYING AND DESIGNATING PERSONS AND ENTITIES FINANCING OR SUPPORTING TERRORIST ACTIVITIES

3. For resolution 1267 (1999) and its successor resolutions, designations relating to Al-Qaida are made by the 1267 Committee, and designations pertaining to the Taliban and related threats to Afghanistan are made by the 1988 Committee, with both Committees acting under the authority of Chapter VII of the Charter of the United Nations. For resolution 1373 (2001), designations are made, at the national or supranational level, by a country or countries acting on their own motion, or at the request of another country, if the country receiving the request is satisfied, according to applicable legal principles, that a requested designation is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee meets the criteria for designation in resolution 1373 (2001), as set forth in Section E.
4. Countries need to have the authority, and effective procedures or mechanisms, to identify and initiate proposals for designations of persons and entities targeted by resolution 1267 (1999) and its successor resolutions, consistent with the obligations set out in those Security Council resolutions⁹. Such authority and procedures or mechanisms are essential to propose persons and entities to the Security Council for designation in accordance with Security Council list-based programmes, pursuant to those Security Council resolutions. Countries also need to have the authority and effective procedures or mechanisms to identify and initiate designations of persons and entities pursuant to S/RES/1373 (2001), consistent with the obligations set out in that Security Council resolution. Such authority and procedures or mechanisms are essential to identify persons and entities who meet the criteria identified in resolution 1373 (2001), described in Section E. A country's regime to implement resolution 1267 (1999) and its successor resolutions, and resolution 1373 (2001), should include the following necessary elements:
 - (a) Countries should identify a competent authority or a court as having responsibility for:
 - (i) proposing to the 1267 Committee, for designation as appropriate, persons or entities that meet the specific criteria for designation, as set forth in Security Council resolution 1989 (2011) (on Al-Qaida) and related resolutions, if that authority decides to do so and believes that it has sufficient evidence to support the designation criteria;
 - (ii) proposing to the 1988 Committee, for designation as appropriate, persons or entities that meet the specific criteria for designation, as set forth in Security Council resolution 1988 (2011) (on the Taliban and those associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan) and related resolutions, if that authority decides to do so and believes that it has sufficient evidence to support the designation criteria; and
 - (iii) designating persons or entities that meet the specific criteria for designation, as set forth in resolution 1373 (2001), as put forward either on the country's own

⁹ The relevant Security Council resolutions do not require countries to identify persons or entities and submit these to the relevant United Nations Committees, but to have the authority and effective procedures and mechanisms in place to be able to do so.

motion or, after examining and giving effect to, if appropriate, the request of another country, if the country receiving the request is satisfied, according to applicable legal principles, that a requested designation is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee meets the criteria for designation in resolution 1373 (2001), as set forth in Section E.

- (b) Countries should have a mechanism(s) for identifying targets for designation, based on the designation criteria set out in resolution 1988 (2011) and resolution 1989 (2011) and related resolutions, and resolution 1373 (2001) (see Section E for the specific designation criteria of relevant Security Council resolutions). This includes having authority and effective procedures or mechanisms to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other countries pursuant to resolution 1373 (2001). To ensure that effective cooperation is developed among countries, countries should ensure that, when receiving a request, they make a prompt determination whether they are satisfied, according to applicable (supra-) national principles, that the request is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee meets the criteria for designation in resolution 1373 (2011), as set forth in Section E.
- (c) The competent authority(ies) should have appropriate legal authorities and procedures or mechanisms to collect or solicit as much information as possible from all relevant sources to identify persons and entities that, based on reasonable grounds, or a reasonable basis to suspect or believe, meet the criteria for designation in the relevant Security Council resolutions.
- (d) When deciding whether or not to make a (proposal for) designation, countries should apply an evidentiary standard of proof of "reasonable grounds" or "reasonable basis". For designations under resolutions 1373 (2001), the competent authority of each country will apply the legal standard of its own legal system regarding the kind and quantum of evidence for the determination that "reasonable grounds" or "reasonable basis" exist for a decision to designate a person or entity, and thus initiate an action under a freezing mechanism. This is the case irrespective of whether the proposed designation is being put forward on the relevant country's own motion or at the request of another country. Such (proposals for) designations should not be conditional upon the existence of a criminal proceeding.
- (e) When proposing names to the 1267 Committee for inclusion on the Al-Qaida Sanctions List, pursuant to resolution 1267 (1999) and its successor resolutions, countries should:
 - (i) follow the procedures and standard forms for listing, as adopted by the 1267 Committee;
 - (ii) provide as much relevant information as possible on the proposed name, in particular, sufficient identifying information to allow for the accurate and positive identification of individuals, groups, undertakings, and entities, and to the extent possible, the information required by Interpol to issue a Special Notice;

- (iii) provide a statement of case which contains as much detail as possible on the basis for the listing, including: specific information supporting a determination that the person or entity meets the relevant criteria for designation (see Section E for the specific designation criteria of relevant Security Council resolutions); the nature of the information; supporting information or documents that can be provided; and details of any connection between the proposed designee and any currently designated person or entity. This statement of case should be releasable, upon request, except for the parts a Member State identifies as being confidential to the 1267 Committee; and
 - (iv) specify whether their status as a designating state may be made known.
- (f) When proposing names to the 1988 Committee for inclusion on the Taliban Sanctions List, pursuant to resolution 1988 (2011) and its successor resolutions, countries should:
- (i) follow the procedures for listing, as adopted by the 1988 Committee;
 - (ii) provide as much relevant information as possible on the proposed name, in particular, sufficient identifying information to allow for the accurate and positive identification of individuals, groups, undertakings, and entities, and to the extent possible, the information required by Interpol to issue a Special Notice; and
 - (iii) provide a statement of case which contains as much detail as possible on the basis for the listing, including: specific information supporting a determination that the person or entity meets the relevant designation (see Section E for the specific designation criteria of relevant Security Council resolutions); the nature of the information; supporting information or documents that can be provided; and details of any connection between the proposed designee and any currently designated person or entity. This statement of case should be releasable, upon request, except for the parts a Member State identifies as being confidential to the 1988 Committee.
- (g) When requesting another country to give effect to the actions initiated under the freezing mechanisms that have been implemented pursuant to resolution 1373 (2001), the initiating country should provide as much detail as possible on: the proposed name, in particular, sufficient identifying information to allow for the accurate and positive identification of persons and entities; and specific information supporting a determination that the person or entity meets the relevant criteria for designation (see Section E for the specific designation criteria of relevant Security Council resolutions).
- (h) Countries should have procedures to be able to operate *ex parte* against a person or entity who has been identified and whose (proposal for) designation is being considered.

C. FREEZING AND PROHIBITING DEALING IN FUNDS OR OTHER ASSETS OF DESIGNATED PERSONS AND ENTITIES

5. There is an obligation for countries to implement targeted financial sanctions without delay against persons and entities designated by the 1267 Committee and 1988 Committee (in the

case of resolution 1267 (1999) and its successor resolutions), when these Committees are acting under the authority of Chapter VII of the Charter of the United Nations. For resolution 1373 (2001), the obligation for countries to take freezing action and prohibit the dealing in funds or other assets of designated persons and entities, without delay, is triggered by a designation at the (supra-)national level, as put forward either on the country's own motion or at the request of another country, if the country receiving the request is satisfied, according to applicable legal principles, that a requested designation is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee meets the criteria for designation in resolution 1373 (2001), as set forth in Section E.

6. Countries should establish the necessary legal authority and identify domestic competent authorities responsible for implementing and enforcing targeted financial sanctions, in accordance with the following standards and procedures:
 - (a) Countries¹⁰ should require all natural and legal persons within the country to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities. This obligation should extend to: all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular terrorist act, plot or threat; those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; and the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities, as well as funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities.
 - (b) Countries should prohibit their nationals, or any persons and entities within their jurisdiction, from making any funds or other assets, economic resources, or financial or other related services, available, directly or indirectly, wholly or jointly, for the benefit of designated persons and entities; entities owned or controlled, directly or indirectly, by designated persons or entities; and persons and entities acting on behalf of, or at the direction of, designated persons or entities, unless licensed, authorised or otherwise notified in accordance with the relevant Security Council resolutions (see Section E below).
 - (c) Countries should have mechanisms for communicating designations to the financial sector and the DNFBNs immediately upon taking such action, and providing clear guidance, particularly to financial institutions and other persons or entities, including DNFBNs, that may be holding targeted funds or other assets, on their obligations in taking action under freezing mechanisms.

¹⁰ In the case of the European Union (EU), which is a supra-national jurisdiction under Recommendation 6, the EU law applies as follows. The assets of designated persons and entities are frozen by the EU regulations and their amendments. EU member states may have to take additional measures to implement the freeze, and all natural and legal persons within the EU have to respect the freeze and not make funds available to designated persons and entities.

- (d) Countries should require financial institutions and DNFBPs¹¹ to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements of the relevant Security Council resolutions, including attempted transactions, and ensure that such information is effectively utilised by the competent authorities.
- (e) Countries should adopt effective measures which protect the rights of *bona fide* third parties acting in good faith when implementing the obligations under Recommendation 6.

D. DE-LISTING, UNFREEZING AND PROVIDING ACCESS TO FROZEN FUNDS OR OTHER ASSETS

7. Countries should develop and implement publicly known procedures to submit de-listing requests to the Security Council in the case of persons and entities designated pursuant to resolution 1267(1999) and its successor resolutions that, in the view of the country, do not or no longer meet the criteria for designation. In the event that the 1267 Committee or 1988 Committee has de-listed a person or entity, the obligation to freeze no longer exists. In the case of de-listing requests related to Al-Qaida, such procedures and criteria should be in accordance with procedures adopted by the 1267 Committee under Security Council resolutions 1730 (2006), 1735 (2006), 1822 (2008), 1904 (2009), 1989 (2011), and any successor resolutions. In the case of de-listing requests related to the Taliban and related threats to the peace, security and stability of Afghanistan, such procedures and criteria should be in accordance with procedures adopted by the 1988 Committee under Security Council resolutions 1730 (2006), 1735 (2006), 1822 (2008), 1904 (2009), 1988 (2011), and any successor resolutions.
8. For persons and entities designated pursuant to resolution 1373 (2001), countries should have appropriate legal authorities and procedures or mechanisms to delist and unfreeze the funds or other assets of persons and entities that no longer meet the criteria for designation. Countries should also have procedures in place to allow, upon request, review of the designation decision before a court or other independent competent authority.
9. For persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism (i.e. a false positive), countries should develop and 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.
10. Where countries have determined that funds or other assets of persons and entities designated by the Security Council, or one of its relevant sanctions committees, are necessary for basic expenses, for the payment of certain types of fees, expenses and service charges, or for extraordinary expenses, countries should authorise access to such funds or other assets in accordance with the procedures set out in Security Council resolution 1452 (2002) and any successor resolutions. On the same grounds, countries should authorise access to funds or other assets, if freezing measures are applied to persons and entities designated by a (supra-)national country pursuant to resolution 1373 (2001) and as set out in resolution 1963 (2010).

¹¹ Security Council resolutions apply to all natural and legal persons within the country.

11. Countries should provide for a mechanism through which a designated person or entity can challenge their designation, with a view to having it reviewed by a competent authority or a court. With respect to designations on the Al-Qaida Sanctions List, countries should inform designated persons and entities of the availability of the United Nations Office of the Ombudsperson, pursuant to resolution 1904 (2009), to accept de-listing petitions.
12. Countries should have mechanisms for communicating de-listings and unfreezings to the financial sector and the DNFBPs immediately upon taking such action, and providing adequate guidance, particularly to financial institutions and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action.

E. UNITED NATIONS DESIGNATION CRITERIA

13. The criteria for designation as specified in the relevant United Nations Security Council resolutions are:
 - (a) **Security Council resolutions 1267 (1999), 1989 (2011) and their successor resolutions²²:**
 - (i) any person or entity participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of; supplying, selling or transferring arms and related materiel to; recruiting for; or otherwise supporting acts or activities of Al-Qaida, or any cell, affiliate, splinter group or derivative thereof²³; or
 - (ii) any undertaking owned or controlled, directly or indirectly, by any person or entity designated under subsection 13(a)(i), or by persons acting on their behalf or at their direction.
 - (b) **Security Council resolutions 1267 (1999), 1988 (2011) and their successor resolutions:**
 - (i) any person or entity participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of; supplying, selling or transferring arms and related materiel to; recruiting for; or otherwise supporting acts or activities of those designated and other individuals, groups, undertakings and entities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan; or

²² Recommendation 6 is applicable to all current and future successor resolutions to resolution 1267(1999). At the time of issuance of this Interpretive Note, (February 2012), the successor resolutions to resolution 1267 (1999) are: resolutions 1333 (2000), 1367 (2001), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008), 1904 (2009), 1988 (2011), and 1989 (2011).

²³ OP2 of resolution 1617 (2005) further defines the criteria for being "associated with" Al-Qaida or Usama bin Laden.

- (ii) any undertaking owned or controlled, directly or indirectly, by any person or entity designated under subsection 13(b)(i) of this subparagraph, or by persons acting on their behalf or at their direction.
- (c) **Security Council resolution 1373 (2001):**
 - (i) any person or entity who commits or attempts to commit terrorist acts, or who participates in or facilitates the commission of terrorist acts;
 - (ii) any entity owned or controlled, directly or indirectly, by any person or entity designated under subsection 13(c) (i) of this subparagraph; or
 - (iii) any person or entity acting on behalf of, or at the direction of, any person or entity designated under subsection 13(c) (i) of this subparagraph.

INTERPRETIVE NOTE TO RECOMMENDATION 7 (TARGETED FINANCIAL SANCTIONS RELATED TO PROLIFERATION)

A. OBJECTIVE

1. Recommendation 7 requires countries to implement targeted financial sanctions¹⁴ to comply with United Nations Security Council resolutions that require countries to freeze, without delay, the funds or other assets of, and to ensure that no funds and other assets are made available to, and for the benefit of, any person¹⁵ or entity designated by the United Nations Security Council under Chapter VII of the Charter of the United Nations, pursuant to Security Council resolutions that relate to the prevention and disruption of the financing of proliferation of weapons of mass destruction.¹⁶
2. It should be stressed that none of the requirements in Recommendation 7 is intended to replace other measures or obligations that may already be in place for dealing with funds or other assets in the context of a criminal, civil or administrative investigation or proceeding, as is required by international treaties or Security Council resolutions relating to weapons of mass destruction non-proliferation.¹⁷ The focus of Recommendation 7 is on preventive measures that are necessary and unique in the context of stopping the flow of funds or other assets to proliferators or proliferation; and the use of funds or other assets by proliferators or proliferation, as required by the United Nations Security Council (the Security Council).

B. DESIGNATIONS

¹⁴ Recommendation 7 is focused on targeted financial sanctions. These include the specific restrictions set out in Security Council resolution 2231 (2015) (see Annex B paragraphs 6(c) and (d)). However, it should be noted that the relevant United Nations Security Council Resolutions are much broader and prescribe other types of sanctions (such as travel bans) and other types of financial provisions (such as activity-based financial prohibitions, category-based sanctions and vigilance measures). With respect to targeted financial sanctions related to the financing of proliferation of weapons of mass destruction and other types of financial provisions, the FATF has issued non-binding guidance, which jurisdictions are encouraged to consider in their implementation of the relevant UNSCRs.

¹⁵ Natural or legal person.

¹⁶ Recommendation 7 is applicable to all current Security Council resolutions applying targeted financial sanctions relating to the financing of proliferation of weapons of mass destruction, any future successor resolutions, and any future Security Council resolutions which impose targeted financial sanctions in the context of the financing of proliferation of weapons of mass destruction. At the time of issuance of this Interpretive Note (June 2017), the Security Council resolutions applying targeted financial sanctions relating to the financing of proliferation of weapons of mass destruction are: resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016) and 2356 (2017). Resolution 2231 (2015), endorsing the Joint Comprehensive Plan of Action, terminated all provisions of resolutions relating to Iran and proliferation financing, including 1737 (2006), 1747 (2007), 1803 (2008) and 1929 (2010), but established specific restrictions including targeted financial sanctions. This lifts sanctions as part of a step by step approach with reciprocal commitments endorsed by the Security Council. Implementation day of the JCPOA was on 16 January 2016.

¹⁷ Based on requirements set, for instance, in the *Nuclear Non-Proliferation Treaty*, the *Biological and Toxin Weapons Convention*, the *Chemical Weapons Convention*, and UNSCR 1540 (2004) and 2325 (2016). Those obligations exist separately and apart from the obligations set forth in Recommendation 7 and its interpretive note.

3. Designations are made by the Security Council in annexes to the relevant resolutions, or by the Security Council Committees established pursuant to these resolutions. There is no specific obligation upon United Nations Member States to submit proposals for designations to the Security Council or the relevant Security Council Committee(s). However, in practice, the Security Council or the relevant Committee(s) primarily depends upon requests for designation by Member States. Security Council resolution 1718 (2006) provides that the relevant Committee shall promulgate guidelines as may be necessary to facilitate the implementation of the measures imposed by this resolution and its successor resolutions. Resolution 2231 (2015) provides that the Security Council shall make the necessary practical arrangements to undertake directly tasks related to the implementation of the resolution.
4. Countries could consider establishing the authority and effective procedures or mechanisms to propose persons and entities to the Security Council for designation in accordance with relevant Security Council resolutions which impose targeted financial sanctions in the context of the financing of proliferation of weapons of mass destruction. In this regard, countries could consider the following elements:
 - (a) identifying a competent authority(ies), either executive or judicial, as having responsibility for:
 - (i) proposing to the 1718 Sanctions Committee, for designation as appropriate, persons or entities that meet the specific criteria for designation as set forth in resolution 1718 (2006) and its successor resolutions²⁸, if that authority decides to do so and believes that it has sufficient evidence to support the designation criteria (see Section E for the specific designation criteria associated with relevant Security Council resolutions); and
 - (ii) proposing to the Security Council, for designation as appropriate, persons or entities that meet the criteria for designation as set forth in resolution 2231 (2015) and any future successor resolutions, if that authority decides to do so and believes that it has sufficient evidence to support the designation criteria (see Section E for the specific designation criteria associated with relevant Security Council resolutions).
 - (b) having a mechanism(s) for identifying targets for designation, based on the designation criteria set out in resolutions 1718 (2006), 2231 (2015), and their successor and any future successor resolutions (see Section E for the specific designation criteria of relevant Security Council resolutions). Such procedures should ensure the determination, according to applicable (supra-)national principles, whether reasonable grounds or a reasonable basis exists to propose a designation.
 - (c) having appropriate legal authority, and procedures or mechanisms, to collect or solicit as much information as possible from all relevant sources to identify persons and

²⁸ Recommendation 7 is applicable to all current and future successor resolutions to resolution 1718 (2006). At the time of issuance of this Interpretive Note (June 2017), the successor resolutions to resolution 1718 (2006) are: resolution 1874 (2009), resolution 2087 (2013), resolution 2094 (2013), resolution 2270 (2016), resolution 2321 (2016) and resolution 2356 (2017).

entities that, based on reasonable grounds, or a reasonable basis to suspect or believe, meet the criteria for designation in the relevant Security Council resolutions.

- (d) when deciding whether or not to propose a designation, taking into account the criteria in Section E of this interpretive note. For proposals of designations, the competent authority of each country will apply the legal standard of its own legal system, taking into consideration human rights, respect for the rule of law, and in recognition of the rights of innocent third parties.
- (e) when proposing names to the 1718 Sanctions Committee, pursuant to resolution 1718 (2006) and its successor resolutions, or to the Security Council, pursuant to resolution 2231 (2015) and any future successor resolutions, providing as much detail as possible on:
 - (i) the proposed name, in particular, sufficient identifying information to allow for the accurate and positive identification of persons and entities; and
 - (ii) specific information supporting a determination that the person or entity meets the relevant criteria for designation (see Section E for the specific designation criteria of relevant Security Council resolutions).
- (f) having procedures to be able, where necessary, to operate ex parte against a person or entity who has been identified and whose proposal for designation is being considered.

C. FREEZING AND PROHIBITING DEALING IN FUNDS OR OTHER ASSETS OF DESIGNATED PERSONS AND ENTITIES

5. There is an obligation for countries to implement targeted financial sanctions without delay against persons and entities designated:
 - (a) in the case of resolution 1718 (2006) and its successor resolutions, by the Security Council in annexes to the relevant resolutions, or by the 1718 Sanctions Committee of the Security Council¹⁹; and
 - (b) in the case of resolution 2231 (2015) and any future successor resolutions by the Security Council,

when acting under the authority of Chapter VII of the Charter of the United Nations.
6. Countries should establish the necessary legal authority and identify competent domestic authorities responsible for implementing and enforcing targeted financial sanctions, in accordance with the following standards and procedures:

¹⁹ As noted in resolution 2270 (2016) (OP32) this also applies to entities of the Government of the Democratic People's Republic of Korea or the Worker's Party of Korea that countries determine are associated with the DPRK's nuclear or ballistic missile programmes or other activities prohibited by resolution 1718 (2006) and successor resolutions.

- (a) Countries²⁰ should require all natural and legal persons within the country to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities. This obligation should extend to: all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular act, plot or threat of proliferation; those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; and the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities, as well as funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities.
- (b) Countries should 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, authorised or otherwise notified in accordance with the relevant Security Council resolutions (see Section E below).
- (c) Countries should have mechanisms for communicating designations to financial institutions and DNFbps immediately upon taking such action, and providing clear guidance, particularly to financial institutions and other persons or entities, including DNFbps, that may be holding targeted funds or other assets, on their obligations in taking action under freezing mechanisms.
- (d) Countries should require financial institutions and DNFbps²¹ to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements of the relevant Security Council resolutions, including attempted transactions, and ensure that such information is effectively utilised by competent authorities.
- (e) Countries should adopt effective measures which protect the rights of bona fide third parties acting in good faith when implementing the obligations under Recommendation 7.
- (f) Countries should adopt appropriate measures for monitoring, and ensuring compliance by, financial institutions and DNFbps with the relevant laws or enforceable means governing the obligations under Recommendation 7. Failure to comply with such laws, or enforceable means should be subject to civil, administrative or criminal sanctions.

²⁰ In the case of the European Union (EU), which is considered a supra-national jurisdiction under Recommendation 7 by the FATF, the assets of designated persons and entities are frozen under EU Common Foreign and Security Policy (CFSP) Council decisions and Council regulations (as amended). EU member states may have to take additional measures to implement the freeze, and all natural and legal persons within the EU have to respect the freeze and not make funds available to designated persons and entities.

²¹ Security Council resolutions apply to all natural and legal persons within the country.

D. DE-LISTING, UNFREEZING AND PROVIDING ACCESS TO FROZEN FUNDS OR OTHER ASSETS

7. Countries should develop and implement publicly known procedures to submit de-listing requests to the Security Council in the case of designated persons and entities, that, in the view of the country, do not or no longer meet the criteria for designation. Once the Security Council or the relevant Sanctions Committee has de-listed the person or entity, the obligation to freeze no longer exists. In the case of resolution 1718 (2006) and its successor resolutions, such procedures and criteria should be in accordance with any applicable guidelines or procedures adopted by the Security Council pursuant to resolution 1730 (2006) and any successor resolutions, including those of the Focal Point mechanism established under that resolution. Countries should enable listed persons and entities to petition a request for delisting at the Focal Point for de-listing established pursuant to resolution 1730 (2006), or should inform designated persons or entities to petition the Focal Point directly.
8. For persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism (i.e., a false positive), countries should develop and 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.
9. Where countries have determined that the exemption conditions set out in resolution 1718(2006) and resolution 2231 (2015) are met, countries should authorise access to funds or other assets in accordance with the procedures set out therein.
10. Countries should permit the addition to the accounts frozen pursuant to resolution 1718 (2006) or resolution 2231 (2015) of interests or other earnings due on those accounts or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of this resolution, provided that any such interest, other earnings and payments continue to be subject to these provisions and are frozen.
11. Freezing action taken pursuant to resolution 1737 (2006) and continued by resolution 2231 (2015), or taken pursuant to resolution 2231 (2015), shall not prevent a designated person or entity from making any payment due under a contract entered into prior to the listing of such person or entity, provided that:
 - (a) the relevant countries have determined that the contract is not related to any of the prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokering or services referred to in resolution 2231 (2015) and any future successor resolutions;
 - (b) the relevant countries have determined that the payment is not directly or indirectly received by a person or entity subject to the measures in paragraph 6 of Annex B to resolution 2231 (2015); and
 - (c) the relevant countries have submitted prior notification to the Security Council of the intention to make or receive such payments or to authorise, where appropriate, the

unfreezing of funds, other financial assets or economic resources for this purpose, ten working days prior to such authorisation.²²

12. Countries should have mechanisms for communicating de-listings and unfreezings to the financial sector and the DNFBPs immediately upon taking such action, and providing adequate guidance, particularly to financial institutions and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action.

E. UNITED NATIONS DESIGNATION CRITERIA

13. The criteria for designation as specified in the relevant United Nations Security Council resolutions are:
 - (a) **On DPRK - Resolutions 1718 (2006), 2087 (2013), 2094 (2013) and 2270 (2016):**
 - (i) any person or entity engaged in the Democratic People's Republic of Korea (DPRK)'s nuclear-related, other WMD-related and ballistic missile-related programmes;
 - (ii) any person or entity providing support for DPRK's nuclear-related, other WMD-related and ballistic missile-related programmes, including through illicit means;
 - (iii) any person or entity acting on behalf of or at the direction of any person or entity designated under subsection 13(a)(i) or subsection 13(a)(ii)²³;
 - (iv) any legal person or entity owned or controlled, directly or indirectly, by any person or entity designated under subsection 13(a)(i) or subsection 13(a)(ii)²⁴;
 - (v) any person or entity that has assisted in the evasion of sanctions or in violating the provisions of resolutions 1718 (2006) and 1874 (2009);
 - (vi) any person or entity that has contributed to DPRK's prohibited programmes, activities prohibited by the DPRK-related resolutions, or to the evasion of provisions; or
 - (vii) any entity of the Government of the DPRK or the Worker's Party of Korea, or person or entity acting on their behalf or at their direction, or by any entity owned or controlled by them, that countries determine are associated with the DPRK's nuclear or ballistic missile programmes or other activities prohibited by resolution 1718 (2006) and successor resolutions.

²² In cases where the designated person or entity is a financial institution, jurisdictions should consider the FATF guidance issued as an annex to *The Implementation of Financial Provisions of United Nations Security Council Resolutions to Counter the Proliferation of Weapons of Mass Destruction*, adopted in June 2013.

²³ The funds or assets of these persons or entities are frozen regardless of whether they are specifically identified by the Committee. Further, resolution 2270 (2016) OP23 expanded the scope of targeted financial sanctions obligations under resolution 1718 (2006), by applying these to the Ocean Maritime Management Company vessels specified in Annex III of resolution 2270 (2016).

²⁴ *Ibid.*

(b) On Iran - Resolution 2231 (2015):

- (i) any person or entity having engaged in, directly associated with or provided support for Iran's proliferation sensitive nuclear activities contrary to Iran's commitments in the Joint Comprehensive Plan of Action (JCPOA) or the development of nuclear weapon delivery systems, including through the involvement in procurement of prohibited items, goods, equipment, materials and technology specified in Annex B to resolution 2231 (2015);
- (ii) any person or entity assisting designated persons or entities in evading or acting inconsistently with the JCPOA or resolution 2231 (2015); and
- (iii) any person or entity acting on behalf or at a direction of any person or entity in subsection 13(b)(i), subsection 13(b)(ii) and/or subsection 13(b)(iii), or by any entities owned or controlled by them.

