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DIRECTIVE NO. 01 OF 2023

MANDATORY IMPLEMENTATION OF TARGETED FINANCIAL SANCTIONS (TFS)

**FOR ALL INSTITUTIONS PROVIDING SERVICES LISTED IN
SCHEDULES 1 AND 3 OF THE FINANCIAL INTELLIGENCE ACT, 2012**

First Issued: 14 April 2023

Safeguarding Financial Integrity

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¹ United Nations Security Council.

1. INTRODUCTION

This Directive is issued in terms of Section 9(1) and 54(2)(d), amongst others, of the Financial Intelligence Act, 2012 (The FIA). It directs how Accountable Institutions (AIs) and Reporting Institutions (RIs), listed in Schedules 1 and 3 of the FIA, should ensure effective implementation of a Targeted Financial Sanctions (TFS) regime as per the FIA and PACOTPAA. In the same vein, sections 24, 25 and 45 of the PACOTPAA collectively require regulatory and supervisory bodies listed in FIA Schedules 2 and 4 to ensure compliance and contribute to risk management efforts. This naturally implies such bodies are to ensure institutions under their regulation and supervision comply with the PACOTPAA, especially when updates are made. Equally, in their supervisory or regulatory dealings such as licensing and authorising market entry, compliance be ensured with TFS measures as directed herein.

This Directive should be read with Guidance Note No 07 of 2023. The Guidance Note avails detailed and simplified explanations on how to implement TFS measures, in addition to general TF and PF risk mitigation measures.

TFS primarily has two components being: **asset freezing without delay** and **prohibition** from making funds or other assets or services, directly or indirectly, available for the benefit of sanctioned individuals, entities, or groups. The PACOTPAA, as per sections 23, 25 and 45 amongst others, regulate the freezing and prohibition obligations.

It is common cause services listed in Schedules 1 and 3 of the FIA have been subjected to Money Laundering (ML) abuse domestically. The risk that such services can be further abused to advance Terrorism Financing (TF) and Proliferation Financing (PF) activities is prevalent. Internationally, there are many trends and typologies which suggest how TF and PF threats exploited vulnerabilities within such services.

2. COMMENCEMENT

This Directive comes into effect on **17 April 2023**.

3. UNSC² SANCTIONS SCREENING

The object of sanctions screening is to implement Targeted Financial Sanctions (TFS) against anyone listed by the UNSC.

Institutions are expected in terms of section 24 and Regulation 15(5)³ of the FIA to screen clients or potential clients involved in transactions against the relevant sanctions lists issued by the UNSC. Such screening should take place before accounts are opened or client is granted access to services, regardless of whether the client transacts below or above the CDD threshold. If the Institution in any way makes use of middlemen or brokers/agents to facilitate or avail services, it has an obligation to ensure that such third parties/agents/brokers duly attend to their AML/CFT/CPF responsibilities, if any reliance is placed on them. This is essential to combat TF and PF activities by ensuring designated persons are identified and not availed services accordingly.

Locally, the National Security Commission (NSC) is the body with statutory responsibilities in terms of the PACOTPA to proscribe persons or entities to the 1267/1989 Committee for designation and for proposing persons or entities to the 1988 Committee for designation. At the time of issuing this Guidance, the NSC has not designated any person(s) yet. Nonetheless, Institutions are required to continue screening against relevant sanctions lists as explained herein.

Screening against other designations lists such as OFAC⁴, though not mandatorily required by domestic laws is very helpful in the overall risk management effectiveness. For any transactions or currency exchanges in USD for example, there is an inherent requirement to screen involved

² United Nations Security Council.

³ Accountable institution to conduct on-going and enhanced customer due diligence: (5) An accountable institution must also, in the process of monitoring, screen - (a) names of prospective clients, before acceptance of such a client; (b) names of existing clients, during the course of the business relationship; and (c) all the names involved in any transaction, against the sanctions lists issued by the United Nations Security Council under Chapter VII of the United Nations Charter for purposes of combating the financing of terrorism and the funding of proliferation activities.

⁴ Office of Foreign Assets Control ("OFAC") of the US Department of the Treasury administers and enforces economic and trade sanctions.

parties against the OFAC list. Similarly, when dealing in British Pounds or the Euro, screening against lists issued by such relevant authorities is an inherent requirement but overall helps TF/PF risk management.

4. DIRECTIVES ON IMPLEMENTATION

All Accountable and Reporting Institutions are directed to ensure the following:

4.1 Mandatory screening: Screening against the United Nations Security Council (UNSC). The most recently updated information can be found by accessing the following link:

<https://www.un.org/securitycouncil/content/un-sc-consolidated-list>;

4.2 Responsibility to access screening tools: Institutions are required to gain access to the periodic updates to the UNSC Sanctions Lists. It is essential that such access is prompt and without delay, each time the UNSC issues an update;

4.3 Screening before availing services: Sanctions screening must be performed on all clients and their known associates and any party to a transaction before availing them services. Screening must be undertaken in the following circumstances:

- a. Upon any updates to any of the UNSC Lists. Such screening must take place without delay⁵. Institutions are required to screen their entire client database whenever an update is issued;
- b. Prior to onboarding new customers or before facilitating single or once-off transactions; and
- c. Upon KYC reviews or changes to a customer's information.

4.4 No services before screening: No services should be availed to clients, their beneficial owners or such related parties before the sanction screening is completed. Names of parties to any transactions (e.g., buyer, seller, sender and beneficiary/receiver etc.⁶). Directors

⁵ Without delay, as observed via Namibia's 2022 Mutual Evaluation Report means within a few hours.

⁶ Other sectors such as Banks need to include agents, freight forwarders, vessels etc.

and/or agents acting on behalf of customers (including individuals with power of attorney) also need to be screened;

4.5 Documenting evidence: Evidence of sanctions screening as required must be documented to demonstrate effective risk mitigation;

4.6 Detected name matches: When name matches or potential matches are detected. If the individual, entity, or group matches all of the key identifiers published on the Sanctions Lists, then the result is considered a 'confirmed match'. The following must be implemented without delay:

- a. Immediately upon such confirmation, **freeze all funds or other assets** associated with such client, persons to the transaction or their associates;
- b. **Prohibition** of making funds or other assets or services available: DNFBPs, VASPs⁷ and Financial Institutions are prohibited from providing funds or other assets to or rendering financial services or other services related thereto, whether in whole or in part, directly or indirectly, or for the benefit of any designated individual, entity, or group listed by the UNSC; and
- c. Urgently **report to the FIC without delay** (meaning within a few hours). Such should be reported via the Sanctions Name Match Activity (SNMA) report via goAML. With such reports, ensure to explain the following:
 - i. *“Reason”:* indicate the client names that are matched or potential matched with those on a sanctions list. Secondly, state the specific sanctions list on which the match was detected, for example UNSC 1267. This field is mandatory;
 - ii. *“Action”:* importantly, explain the nature and type of relevant freezing and prohibition measures taken by the institution filing such report. This field is mandatory; and
 - iii. *“Attachments”:* attach proof of freezing and prohibition measures taken for SNMA reports. Attachment must include complete identification and address records of listed client/associates; description of frozen assets; client’s address.

⁷ Virtual Asset Service Providers

5. TF AND PF REPORTING

Institutions are directed to cease reporting sanctions screening matches, TF or PF suspicions via Suspicious Transaction Reports (STRs) or Suspicious Activities Reports (SARs). Only ML related suspicions or transactions should be reported via STRs and SARs. Reporting sanctions screening matches as well as TF and PF suspicious activities and transactions should be as per the new report types listed below:

Reportable Activity or Transaction	Type of Report
Detection of a possible sanctions screening match .	SNMA - Sanction Name Match Activity report
Reporting any other Activity (or attempted transaction which was not completed) which may point to, or be linked to potential terrorism, TF or PF.	TPFA - Terrorist & Proliferation Financing <i>Activity</i> report
Reporting any other Transaction (actual transacting) which may point to, or be linked to potential terrorism, TF or PF.	TPFT- Terrorist & Proliferation Financing <i>Transaction</i> report

6. LENGTH OF FREEZING AND PROHIBITION MEASURES

Asset freezing and prohibition measures **have no time limit**. The funds or such other assets should remain frozen and the prohibition from making funds or other assets or services available remains in place until the individual, entity, or group is removed from the relevant UN Sanctions List (or such domestic list), or until there is a freezing cancellation decision made by a competent authority or the UNSC. The FIC or relevant competent authority will communicate the cancellation decision to the Institution which has implemented TFS measures.

7. PERIOD FOR WHICH RECORDS MUST BE KEPT

Record keeping is essential for combatting purposes. Records that relate to the establishment of a business relationship must be kept as long as the business relationship exists and for at

least five years from the date on which the business relationship is terminated. Records that relate to single transactions must be kept for five years from the date on which the transaction was concluded. Records that relate to copies of reports submitted to the FIC must be kept for a period of not less than five years from date of filing such report. However, records must be kept for longer than the five-year period if an Institution is requested to do so by the FIC or by other law enforcement body.

8. REPORTING INSTITUTIONS (RIs)

The entire provisions of sections 23, 24 and 25 of the FIA do not apply to Reporting Institutions (RIs). However, sanctions screening obligations as per PACOTPAA apply to RIs, if sections 24(2)(c)⁸ and 45 are anything to go by. Section 39(3) requires of RIs to develop, adopt and implement customer acceptance policies, internal rules, programmes, policies, procedures and controls as prescribed to effectively manage and mitigate risks of ML, TF and PF activities. The inclusion of TF and PF implies RIs must duly contribute to national and international combatting efforts in this regard.

9. GENERAL

This document may contain statements of policy which reflect the FIC's administration of the legislation in carrying out its statutory functions. This Directive is issued without prejudice to the FIA, PACOTPAA and their complementing Regulations. The information contained in this document is intended to only provide a summary on these matters and is not intended to be comprehensive.

The Directive can be accessed at www.fic.na

⁸ Section 24(2)(c) creates this obligation for RIs as follows: "The Director of the Centre or his or her authorized representative after receiving the sanctions list or the designation referred to in subsection (1), must, without delay, circulate the list using electronic mail, facsimile or any other expeditious means of communication to - (c) all reporting institutions listed in Schedule III of the Financial Intelligence Act.

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