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GUIDANCE NOTE NO. 07 OF 2023

GUIDANCE ON THE 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: 17 April 2023

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DEFINITIONS AND ABBREVIATIONS

“Accountable Institution (AI)” means a person or entity providing services listed in Schedule 1 of the Financial Intelligence Act, 2012 (The Act);

“Business relationship” means an arrangement between a client and an accountable or reporting institution for the purpose of concluding transactions on a regular basis;

“CDD” means Customer Due Diligence;

“Client and Customer” have their ordinary meaning and are used interchangeably herein;

“Customer Due Diligence” (CDD) means a process which involves establishing the identity of a client, the identity of the client’s beneficial owners in respect of legal persons and monitoring all transactions of the client against the client’s profile;

“Designation or listing” as defined in the PACOTPAA, means the identification of a person, an organisations or a country that is subject to targeted financial sanctions pursuant to –

- a. Security Council resolutions 1267 (1990) and 1989 (2011) and its successor resolutions;
- b. Security Council resolutions 1988 (2011) and its successor resolutions;
- c. Security Council resolution 1373 (2001) and its successor resolutions;
- d. Security Council resolution 1718 (2006) and its successor resolutions;
- e. Security Council resolution 1737 (2006) and its successor resolutions; and
- f. any future Security Council resolutions which impose targeted sanctions in the context of terrorism, the funding of terrorism or proliferation of weapons which has the ability to cause mass destruction and the funding thereof;

“DNFBPs” stands for Designated Non-Financial Businesses and Professions. Within the AML/CFT/CPF context, this refers to all Non-financial institutions such as legal practitioners; real estate agents; casinos; accountants, auctioneers; trust and company service providers; dealers in precious metals & stones; customs clearing & forwarding agents etc. These are institutions providing such services as per Schedules I and III of the FIA;

“Enhanced Due Diligence” (EDD) means doing more than the conventional simplified due diligence or the basic CDD measures mentioned above and includes, amongst others, taking measures as prescribed by the Centre to identify, as far as reasonably possible, the source of wealth, funds and any other assets of the client or beneficial owners whose activities may pose a risk of ML, TF or PF;

“Establish Identity” means a two-tier process consisting of *ascertainment or collecting* of certain identification information, and *verification* of some of the information against reliable documentation or information;

“FATF” means the Financial Action Task Force;

“FIA” refers to the Financial Intelligence Act, 2012 (Act No. 13 of 2012);

“FIC” means the Financial Intelligence Centre;

“freeze” means the prohibition of the use, transfer, conversion, disposition or movement of any funds, economic resources, property or other assets that are owned or controlled by designated persons or entities on the basis of, and for the duration of the validity of an action initiated by the Security Council in accordance with applicable Security Council resolutions (as per PACOTPAA);

“freeze of economic resources”, includes preventing their use to obtain funds, goods, or services in any way, including the selling, hiring or mortgaging them (as per PACOTPAA);

“freezing order” means the actions taken by the Minister in terms of section 23 or 45 of the PACOTPAA;

“LEAs” means Law Enforcement Authorities such as the Namibian Police, Anti-Corruption Commission or NAMRA;

“Listed” means any natural or legal persons listed or designated by the relevant authorities (including the UNSC, OFAC, EU etc). See definition of designation and listing herein above;

“ML” means Money Laundering;

“Monitoring” as defined in the FIA, for purposes of Sections 23, 24 and 25 of the Act includes -

- a. the monitoring of transactions and activities carried out by the client to ensure that such transactions and activities are consistent with the knowledge that the accountable institution has of the client, the commercial or personal activities and risk profile of the client;
- b. the enhanced monitoring of transactions and activities of identified high risk clients in order to timeously identify suspicious transactions and activities; and
- c. the screening of the name of a client or potential client, and the names involved in transactions, against the sanctions lists issued by the United Nations Security Council under Chapter VII of the United Nations Charter; for purposes of combating money laundering, the financing of terrorism and the funding of proliferation activities.

“NAMFISA” means the Namibia Financial Institutions Supervisory Authority;

“NRA” means the National Risk Assessment on ML, TF and PF;

“PEPs” means Political Exposed Persons (See FIC Guidance Note 01 of 2019);

“PACOTPA” means the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014), as amended;

“PF” means proliferation financing;

“Records” means any material on which information is recorded or marked and which is capable of being read or understood by a person, or by an electronic system or other device;

“Regulations” refer to the FIA Regulations unless otherwise specified;

“Reporting Institution” means all entities and persons provided services listed in Schedule 3 of the FIA;

“Single Transaction” means a transaction other than a transaction concluded in the course of a business relationship;

“**SAR**” refers to a suspicious activity report submitted to the FIC in terms of sections 33 (1) & (2) of the Act. When a potential ML *activity* is noted, institutions should file a SAR with the FIC;

“**SNMA**” refers to a Sanction Name Match Activity Report. When a potential sanctions match is detected, institutions should file a SNMA with the FIC. With effect from 17 April 2023, all sanctions name matches should be reported through SNMA reports and no longer through STRs or SARs;

“**STR**” refers to a suspicious transaction report submitted to the FIC in terms of sections 33 (1) & (2) of the FIA. When a potential ML *transaction* is noted, institutions should file a STR with the FIC;

“**TF**” means Terrorist Financing;

“**Transaction**” means a transaction concluded between a client and an accountable or reporting institution in accordance with the type of business carried on by that institution and includes attempted transactions;

“**VASP**” Means a Virtual Asset Service Provider as defined in FIC Directives 01 and 02 of 2021. The proposed FIA amendments and VASP Law will equally define such along the same principles;

“**Without delay**” means taking required actions within a few hours, as advised in Namibia’s September 2022 Mutual Evaluation Report.

1. INTRODUCTION

This Guidance Note is issued in terms of Section 9(1)(h) of the Financial Intelligence Act, 2012 (The FIA). It avails guidance on effective implementation of a Targeted Financial Sanctions (TFS) regime as per the FIA and PACOTPAA. 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.

The Guidance Note is primarily aimed at all Accountable Institutions (AIs) and Reporting Institutions (RIs). These are institutions availing services listed in Schedules 1 and 3 of the FIA. 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 TF and PF 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 per the PACOTPAA and simplified herein.

It is common cause services listed in FIA Schedules 1 and 3 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. This Guidance focuses on effective TFS implementation to combat and prevent TF and PF. In furtherance of such, all institutions availing services listed in Schedules 1 and 3 of the FIA are required to implement effective internal Anti-Money Laundering, Combatting the Financing of Terrorism and Proliferation (AML/CFT/CPF)

measures¹. This guidance should be used in enhancing TFS controls within such measures at institutional level.

2. COMMENCEMENT

This Guidance Note 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,

¹ Includes both policies and procedures (controls).

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.

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 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.

3.1 Effective Screening of Clients

In order to effectively implement TFS, Institutions must ensure:

- a. sanctions screening is performed on all clients before availing them services; and
- b. no services are availed to clients before the sanction screening is completed and evidence of same has been documented. Screening should **not be undertaken after** availing services or facilitating transactions, unless such screening is done in the course of a business relationship when the sanctions lists are updated. **This enables proactive detection of sanctioned/designated persons.** If such sanctioned/designated persons are detected, such should not be granted access to any services at all and their attempted transactions should be reported to the FIC promptly and without delay, while the assets (or funds) involved are frozen or transactions cancelled, as per the FIA and PACOTPAA.

In practice, policies and operating procedures therefore need to ensure clients are allowed to at least attempt the transaction to ensure due identification, which will enable effective screening and, if client is listed, eventual freezing of the funds which the client attempted to transact with, followed by complete prohibition to transact any further.

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

3.2 Where to find the updated Sanctions Lists?

Domestically, at the time of issuing this Guidance (April 2023), the NSC has not proscribed/designated or listed any persons yet, as stated above. Internationally however, various authorities including the UNSC, have listed or designated certain persons. The information on designated individuals, entities, or groups in the Sanctions Lists is subject to change. The most recently updated information can be found by accessing the following link: <https://www.un.org/securitycouncil/content/un-sc-consolidated-list>

The UNSC has a UN Consolidated List of all the sanctioned individuals, entities, or groups designated.

3.3 Risk Mitigation Steps

In essence, the primary TFS measures process can be simplified or reduced to the following primary Steps.



Figure 1 Primary steps in effective TFS framework

3.3.1 Step 1 – Subscribe

Institutions are required to have reliable access to a platform, tool or similar solution through which to screen clients. In practice, the most effective way is making use of sanctions screening tools/solutions/systems/platforms etc., that update their sanctions lists against a business can screen its client database. It is essential institutions have immediate access to the updated sanctions lists, each time same are updated. Institutions may consider using the screening tool

availed by the FIC. It is important to first evaluate same and gain reasonable assurance that the screening mechanism to be employed would address its risk exposure. If an Institution cannot obtain such assurance, it should employ other appropriately suited screening systems/measures to effectively mitigate TF and PF risks. Both *ad-hoc or single*⁵ screening and *batch*⁶ screening are permitted, depending on the entity risk exposure.

The FIC notes that screening is at times undertaken through or by the operational systems availed by an Institution's agency/partner/broker. The need to gain assurance that such screening tool is effective still rests with the Accountable or Reporting Institution, as per the FIA and PACOTPAA.

The FIC sends out notifications daily about any updates on relevant screening lists. The proposed FIA and PACOTPAA amendments will require of Accountable and Reporting Institutions to screen their clients against the sanctions lists whenever such updates are made, without waiting for the local gazetting of such. This will greatly reduce risks around timelines taken to issue Gazettes in an attempt to domesticate an international obligation into national law before the passing of such amendments. To enhance effective risk mitigation, Institutions are encouraged to subscribe to relevant lists for notifications and screen clients, without delay, each time an update is communicated.

All Accountable and Reporting Institutions must register with the FIC as per the FIA. Institutions under the supervision of NAMFISA⁷ should accordingly register through NAMFISA. Through such registration, institutions will be availed timely updates on sanctions lists. Guidance on FIC registration can be accessed via the following link: [Directive 03 of 2020 - FIC Registration Requirements.pdf](#) and the applying entity/company/person should submit all required documentation to the FIC or NAMFISA by emailing same to register@fic.na . Alternatively, Institutions may contact the FIC as per contact details availed on the last page or cover page of this document.

⁵ Refers to screening of single item or name at given time. Opposite of screening a group or batch of names at the simultaneously.

⁶ Screening a group or batch of record, items, names etc., simultaneously. For example, a system that allows an institution to screen its entire database of client names against a sanctions list at once.

⁷ Namibia Financial Institutions Supervisory Authority (NAMFISA).

3.3.2 Step 2 – Screen

Institutions must undertake regular and ongoing screening on the UN Consolidated List (or any such domestic one if such is ever issued). Screening must be undertaken in the following circumstances:

- a. **Upon any updates** to the UN Consolidated List. In such cases, screening must be conducted without delay to ensure compliance with implementing freezing measures. **Without delay**, as observed from Namibia’s 2022 Mutual Evaluation Report means within a few hours;
- b. **Prior** to onboarding new customers or before facilitating single or once-off transactions;
- c. Upon KYC⁸ reviews or changes to a customer’s information; and
- d. Before processing any transaction wherein the clients/associates parties to such have not been subjected to screening against the latest updates.

Institutions are also required to identify, assess, monitor, manage and mitigate TF and PF risks, particularly sanctions-related risks. The internal screening process must take into account such a risk assessment. For example, the controls employed, in view of volumes of daily transactions and number of clients should enable effective risk mitigation. Where there are higher risks, Institutions should take commensurate measures to manage and mitigate the risks, including applying enhanced screening measures. Correspondingly, where the risks are lower, they should ensure that the screening measures are commensurate with the lower level of risk.

The following databases must be included in the screening process:

- a. Existing customer databases. All systems containing customer data and transactions need to be mapped to the screening system to ensure effective risk mitigation;

⁸ Know Your Customer.

- b. Potential customers before conducting any transactions or entering a business relationship with any person;
- c. Names of parties to any transactions (e.g., buyer, seller, sender and beneficiary/receiver etc.⁹);
- d. Ultimate beneficial owners of trusts, legal persons such as companies and Close Corporations;
- e. Names of individuals, entities, or groups with direct or indirect relationships with clients; and
- f. Directors and/or agents acting on behalf of customers (including individuals with power of attorney).

Sanctions Lists contain a range of information to aid the identification of designated individuals, entities, or groups. The following (in Figure 2) are examples of the identifiers in the Sanctions Lists:

For natural person	For legal persons
<ul style="list-style-type: none"> • Name • Aliases • Date of birth • Nationality • ID or passport information • Last known address 	<ul style="list-style-type: none"> • Name(s) • Aliases • Address of registration • Address of branches • Other information

Figure 2 Identifiers in the Sanctions Lists

Potential match	A potential match is when there is a partial match between identifiers in the Sanctions Lists with any information in your databases, and you are unable to conclude a false positive or a confirmed match.	Example: Your customer’s name and DOB match with the identifiers of a designated person in the Sanctions Lists, but the nationality is different and there is a slight difference in the name spelling.
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Figure 3 Potential matches with names on Sanctions Lists

⁹ Other sectors such as Banks need to include agents, freight forwarders, vessels etc.

3.3.2.1 Assessing Potential Matches

A. False Positives

Because many names are very common, you may find various potential matches. However, it does not necessarily mean that the individual, entity, or group you are dealing with is subject to TFS. When identifying the potential match, by taking into consideration the knowledge you have of the customer, potential customer, beneficial owner, or transaction, through the customer due diligence and/or using reasonable information (e.g., open-source information, media articles, commercial databases, etc.), you must cross-check your customer's data with the identifiers published on the Sanctions Lists. If you are satisfied that the individual, entity, or group is not the designated individual, entity, or group, i.e. a *'False Positive Result'*, then you do not need to implement any TFS measures. You may allow the transaction or business to continue its normal course, and you are required to maintain evidence of this process in your records.

If you are unable to internally verify whether the 'potential match' is a false positive result or a confirmed match, then you must suspend any transaction and file a Sanction Name Match Activity (SNMA) report with the FIC promptly and without any delays. Without delay in this context means within a few hours.

B. Positive Matches

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'. In case the confirmed match is an existing customer, you must freeze all funds or assets of such person without delay, refrain from offering any funds or other assets or services and report the freezing measures to the FIC and the relevant Supervisory Authority without any delays (within a few hours) from the time of taking any freezing measure and/or attempted transactions. In case the confirmed match is a potential customer, you must reject the transaction immediately and report the case. Reporting

procedures on freezing measures due to confirmed match are further explained in “*Step 4 – Report*” herein below.

3.3.3 Step 3 – Apply Targeted Financial Sanctions

The following are the TFS measures that must be implemented if a match with the UN Consolidated List is identified.

Firstly, freeze all funds or other assets without delay: freezing without delay means promptly or within a few hours. Such should also be without prior notice to the listed/designated individual, entity, or group, of all the funds or other assets:

- a. Owned or controlled, wholly or jointly, directly, or indirectly, by an individual, entity, or
- b. group designated as per the UN Consolidated List, a local or such other relevant list;
- c. Derived or generated from funds or other assets under item (a) above; or
- d. Any individual or entity acting on behalf of or at the direction of any designated individual, entity, or group.

Important, the obligations to freeze without delay **shall not prevent additions** to frozen accounts of:

- ✓ interest, profits, or other earnings due on the account; or
- ✓ of payments due under contracts, agreements or obligations agreed upon prior to the date on which the account has become subject to freezing, provided such additions are immediately frozen.

Secondly, prohibition of making funds or other assets or services available: DNFBPs, VASPs¹⁰ and Financial Institutions in Namibia are prohibited from providing funds or other assets to or rendering financial services or other services related to, whether in whole or in part, directly or indirectly, or for the benefit of any designated individual, entity, or group listed by the UNSC.

3.3.4 Step 4 – Report

¹⁰ Virtual Asset Service Providers

The mechanism to report any freezing or suspension measures taken upon identifying confirmed or potential matches is through the goAML platform. The use of the goAML platform for TFS reporting purposes eases the burden of reporting and avails the necessary confidentiality required for this highly sensitive and confidential process. The following information must be shared when submitting a SNMA Report:

- a. The **full names of the ‘confirmed match’**. Attach identification documents of the ‘confirmed match’, such as national ID document, passport or such other ID documents for individuals. For legal persons, attach incorporation documents such as company or Close Corporation (CC) incorporation forms, articles of association, trust establishing documents etc.; and
- b. **Amount of funds or other assets frozen** (e.g., value of funds presented at Casino or ADLA, value of real estate, value of funds in bank accounts, value of transactions, value of securities, etc.). Attach proof documents such as Casino transacting activities, ADLA remittance or exchange activities, bank statements, transaction receipts, securities portfolio summary, title deeds, etc., if such are at hand.

Example: A Real Estate Agent identifies a confirmed match (Person A) when screening the parties to a property sale transaction.

Person A is the prospective seller of the real estate. The real estate agent must block the transaction immediately, refrain from offering any further services to Person A, and submit a SNMA via goAML. The SNMA must include attachments that clarify:

- a. *The type, value, and location of the real estate being sold. Include supporting documents such as title deeds. If the buyer is the listed party, obtain and submit records of their complete identification information and any information about their address as well as how they planned to finance the deal;*
- b. *ID documents of the confirmed match, such as ID card, travel documents, trade permits/authorization/licenses, etc.*

4. TARGETED FINANCIAL SANCTIONS (TFS)

4.1 What are TFS?

As mentioned in the introductory section herein, the term Targeted Financial Sanctions includes both 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.

4.1.1 Asset Freezing Without Delay

In terms of international standards, without delay means **within a matter of hours**. Freezing is the prohibition to transfer, convert, dispose, or move any funds or other assets that are owned or controlled by listed or designated individuals, entities, or groups. It includes:

- a. The freezing of funds and other financial assets and economic resources, and includes preventing their use, alteration, movement, transfer, or access; and
- b. The freezing of economic resources also includes preventing their use to obtain funds or other assets or services in any way, including, but not limited to, by selling or mortgaging them.

Examples of effective freezing:

- i. ***Financial Institutions:*** freezing measure can be freezing all assets or investments made by a client who the Asset Management Company has found to have been listed. An insurance company identifies a confirmed match (Person A) when screening its customer database. Person A is the beneficiary of a life insurance policy. The insurance company must freeze any policy withdrawals/payouts. Account may still receive premiums or accrue interest due. Institution must seek approval from the FIC before making any payments under the policy. The insurance company must also submit a SNMA via goAML with details of the insurance agreement (including policyholder, beneficiary, premiums, etc). For ADLAs, if a client has deposited funds that ought to be remitted or exchanged for another currency, the

ADLA cancels or blocks the continuation of such transaction and does not refund the frozen assets, unless so directed lawfully by competent authorities (usually after an investigation);

- ii. **DNFBPs like real estate agents and law firms:** a freezing measure can be suspending access to Casino services for a client who holds membership and has funds on such account. A freezing measure can be stopping the facilitation of or blocking the transfer of ownership of funds, movable or immovable assets. Law firms can hold funds in a trust account upon discovery that a client is listed and may not move, use or transfer such funds until legally so instructed by a competent authority (usually after the necessary due process or investigation); and*
- iii. **VASPs¹¹:** a freezing measure can be blocking services to trade and transfer virtual assets.*

4.1.2 Prohibition

Prohibition from making funds or other assets or services available: This means the prohibition to provide funds or other assets to or render financial or other services to, any designated individual, entity, or group.

Examples of prohibition:

- i. **Financial institutions:** prohibition from offering microlending or asset management services, including transactional services. Prohibition of insurance or microlending services;*
- ii. **DNFBPs, like real estate agents and law firms:** prohibition from the provision of any services, such as legal services to transfer asset ownership, buying or selling real estate, selling jewellery, precious metals, natural resources, etc. Trust and*

¹¹ Virtual Asset Service Providers such as those dealing in Bitcoin etc

Company Service Providers (TCSPs), approached by someone who is listed or who may not be listed (themselves) but represents beneficial owners or an entity who are listed – such TCSP should prohibit the availing of such services; and

- iii. **VASPs:** *prohibition from the provision of any services, including but not limited to trading and transferring virtual assets.*

4.1.3 Object of freezing and prohibition

Note however that even when freezing measures are taken or enacted, there should be no restrictions on client introducing or depositing more funds with the Institution (or paying deposit, further funds on the property deal). As long as the service which the listed client so desires cannot be finalised for them, prohibition and asset freezing requirements will be met on condition whatever has already been frozen is not further depleted. The object remains to source as much funds/assets as possible from listed persons so they can be denied access to resources which they can use to fund terrorist or proliferation activities. This is the essence or primary goal of TFS measures and Accountable and Reporting Institutions need to consider appropriate implementation given the circumstances they may find themselves in.

4.2 Who is the target of these measures?

The persons targeted by TFS are persons designated or identified as advancing and/or supporting terrorism and proliferation activities directly or indirectly. The freezing measures, including the prohibition of making funds or other assets or services available, apply to:

- A. Any individual, entity, or group designated by the NSC or designated by the UNSC;
- B. Any entity, directly or indirectly owned or controlled by an individual, entity, or group designated under A (above); and
- C. Any individual or entity acting on behalf of or at the direction of any individual, entity, or group designated under A & B (above).

In cases where an asset is owned or controlled in part or in full by a designated individual, entity, or group and such asset continues to produce benefit, for example in the form of dividends or interest, the relevant portion of such benefit is also subject to freezing measures.

4.3 Managing Ultimate Beneficial Ownership (UBO) Risks

This section speaks to managing TFS risks associated with ownership, control, and acting on behalf of legal persons and trusts. When a designated or listed person is one of the beneficial owners or found to be acting on behalf of an entity, the Accountable or Reporting Institution should exercise TFS measures on both the legal person or trust (including the individual if possible) and report without delay to the FIC. The FIC will duly investigate such circumstances, determine potential risks and guide the Institution further. It can get risky if poorly informed or misguided considerations are made around whether a listed person is a minority shareholder/beneficial owner and thus might not warrant subjecting such person or involved entity to TFS.

Profile mismatch

At times, the profile of the client might not match the values of funds client transacts in. In the single case of potential terrorism and TF investigated by NamPol, it was found that the primary suspect, a local Namibian, formerly Christian, who converted to Islam some years ago and became radicalized was sending funds to various high risk jurisdictions. Upon investigations, it was found that the suspect who send such via ADLAs/Money Service Businesses (MSBs), did not have the means to earn such funds, judging by his lifestyle audit revelations. He was granted minority stake in two CCs. In one, he has shareholding of 5% and in another, he has shareholding of 10%. One entity is a 'car wash' and the other is a used car dealership. He appears to be a front man for foreign nationals from Kenya and Somalia, who are also closely associated with his faith. He appears to have been used by others to remit funds on their behalf as his earning and lifestyle did not suggest all the funds he was sending was his. The said primary suspect openly supports extremism and his activities on social media revealed same. (Observations from the 2023 NRA update on TF)

At the core of UBOs risk is determining the person(s) who exercise effective control over a legal person, arrangement or trust. It is such person(s) who are in a position to abuse the legal structures to advance TF and PF risks.

Financial Institutions, DNFBPs, and VASPs should apply freezing measures in cases in which a designated person holds a minority interest, if there is evidence that the designated person exerts control over the legal entity (despite owning a minority interest). The criteria to be taken into account when assessing whether a legal entity is mainly controlled by another person or entity, alone or pursuant to an agreement with another shareholder or other third party, could be any of the following:

- a. having the right to appoint or remove a majority of the members of the administrative or management body of such legal person, entity, group or arrangement;
- b. having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative or management body of a legal person, entity, group or arrangement who have held office during the present and previous financial year;
- c. controlling alone, pursuant to an agreement with other shareholders in or members of a legal person, group or entity, a majority of shareholders' or members' voting rights in that legal person, entity, group or arrangement;
- d. having the right to exercise a dominant influence over a legal person, group or entity, pursuant to an agreement entered into with that legal person, entity, group or arrangement, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person, entity, group or arrangement permits its being subject to such agreement or provision; and
- e. having the power to exert the right to exercise a dominant influence referred to in point (d), without being the holder of that right;
- f. having the right to use all or part of the assets of that legal person, entity, group or arrangement;
- g. managing the business of that legal person, entity, group or arrangement on a unified basis, while publishing consolidated accounts;

- h. sharing jointly and severally the financial liabilities of legal person, entity, group, or arrangement, or guaranteeing them; and
- i. Having a power of attorney or authorized signatory arrangement over a legal person, entity, or group.

4.3.1 Abuse of Legal Persons and Arrangements

It is generally accepted that legal persons and arrangements (e.g trusts, partnerships) present some form of avenue through which people can hide their identity while advancing ML, TF and PF. This naturally enhances risks associated with legal persons and arrangements.

Complex legal structures of companies and trusts can be used to hide Ultimate Beneficial Ownership. The 2023 NRA update to the 2020 NRA has found that Close Corporations (CCs) are highly exposed to ML/TF/PF risks. The ease with which CCs can be created and their reduced governance frameworks, amongst others, contribute to their overall vulnerability.

It is also generally accepted that Specified Non-Profit Organisations (NPOs) are highly vulnerable to TF. The 2020 NRA found Faith Based Organisations (FBOs) to be most vulnerable to TF domestically. Internationally, charity organisations are found to be most vulnerable to TF abuse. This naturally also exposes Namibia to enhanced TF risks associated with charities, especially given the global reach of some. Accountable and Reporting Institutions are therefore required to take the necessary care and ensure effective risk mitigation when dealing with FBOs and charity organisations.

While FBOs and charity organisations also need to ensure compliance with the guidance herein, Guidance Note 10 of 2023 on Combatting TF in Specified NPOs avails specific guidance on how FBOs and NPOs can implement measures to protect their systems from TF abuse.

Example: Where a listed minority Shareholder exercises effective control of a legal person

Person A is designated in the Sanctions Lists and owns 15% of non-designated Company A. Two other owners own the remaining 85% equally (42.5% each) and are not designated. Person A has a signed agreement with the two other owners that gives Person A majority voting rights in Company A. Despite Person A holding a minority interest, the funds or other assets of Company A must be frozen without delay since the signed agreement between Person A and the other owners proves that Person A exerts control over Company A by holding majority of the voting rights.

4.4 Managing TF risks with Specified Non-Profit Organisations (NPOs)

The 2020 NRA found Faith Based Organisations (FBOs) to be most vulnerable to TF domestically. Internationally, trends suggest charity organisations are most vulnerable to TF abuse. This naturally also exposes Namibia to enhanced TF risks associated with charities, especially given the global reach of some. Accountable and Reporting Institutions are therefore reminded that FBOs and charities, being the Specified NPOs, generally present increased TF risks. Worth noting is that domestically, FBOs have also been greatly abused to advance ML activities. The Specified NPOs should thus be subjected to EDD as per the FIA. Institutions must subject Specified NPOs to the following EDD measures as a minimum:

- a) the **registered name** of the entity, if so registered;
- b) the **office or place of business**, if any, from which it operates;
- c) the **registration number**, if any;
- d) its **principal activities**;
- e) obtain **senior management's approval** while establishing business relationship but before availing any services;
- f) ensure that the business relationship may **not be used for unlawful objects**;
- g) issue the recognition or services or sales agreements/instrument documents, account opening etc., **in the name of the specified NPO**, as given in its constituent documents and not other names;

- h) ensure that the NPO itself, its authorized agents or representatives **are not listed on any sanctions list nor affiliated directly or indirectly with listed or proscribed persons or entities**, whether under the same name or a different name;
- i) Below is a list of the type of information which needs to be ascertained/verified for **persons who represent and/or exercise such effective control** of the Specified NPOs:
- Verification: full names;
 - Verification: nationality;
 - Verification: If citizen – national ID no./ passport no./date of birth;
 - Verification: Non-citizen – passport no./national ID no./date of birth;
 - Obtain: Namibia residential address for citizens OR if non-citizen, residential address in his/her country or physical address in Namibia, if any;
 - Contact particulars; and
 - Valid resolution which authorises such person(s) to act on behalf of the Specified NPO.

Institutions need to ensure due verification of identification information before availing services. Verification should ideally be done with the Ministry of Home Affairs' National Identification Database. However, such is not possible at the time of issuing this guidance. Institutions should use other reliable means to verify identify of clients such as comparing ID document to passports, driver's license cards, voter's cards, birth certificates and such other reliable mechanisms.

It is reiterated that the Specified NPOs who ought to be subjected to the EDD measures as per above remain FBOs and charities. Institutions are cautioned against unduly subjecting all other types of NPOs to enhanced EDD measures, if there is no indication of increased risk. Going beyond these two NPO sub-sectors does not align to the RBA and will unduly undermine operations of low risk NPOs.

4.5 How long does freezing and prohibition measures last?

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 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 competent authority or the UNSC. The FIC or relevant competent authority will communicate the cancellation decision to the Institution which has implemented TFS measures.

4.6 What does 'funds or other assets' mean?

4.6.1 Funds or other assets

The term funds or other assets means any assets, including, but not limited to, financial assets, economic resources (including oil and other natural resources), property of every kind, whether tangible or intangible, movable or immovable, however acquired. This also includes legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets, and any other assets which potentially may be used to obtain funds, goods or services; and

4.6.2 Categories of funds

Generally, all types of funds or other assets are subject to freezing measures. Below are detailed examples of Categories of 'funds or other assets' subject to freezing.

Part I: Funds and other financial assets subject to sanctions are, for example, the following:

- a. Cash, claims on money, drafts, money orders, bearer instruments, internet-based and other electronic or digital payment instruments, including virtual assets/currencies;
- b. Deposits with financial institutions or other entities and balances on accounts, including but not limited to: (1) fixed or term deposit accounts, (2) balances on

- share trading accounts with banks, brokerage firms, or other investment trading accounts;
- c. Debts and debt obligations, including trade debts;
 - d. Other accounts receivable, notes receivable, and other claims of money on others;
 - e. Equity and other financial interest in a sole trader or partnership;
 - f. Publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, and derivatives contracts;
 - g. Interest, dividends, or other income on or value accruing from or generated by assets;
 - h. Credit, right of set-off, guarantees, performance bonds or other financial commitments;
 - i. Letters of credit, bills of lading, bills of sale; notes receivable and other documents evidencing an interest in funds or financial resources and any other instruments of export-financing; and
 - j. Insurance and reinsurance.

Part II: Economic Resources subject to sanctions

Economic resources subject to sanctions include assets of any kind, whether tangible or intangible, movable, or immovable, actual, or potential, which potentially may be used to obtain funds, goods, or services, such as:

- a. Land, buildings, or other real estate;
- b. Equipment, including computers, computer software, tools, and machinery;
- c. Office furniture, fittings and fixtures and other items of a fixed nature;
- d. Vessels, aircraft, and motor vehicles;
- e. Inventories of goods;
- f. Works of art, cultural property, precious stones, jewellery, or gold;
- g. Commodities, including oil, minerals, or timber;
- h. Arms and related material, including all items mentioned in the arms embargo, included but not limited to weapons and ammunition, military vehicles and equipment,

paramilitary equipment, and spare parts for the aforementioned, and technical advice, assistance, or training related to military activities; and

- i. Raw materials and components that can be used to manufacture improvised explosive devices or unconventional weapons, including but not limited to chemical components, detonating cord, or poisons.

5. PERIOD FOR WHICH RECORDS MUST BE KEPT

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.

6. REPORTING TO THE FIC

Als and RIs should no longer report sanctions screening matches, TF or PF suspicions via STRs or SARs. Only ML related suspicions or transactions should be reported via STRs and SARs. Reporting sanctions screening matches as well as TF and PF suspicions or transactions should be as per 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 Activity report
Reporting any other Transaction (actual transacting) which may point to, or be linked to potential terrorism, TF or PF.	TPFT- Terrorist & Proliferation Financing Transaction report

6.1 Rules for filing SNMA, TPFA and TPFT Reports

As explained above, SNMA reports should only be filed when a sanctions screening match, whether actual or potential, is detected. When filing the SNMA report on GoAML, a screen similar to what is presented in Figure 4 (on page 29 below) will be provided. It is essential that the reporting persons provide the following accordingly:

- a. Under “**Reason**”: firstly, 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 and the report cannot be finalised and submitted without providing this information;
- b. Under “**Action**”: importantly, explain the nature and type of relevant **freezing and prohibition measures** taken by the institution filing such report. For example, this should indicate how much the listed (or potential) client’s funds may have been received and remain frozen since the date of such detection. Please reach out to the FIC for specific guidance on freezing and prohibition measures if there is uncertainty due to circumstances at hand. This field is mandatory and the report cannot be finalised and submitted without providing the specific actions that were taken;
- c. “**Attachments**” provision: it is mandatory to provide **proof of freezing and prohibition measures** taken for SNMA reports. For example, with Real Estate Agents, information which supports the following, amongst others, is required to be attached:
 - complete identification records of listed client/associates;
 - the type, value and location of the real estate being sold;
 - any information about the client’s address; and
 - how they planned to finance the deal (cash, bond etc)

With TPFT reports, it is also mandatory to attach proof of transactions as customarily done when filing Suspicious Transaction Reports (STRs). With TPFA reports, which

speak to activities, records may not always be readily at hand and thus reports can be accepted without any attachments. **SNMA and TPFT reports provided without the appropriate attachments may be rejected by the system.** The FIC, upon analysis can however request for any relevant or additional records as per the FIA.

- d. **“Indicators”**: In addition to the above, a list of specific reporting indicators are provided. Please select the appropriate report indicator. Please reach out to the FIC if a specific sanction list is not available under the list of indicators. This field is mandatory and at least one indicator should be selected.

Figure 4 SNMA reporting screen for SNMA, TPFA and TPFT Reports

6.2 Practical Controls

For an effective SNMA, TPFA, TPFT reporting framework, an Accountable or Reporting Institution must enable the following:

- a. **Conducive environment** where staff can raise an internal report if they know or suspect, or where there are reasonable grounds for having knowledge or suspicion that persons involved in the transaction could be engaged in ML, TF or PF;
- b. The Institution’s AML Compliance Officer, or their appointed alternative, must duly **review and consider all such internal reports** in order to decide on the correct report to file via GoAML. The following is important:
 - enquiries/reviews made in respect of internal reports (red flags) must be recorded;

- the reasons why a suspicion/red flag may or may not have been reported to the FIC should be recorded;
 - keep a record of any communications to or from the FIC about any report filed.
All keep copies of all records shared with reports.
- c. Such SNMA should be reported **without delay (within a few hours of being detected)** to enhance the effectiveness of combatting activities, especially in the overall implementation of TFS;
- d. Generally, when TF or PF is suspected, such must be reported via TPFA or TPFT report, **as soon as the suspicion arises**. The principle is that the longer it takes to file a report, the more time subjects may have to advance their crimes. This also implies that combatting authorities will have lesser time to intervene; and
- e. It is a **criminal offence** for anyone, following a disclosure to a Compliance Officer or to the FIC, to do or say anything that might either **'tip off'** another person that a disclosure has been made or prejudice an investigation. An Institution's policies should clearly state this.

6.3 Explaining Grounds for Suspicion with each Report

In the context of implementing TFS or conventional reporting of TF and PF, Accountable and Reporting Institutions need to ensure the TFS-related Reasons for Reporting or Grounds of Suspicion are duly explained in the provision for 'Reason' on goAML. Below is a non-comprehensive list of Grounds of Suspicion when reporting:

- a. A sanctions screening match (or close/potential match) for customer is detected on the UNSC designations list (or such other list);
- b. Customer is subject to adverse media or such similar reports which associate customer to potential terrorism or proliferation activities;
- c. Customer is known to or suspected to be raising funds/assets for terrorism groups, proliferation activities or supporting such. Includes when customer is reported to sympathise with known terrorist groups or proliferation activities;
- d. Customer is linked to, or associated with terrorist radicalization activities, groups. Social media activities cannot be ignored;

- e. Customer is engaging in complex commercial deals and arrangements that seem to be aiming to hide the final destiny of the transaction/good or the beneficial owner, which could be a designated individual, entity, or group. (e.g the use of a front company, middlemen, or intermediaries by the designated individual to circumvent the TFS);
- f. Customer is carrying out multiple ATM cash withdrawals in short succession across various locations in territories where sanctioned people have influence or around the border of sanctioned countries linked to terrorist financing;
- g. Customer is suspected to be working or acting on behalf of, or is controlled by, a sanctioned individual, entity, or group;
- h. Customer or transaction is suspected of being linked (directly or indirectly) to the Democratic People's Republic of Korea's (DPRK) nuclear related, Weapons of Mass Destruction-related, or ballistic missiles weapons program. Alternatively, customer unreasonably sends, receives or has illogical trade relations with persons associated with countries known to advance PF other than DPRK;
- i. Customer or transaction is suspected of being linked (directly or indirectly) to IRAN's nuclear weapons program;
- j. Customer or transaction is suspiciously involved in the supply, sale, delivery, export, or purchase of dual use, controlled, or military goods to countries of proliferation concerns or related to illegal armed groups;
- k. Transaction involves sale, shipment, or export of dual use goods incompatible with the technical level of the country to which it is being shipped;
- l. Trade finance transaction involves shipment route (if available) through country with weak export control laws or weak enforcement of export control laws; and
- m. Inclusion of the individual/entity in the international sanctions list e.g. OFAC, UKHMT, EU, etc.

Example 1: UN Panel of Experts Report

*After conducting screening, you have identified that a customer (Person A) is mentioned in a UN Panel of Experts Report. However, Person A is **not listed** in neither the UN Consolidated List nor the Local Terrorist List issued by the NSC. In this case, you are not required to implement the TFS requirements since Person A is not listed locally or by the UNSC; however, the fact that Person A is mentioned in a UN Panel of Experts Report may be a cause for TF or PF suspicion and you should consider filing a TPFA or TPFT report with the FIC.*

Example 2: International Sanctions

*After conducting screening, you have identified that a customer (Person A) is subject to international sanctions. However, Person A is **not listed** in neither the UN Consolidated List nor the Local Terrorist List issued by the NSC. In this case, you are not required to implement the TFS requirements since Person A is not listed locally or by the UNSC; however, the fact that Person A is subject to international sanctions may be a cause for potential TF or PF suspicion and you should consider reporting a TPFA or TPFT report to the FIC. (Section 6 guides on such reports)*

It is important that the Grounds for Suspicion stated (or reasons for reporting) are aligned to the observed customer activities, behaviour or transactions. This enhances effectiveness of combatting activities such as investigations by the FIC and Law Enforcement.

7. 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 PACOTCAA apply to RIs, if sections 24(2)(c)¹² and 45 are anything to go by.

Section 39(3) requires of RIs (similar to Accountable Institutions) 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. as mentioned above, while sections 23 and 24 do not explicitly refer to RIs, FIA section 39(3) requires RIs' policies and risk management frameworks to identify and duly mitigate or respond

¹² 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.

to high risk clients and circumstances as they may arise. It is in this same vein that RIs are required to mitigate against TF and PF risks and thus adopt effective risk mitigation measures, primarily client screening as per section 24(2)(c) of the PACOTPAA.

The object of the law is to not overburden RIs but still require of them to contribute to national and international TF/PF combatting measures. It is for this reason that RIs are equally required to comply with FIA section 33 and all other TFS measures detailed in the FIA and PACOTPAA. The FIC will therefore at all times need to gain assurance that RIs have demonstrable combatting and preventative measures as per FIA section 9.

8. GENERAL

This document may contain statements of policy which reflect the FIC's administration of the legislation in carrying out its statutory functions. This Guidance is issued without prejudice to the FIA and its 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.

9. NON-COMPLIANCE WITH THIS GUIDANCE

This document is a guide. Effective implementation is the sole responsibility of Accountable and Reporting Institutions. Should an institution fail to adhere to the guidance provided herein, it will be such institution's responsibility to demonstrate alternative risk management controls implemented which are effective.

The Guidance Note can be accessed at www.fic.na

DATE ISSUED: 17 APRIL 2023

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