

GUIDELINE ON TARGETED FINANCIAL SANCTIONS

For

**Financial Institutions and Designated Non- Financial
Business Entities and Professionals (DNFBPs) engaged in
the services listed in the First Schedule and Second
Schedule to the Money Laundering and Financing of
Terrorism (Prevention and Control), Act 2011-23**

November 2019

Contents

Definitions.....	3
Introduction.....	3
The Legislative Framework.....	4
What are sanctions?	4
What are financial sanctions?	5
Requirements of Financial Institutions and Designated Non-Financial Businesses and Professions.....	6
Listed Persons and Entities.....	6
What Financial Institutions and Designated Non-Financial Businesses and Professions are to do?.....	8
Record Keeping	9
Delisted Persons.....	9
APPENDIX 1.....	11

Definitions

Designated Person or Entity means Listed Person

Immediately means Without Delay

False Positive- This occurs where there is a name match but the client/customer is not the person on the United Nations Security Council List.

Freeze - For the purposes of Recommendations 6 and 7 on the implementation of targeted financial sanctions, the term “freeze” means to prohibit the transfer, conversion, disposition or movement of any funds 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 United Nations Security Council or in accordance with applicable Security Council resolutions by a competent authority or a court.

Property is defined to include funds, whether situated in Barbados or elsewhere, and any legal or equitable interest, whether full or partial, in property

Targeted Financial Sanctions means both asset freezing and prohibitions to prevent funds or other assets from being made available, directly or indirectly, for the benefit of designated persons and entities. (FATF)

Without Delay - means, ideally, within a matter of hours of a designation by the United Nations Security Council or its relevant Sanctions Committee (e.g. the 1267 Committee, the 1988 Committee, the 1718 Sanctions Committee). For the purposes of S/RES/1373(2001), the phrase without delay means upon having reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, one who finances terrorism or a terrorist organisation. In both cases, the phrase without delay should be interpreted in the context of the need to prevent the flight or dissipation of funds or other assets which are linked to terrorists, terrorist organisations, those who finance terrorism, and to the financing of proliferation of weapons of mass destruction, and the need for global, concerted action to interdict and disrupt their flow swiftly. (FATF)

Introduction

Barbados has long been an active participant in international efforts to disrupt organized crime and to remove the profit from criminal activity. As a member of the Caribbean Financial Action Task Force (CFATF), Barbados is committed to demonstrating its adherence to the 40 Recommendations of the Financial Action Task Force (FATF). As such Barbados is committed to implementing the United Nations Security Council Resolutions (UNSCRs) sanctions measures.

Amongst other measures, the UNSCRs may impose targeted financial sanctions against specific individuals and entities identified by the UN Security Council (or relevant UN Committees) as contributing to a particular threat to, or breach of, international peace and security.

The purpose of this Guideline is to assist Financial Institutions (FIs) and Designated Non- Financial Businesses and Professions (DNFBPs) engaged in the services listed in the First and Second Schedules to the Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011-23 in complying with their obligations regarding targeted financial sanctions. This specifically relates to the prevention and suppression of terrorism and terrorist financing, and the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing.

The Legislative Framework

The legislative framework for targeted financial sanctions includes the following Acts of Parliament:-

- The Anti-Terrorism and Counter-Proliferation of Weapons of Mass Destruction Act, Cap. 158
- The Anti-Terrorism (Amendment) Act, 2015-28
- The Anti-Terrorism (Amendment) Act, 2019-34
- The Constitution of Barbados
- The Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011-23
- The Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2019-22
- Proceeds & Instrumentalities of Crime Act, 2019-17

The purposes of the Anti-Terrorism and Counter-Proliferation of Weapons of Mass Destruction Act, Cap. 158 are to:

- implement the United Nations Convention respecting the Suppression of the Financing of Terrorism and United Nations Security Council Resolutions relating to terrorism, and to provide generally for preventing and combatting terrorism and its financing;
- implement United Nations Security Council Resolutions relating to the prevention, suppression and disruption of the proliferation of weapons of mass destruction and its financing and to provide generally for preventing, suppressing and disrupting the proliferation of weapons of mass destruction and its financing;
- alter Section 16 of the Constitution to any extent necessary for such implementation and provide for related matters. This Section relates to protection from deprivation of property.

What are sanctions?

Sanctions are used as a foreign policy tool as part of a broader political and diplomatic strategy to achieve a desired outcome from a target country or regime. They are usually agreed and coordinated at an international level by the United Nations Security Council and the European Union. They may include travel, arms, financial and trade restrictions against the individuals and entities that are subject to the restrictions

The primary aim of all UN sanctions, as set out in Chapter VII of the UN Charter, is to implement decisions by its Security Council for the maintenance of international peace and security. There are three categories of sanctions namely (1) terrorism/terrorist financing (2) proliferation financing and (3) general sanctions against countries (internal conflicts).

What are financial sanctions?

Financial sanctions are restrictions put in place by the UN and other groups on countries to achieve a specific foreign policy or national security objective. They can limit the provision of certain financial services and restrict access to financial markets, funds and economic resources.

Financial sanctions come in many forms as they are developed in response to a given situation. The most common types of financial sanctions used in recent years are:

- **Targeted asset freezes** - which are usually applied to named individuals, entities and bodies, restricting their access and ability to use funds and economic resources.
- **Restrictions on a wide variety of financial markets and services** - these can apply to named individuals, entities and bodies, to specified groups or to entire sectors. To date they have taken the form of investment bans; restrictions on access to capital markets; directions to cease banking relationships and activities; requirements to notify or seek authorization before certain payments are made or received; and restrictions on provision of financial, insurance, brokering, advisory services or other financial assistance.
- **Directions to cease all business** - of a specified type with a specific person, group, sector territory or country.

Where the financial sanction takes the form of an asset freeze, it is generally prohibited from:

- Dealing with the funds or other assets, belonging to or owned, held or controlled by a designated person
- Making funds or other assets available, directly or indirectly, to, or for the benefit of, a designated person; or
- Engaging in actions that, directly or indirectly, circumvent the financial sanctions prohibitions.

The funds and other assets are to be frozen immediately by the person in possession or control of them on receipt of the Court Order against the designated individual or entity. The term “designated individual or entity” has the same meaning as the term “listed person” as defined in Section 10A. (1) of The Anti-Terrorism and Counter-Proliferation of Weapons of Mass Destruction Act, 2019-34.

The frozen property, equipment, funds or other assets remain the property of the natural or legal person(s) that held an interest in them at the time of the freezing and may continue to be administered by third parties, or through other arrangements established by such natural or legal person(s) prior to the initiation of an action under a freezing mechanism.

In implementing the obligations related to targeted financial sanctions, sections 43, 44 and 47 of the Proceeds and Instrumentalities of Crime Act, 2019-17 refer to the measures in place to protect the rights of bona fide third parties acting in good faith.

Requirements of FIs and DNFBPs

All Institutions should:

- Have adequate policies and procedures to comply with the sanctions measures, which should be properly documented, reviewed and endorsed by senior management and the Board.
- Determine your risk profile with reference to the following non-exhaustive list of risk factors: (a) customer/client, product and activities, (b) distribution channels, (c) complexity and volume of transactions, (d) processing and systems, (e) operating environment, (f) screening processes of intermediaries (where applicable), and (g) geographic risk.
- Determine reasonable and proportionate due diligence and screening measures to understand your customers/clients (including beneficial ownership and control information) and the activities undertaken by each customer/client. Due diligence and screening should be commensurate with the nature of the transaction or activity concerned and the likelihood that it may otherwise give rise to an infringement of sanctions. Due diligence should be conducted wherever possible at the commencement of any business relationship and thereafter on an ongoing basis. The frequency of screening will depend on factors such as the type of customer/client, business relationship, product or activity.
- Have systems and controls in place to prevent any participation in prohibited activities with designated or listed persons and restricted goods and services etc. It is also important for all relevant staff to be trained, and assessed, on how to comply with the established sanctions compliance procedures.

Listed Persons and Entities

The Director of Public Prosecutions may apply to a Judge in Chambers for an order designating a person as a terrorist or terrorist entity, as the case may be,

- where the person is included in a list of individuals and entities designated by, or under the authority of, the United Nations Security Council as terrorists or terrorist entities;
- the Director of Public Prosecutions has reasonable grounds to believe that the person has committed or participated in the commission of an offence referred to in section 3, 3A or 4;
- or a request to designate a person as a terrorist or terrorist entity is transmitted to Barbados from another country, is supported by reasonable grounds for the designation and is accepted by Barbados.

The Director of Public Prosecutions (DPP) may apply to a Judge in Chambers for a counter-proliferation order against a person where the person is a listed person.

The list of persons and entities designated as terrorists/terrorist financiers or for proliferation of weapons of mass destruction or the financing thereof will be disseminated via email blasts, via the newspaper and on the websites of various competent authorities i.e.

- The Barbados FIU
- The Central Bank of Barbados
- The Financial Services Commission
- The Ministry of International Business and Industry
- Corporate Affairs and Intellectual Property Office

When searching against the United Nations Security Council List you may find that the name of an individual or entity you are dealing with matches entries on the UN Security Council List. This is known as a name match. However, it does not necessarily mean that the individual or entity you are dealing with is the same one on the list. You are to ensure using reasonable measures that the match is indeed a target.

If the individual or entity you are dealing with matches all the information on the United Nations Security Council List, this is likely to be a target match.

Where you have reviewed all of the information on the United Nations Security Council List against all of the information that you have about the person or entity and you are still unsure as to whether you have a target match, you should contact the FIU for assistance.

False positives

False positives are potential matches to listed persons or entities, either due to the common nature of the name or due to ambiguous identifying data, which on examination prove not to be matches.

Distinguishing between designated and non-designated persons or entities may be difficult even with additional identifiers. In some cases the funds of a person/entity that was not the intended target of the restrictive measures will be frozen due to identifiers that match with those of a designated person/entity. As a precautionary measure, you should refrain from entering into a business relationship with any person or entity that the available identifiers match, unless it is clear that it is not the same as the designated person or entity.

If a person/entity whose funds or other assets are frozen claims that they are not the intended target of the restrictive measures, they should first contact the relevant institution that froze the assets or funds, requesting an explanation, including why the relevant institution believes the person is a target match on the United Nations Security Council List. The burden of proof concerning determination of a question of a 'false positive' rests with the person/entity, who should submit documentary evidence to the relevant institution of their identity and a detailed statement as to why they are not the listed person/entity. If the relevant institution or the person/entity, after using all the available sources cannot resolve the issue as to whether a customer is in fact the designated person/entity, then either should inform the FIU.

What should FIs and DNFBPs do?

Before engaging in a business relationship or providing a financial service you should screen the names of your customers/clients, including the beneficial owners, against the United Nations Security Council List to ensure that you are not dealing with a designated person or entity. You should also check the United Nations Security Council List against your existing customers/clients on an ongoing basis in the event of updates.

Upon receipt or accessing the list of persons and entities (See Annex 1) and if you know or have reasonable cause to suspect that you are in possession or control or are otherwise dealing with the funds or other assets of a listed person or entity, you shall report them to the FIU immediately and conduct enhanced monitoring of the accounts/activities of the designated person or entity.

On receipt of the Court Order,

- You shall immediately freeze the funds or other assets of the designated person or entity; You are required 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.. The Anti- Terrorism (Amendment) Act, 2019-34 defines “property” to include funds, whether situated in Barbados or elsewhere, and any legal or equitable interest, whether full or partial, in property;
- You shall not enter into financial transactions or provide financial assistance or services in relation to the designated persons on entities;
- Report them to the FIU if not already so done (Suspicious/ Unusual Transactions Reporting Form)
- Complete and submit the TF/PF Asset Freeze Report (AFR) Form (**See Appendix 1**) to the FIU and to your supervisory authority without delay.

To facilitate freezing without delay, entities are encouraged to subscribe and screen against the United Nations Security Council List [<https://www.un.org/securitycouncil/content/un-sc-consolidated-list#Mailinglist>], The lists may have full name; any known aliases; honorary, professional or religious titles; date of birth, place of birth; nationality; passport details; national identification numbers; address; any additional information that may be useful; title of the financial sanctions regime under which the designated person is listed; unique ID reference number relating to the designated person/entity.

However, freezing must only occur once the designation order or counter-proliferation order has been disseminated.

Record Keeping

Entities should maintain records of any potential matches to names on sanctions lists - whether the match turns out to be a true match or a false positive (see false positives below). •They must also maintain records that capture attempted or aborted transactions.

At a minimum, keep the following information about any match –

- The information or other grounds which triggered the match (e.g. a “hit” provided by screening software);
- any further checks or enquiries undertaken;
- the sanctions regime;
- the person(s) involved, including any members of compliance or senior management who authorised treatment of the match as a false positive;
- the nature of the relationship with the person or entity involved, including attempted or aborted transactions;
- subsequent action taken (e.g. freezing of funds);
- if you consulted with, or filed a report with the FIU.

Delisted Persons

This is where persons or entities previously designated have been delisted via Court Order. This will be communicated similarly to the listing process. Entities are required to remove any sanctions imposed on those delisted persons which would include the **unfreezing** of funds or other assets.

Procedure For Removing Persons From The United Nations Security Council List And Unfreezing Of Funds Or Other Assets.

On receipt of the Court Order where an entry has been removed from the United Nations Security Council List and is no longer subject to any assets or funds freeze:

“You must immediately on receipt of the Court Order advising of removal of person and/or entity from the United Nations Security Council List –

- i. Check whether you have frozen funds or assets of any person or entity removed from the United Nations Security Council List and verify that the person or entity is no longer subject to an asset freeze.

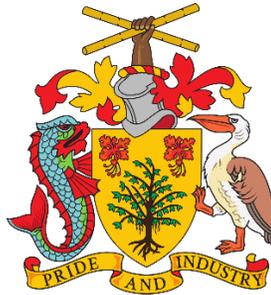
- ii. Remove the person or entity from your institution's list of persons/entities subject to financial sanction;
- iii. Un-freeze the funds or other assets of the person or entity and where necessary re-activate all relevant accounts;
- iv. Send advice to person or entity that the funds or other assets are no longer subject to an asset/ fund freeze;
- v. Advise the FIU of the actions taken.

Where the funds or other assets of the person or entity are inadvertently affected by a freezing mechanism, upon verification that the person or entity is not a designated person, take all necessary measures to carry out the instructions (ii) to (iv) above.

Contact Persons and Information

FI and DNFBPs should provide their supervisory authority with the contact information for the person(s) designated to receive the list of designated person and entities, particularly where different from the Compliance Officer. An alternate should be identified to ensure the time response to the list.

BARBADOS TF/PF ASSET FREEZE REPORT FORM



PART I INSTRUCTIONS		
<p>(i) A Report on Terrorist/Proliferation Funds shall be made to the Financial Intelligence Unit and to your relevant supervisory Authority (Central Bank of Barbados, Financial Services Commission, Ministry of International Business – International Business Unit) of a designated or listed person/entity that has funds in a financial institution of designated non-bank financial institution.</p> <p>(ii) Section 4(1) Anti-Terrorism Act states that the provision or collection funds or financial services to persons to be used to carry out an offence as defined in the listed treaties or any other act and is subject on conviction on indictment to 30 years imprisonment.</p>		
<i>Please type or complete in block letters. Always complete entire form</i>		
PART II PRELIMINARY INFORMATION		
REPORTING ENTITY INFORMATION		
Name of Reporting Entity		
PART III SUSPECT IDENTIFICATION		
INDIVIDUAL(S)		
Surname: Mr./Mrs./Ms.	First Name	Middle Name
Address (Street number, name, Town/City, and Country)		
ID: (ID#, DP#, PP#, other)	Date of Birth (DD/MM/YYYY)	Place of Birth:
Occupation	Nationality	Telephone Number (s)
COMPANY/BUSINESS		
Legal Name		
Company Registration No. / Trade and Business License No.	Nature of Business	
Date of Incorporation/Registration:		
Registered Office or Principal Place of Business (Street number, name, Town/City, and Country)		

Tel. No:	Email	Website:	
Branch/Outlet			
PART IV INFORMATION ON FUNDS			
LOCATION OF FUNDS	ACCOUNT NO.(S)	TYPE OF ACCOUNT	\$ AMOUNT INVOLVED
PART V INFORMATION ON FUNDS			
Narrative (continue on additional pages if necessary):			
PART VI SUBMITTED BY			
Print Name: Position:.....			
Signature: D a t e :/...../..... DD MM YYYY			

Mailing Information:	
The Director Financial Intelligence Unit Anti-Money Laundering Authority P.O. BOX 1372 Bridgetown, Barbados FACSIMILE NO. (246) 436-4756 Email: adminfiu@barbados.gov.bb For urgent reporting – Tel. (246) 436-4734/5	The Chief Executive Officer Financial Services Commission Suites 301 & 302, Building 4 Harbour Industrial Park Bridgetown, St. Michael Barbados BB11142 EMAIL: info@fsc.gov.bb
The Director Bank Supervision Department Central Bank Of Barbados P.O. BOX 1016 Bridgetown, Barbados Email: supervision@centralbank.org.bb	The Director International Business Unit Min. Of Industry & International Business 8th Floor BAOBAB Tower Warrens, St. Michael Barbados, West Indies Email: ib.info@barbadosbusiness.gov.bb
The Registrar Corporate Affairs and Intellectual Property Office Ground Floor Baobab Tower Warrens, St. Michael, Barbados Email: info@caipo.gov.bb	

