

GUIDELINES TARGETED FINANCIAL SANCTIONS RELATING TO TERRORISM, PROLIFERATION OF WMDs AND THEIR FINANCING

A. INTRODUCTION

1. These guidelines are issued pursuant to article 6.1.4 of Anti-terrorism law.
2. These guidelines are issued by the Financial Information Unit (FIU) to assist reporting entities as defined in Article 4.1 of the AML/CFT Law (“reporting entities”) implement their obligations in relation to targeted financial sanctions (TFS) relating to terrorism, terrorist financing (TF), proliferation of WMDs and proliferation financing (PF) in accordance with the requirements of the TF, PF related articles of AML/CFT law and PRM regulation. This guideline is also applicable to purposes of implementing revised ATL law and revised TFS regulation which will be enacted in June 2019.
3. This law and regulation reflect prevention activities of FATF Recommendations on Recommendations 6, 7 which are related to implementation of TF and PF related targeted financial sanctions specified in the UNSCRs.
4. The main UNSCRs are 1267, 1373, 1718 and 2231 and that they are immediately binding pursuant to Chapter VII of the UN Charter and same principle apply to successor resolutions of those UNSCRs. These resolutions can be found from GIA website.
5. The requirements of AML/CFT law, PMR regulation, ATL law and TFS regulations relating TFS for TF and PF are not risk-based, but rule-based, which means reporting entities must implement their obligations under the Law/Regulation regardless of the risk associated with a particular customer or a product/service. However, reporting entities must identify where risks are higher and apply enhanced due diligence in those circumstances.
6. Targeted Financial Sanctions (TFS) means both asset freezing and prohibitions to prevent assets or financial services from being made available, directly or indirectly, for the benefit of designated persons and entities, except as authorized by the Competent Authority or FIU under conditions described in the Regulations. Refer to provisions in the law.
7. Definitions meaning of freezing, prohibition, assets and economic resources can be found either from laws and regulations or from FATF Recommendations.
8. Reporting entities are required to freeze immediately the funds, other financial assets and economic resources which are on their possession or control or at any time thereafter that are owned or controlled, directly or indirectly by the persons/entities mentioned in paragraph 6 above, and ensure (prohibit) that no funds or other assets and economic resources or financial services are made available to such persons and entities, except in specific situations as authorized by the Competent Authority or the FIU, and under conditions specified in the UNSC Resolutions.
9. This obligation should extend to: all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular terrorist act, plot or threat; those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; and the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities, as well as funds

or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities.

10. The Laws and Regulations apply to all individual or entity located in Mongolia, and Mongolian individuals and entities located within or outside the jurisdiction of Mongolia.
11. The competent authority to ensure the implementation of the UNSCRs is the GIA, main body to ensure implementation of requirements by reporting entities are BOM, FRC, FIU and SBRs. Refer IN R6 C(c) in relation to communication.
12. Communications will be made according to the procedure specified in the FATF recommendation and guidance of competent authority.

B. TFS for TF and PF

13. TFS relating to proliferation financing are applicable to persons and/or entities designated by the UN Security Council (UNSC) or the relevant committees set up by the Security Council or by the competent authority in Mongolia, on its own motion or upon request of a foreign country.
14. Designation/listing criteria are:
 - a. persons or entities engaging in or providing support for, including through illicit means,
 - b. proliferation-sensitive activities and programs;
 - c. acting on behalf of or at the direction of designated persons or entities;
 - d. owned or controlled by designated persons or entities; and
 - e. persons or entities assisting designated persons or entities in evading sanctions or violating resolution provisions.
15. The person or entity designated by UNSCRs committee or Competent authority of Mongolia. This designation process is specified in TF and PF related TFS regulation. In the same regulation, designation, communication of designation, proposing designation to UNSCR committee, delisting and unfreezing procedures, and its communication are detailed.
16. Chapter 5 of same regulation also includes the responsibilities of person and entities to freeze asset or fund without delay if the fund belongs to person or entities that designated as specified in the resolution or competent authority. Chapter 5 also prohibits person or entity to provide any asset, fund, service, and support to the designated person and entities.
17. Provision 4.5 of TFS regulation explains policy for access to funds for basic expenses

C. ESTABLISHING A SCREENING MECHANISM FOR DESIGNATED PERSONS

18. Sanction screening refers to the process of screening of customers against the most recent list of designated persons by attempting to match key identification data, and screening of customers who may be owned or controlled by, or who may hold assets or conduct transactions on behalf or at the direction of a designated person or entity. The screening process requirement is specified in article 14 of PMR.
19. Reporting entities are required to follow a two-stage approach to comply with screening and identification requirement.

- i. The first requirement is the screening of existing and new customers against the consolidated list of designated persons, and any person (natural or legal) acting on behalf of designated persons.
 - ii. The second step is screening transaction details to identify sanctions violations.
20. Reporting entities should maintain a complete, accurate and up to date customer details in electronic form (computer based) to ensure an effective screening process.

D. SCREENING OF CUSTOMER BASE AGAINST DESIGNATED PERSONS LISTS

21. Whenever there is a notification by the FIU or competent authorities (GIA) on updates to the designated persons list, reporting entities are required to obtain the updated list and perform a full screening of their customer base against the list. Reporting entities are required to ensure that the customer is not a designated person or entity, before entering into a relationship with the customer.
22. Reporting entities should screen their customer base using, at a minimum, a combination of name, date of birth, nationality, passport or other identity number and address for the search process. As there could be subtle differences between the list contents and customer data in a reporting entity's database, a phonetic search is recommended for an effective search.
23. Reporting entities are required to regularly obtain the updated designated persons list from the GIA website or UN website and use it for screening process. Whenever there is a new customer/ new business relationship, the details of that customer are required to be screened against the designated list, and reporting entities are required to ensure that the customer is not a designated person. Similarly, whenever a transaction is carried out for any customer, reporting entities are required to screen the sender and beneficiary of the transaction against the designated list, and ensure that no designated persons are involved.
24. Reporting entities are required to develop processes to identify the beneficiaries of accounts, and apply the same procedure described in paragraphs 37 and 38 of this guideline, to ensure that no designated persons are beneficiaries of the funds, accounts or other assets. Such processes are required to be developed so as to identify the beneficiaries wherever possible, and reporting entities are required to be able to demonstrate, if required, that the best efforts within the capacity of the reporting entity have been made to identify the beneficiaries of the funds, accounts or other assets.
25. For transactions involving non-account holders / walk-in customers and third-party customers (such as cheque encashment, pay orders and currency exchanges), reporting entities should perform screening before conducting the transaction. For that, adequate internal procedures should be established to obtain information from such customers. If the reporting entity identifies a possible match due to such screening, then it should collect funds from the payer and then freeze the transaction/funds and notify the competent authority or FIU as required by the Law and Regulations.

E. FREEZING OF FUNDS, ACCOUNTS AND OTHER ASSETS

Essentially article 14 of the PMR requires all reporting entities to take measures against UNSCRs which are dealing with freezing of funds, accounts and other assets

26. Reporting entities are required to screen their customers regularly and immediately freeze such funds, accounts and other assets maintained with the reporting entity, upon identifying designated persons.
27. In order to ascertain whether a customer is a designated person, reporting entities are required to utilize the customer identification information obtained under Customer Due Diligence requirements of the AML/CFT Law and Preventive Measures Regulations, and related legislations as well as other publicly available information.
28. If reporting entities are unable to determine whether a customer is a designated person, due to the lack of information available in the designated list for that individual or entity, reporting entities should contact the competent authority to obtain additional information.
29. After freezing the funds and other assets of designated persons, reporting entities are required to immediately inform the Competent Authority and the FIU about the freezing actions including, customer details and nature of the funds or assets frozen including attempted transactions, after freezing of such assets. Reporting entities should also inform the customer immediately about the freezing of funds or assets.
30. Reporting entities should establish procedures to monitor attempts to access the frozen funds or assets. In the event an attempt is made to access the frozen funds or assets, the reporting entity should immediately notify the competent authority.
31. The Competent Authority may issue an order to lift the freeze of an asset for specific situations, and the reporting entity should establish procedures to return the funds or assets or allow access to the funds or assets.
32. If a customer whose assets are frozen, claims that they have been falsely identified as a designated person due to identical identity, reporting entities are required to inform the customer to make a request to the Competent Authority to lift the freeze order.
33. If reporting entities identify a designated person in a transaction or financial service who is not a customer of the reporting entity, reporting entities must not carry out the transaction or perform the financial service, and inform the Competent Authority about the transaction, and submit an STR to the FIU.

F. OTHER

34. If a reporting entity has doubts whether a particular customer is a designated person, and entities requires additional details from the customer to ascertain that, reporting entities are required to obtain such information from the customer in a way that would not 'tip off' the customer. Such inquiry from the customer is required to be made after applying procedures to secure the funds, account or other asset to prevent the flight of assets.
35. Reporting entities are required to make ensure that staff receive appropriate training in relation to the requirements of the Law and Regulations relating to TFS relating to TF and PF and on how to identify trade transactions related to proliferation of WMD.

G. PENALTIES

36. Any person who contravenes the provisions of the Law and Regulations [insert details] shall be penalized according to the relevant Law and Regulation.

H. EXTRA INFORMATION

37. FATF (2018), Guidance on Counter Proliferation Financing – The Implementation of Financial Provisions of United Nations Security Council Resolutions to Counter the Proliferation of Weapons of Mass Destruction, FATF, Paris www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-counter-proliferation-financing.html

This guideline gives detailed explanations related to recommendation 7. It includes detailed criteria and processes, and international best practices to implement Rec 7.

38. FATF (2013), Guidance on <http://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP-Fin-Sanctions-TF-R6.pdf>

This guideline gives detailed explanations related to recommendation 6. It includes detailed information of rec 6 including international best practices and detailed information of UNSCRs.

39. UNITED NATIONS SECURITY COUNCIL RESOLUTIONS

United Nations Security Council Resolutions on ISIL (Da'esh) and Al-Qaida:
Resolution 1267 (1999) of the Security Council, adopted on 15 October 1999
Resolution 1989 (2011) of the Security Council, adopted on 17 June 2011
Resolution 2253 (2015) of the Security Council, adopted on 17 December 2015
Successor resolutions to any of the above Resolutions

United Nations Security Council Resolutions on Taliban:
Resolution 1988 (2011) of the Security Council, adopted on 17 June 2011
Successor resolutions to any of the above Resolutions

United Nations Security Council Resolutions on Counter Terrorism:
Resolution 1373 (2001) of the Security Council, adopted on 28 September 2001
Successor resolutions to any of the above Resolutions

United Nations Security Council Resolutions on Democratic People's Republic of Korea:

Resolution 1718 (2006) of the Security Council, adopted on 14 October 2006
Resolution 1874 (2009) of the Security Council, adopted on 12 June 2009
Resolution 2087 (2013) of the Security Council, adopted on 22 January 2013
Resolution 2094 (2013) of the Security Council, adopted on 7 March 2013
Resolution 2270 (2016) of the Security Council, adopted on 2 March 2016
Resolution 2321 (2016) of the Security Council, adopted on 30 November 2016
Resolution 2371 (2017) of the Security Council, adopted on 5 August 2017
Resolution 2375 (2017) of the Security Council, adopted on 11 September 2017
Resolution 2397 (2017) of the Security Council, adopted on 22 December 2017
Successor resolutions to any of the above Resolutions

United Nations Security Council Resolutions on Iran:
Resolution 1737 (2006) of the Security Council, adopted on 27 December 2006
Resolution 2231 (2015) of the Security Council, adopted on 20 July 2015
Successor resolutions to any of the above Resolutions

40. The terms defined in paragraph 41 is just to give understanding unless otherwise stipulated in the law and regulation.

41. The following terms shall be understood as follows:

“Asset” means funds, property, financial resources and economic resources of every kind, whether tangible or intangible, corporeal or incorporeal, moveable or immovable, actual or potential, however acquired, including all of the following:

- cash
- virtual or digital currencies, including crypto-currencies
- bank credits, travellers cheques, bank cheques, money orders
- precious metals and precious stones
- real property, chattels and vessels
- shares, securities, bonds and drafts
- rights of set-off, guarantees, performance bonds, and other financial commitments
- letters of credit, bills of lading and bills of sale
- instruments of export financing
- natural resources
- labour resources such as crew services
- any other economic resources that may be used to obtain funds, goods or services
- legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, or right to claim an asset
- any interest, dividend, income or value accruing from, generated by, or derived from an asset.

“Authorisation” means a permission granted by the General Intelligence Agency (Agency) to perform an act or make an omission that is otherwise prohibited by the Anti-Terrorism Law or this Regulation and can include conditions imposed on the permission.

“Basic expense” means an expense necessarily incurred for any of the following purposes:

- obtaining foodstuffs
- paying rent or mortgage
- obtaining medicine or medical treatment
- paying taxes
- paying insurance premiums
- paying utility charges
- paying reasonable professional fees
- paying reasonable expenses associated with the provision of legal services
- paying fees or service charges that are in accordance with the laws of Mongolia for the routine holding or maintenance of a frozen asset
- any other similar purpose that does not violate the provisions of a UNSCR listed in paragraph 39.

“Contractual obligation” means an obligation whereby a payment is required under a contract or agreement made before the date of the person or entity’s designation and where the payment required does not violate the provisions of a UNSCR listed in Schedule 1.

“Control” means exercising influence, authority or power over decisions about financial or operating policies, and includes control as a result of, or by means of, trusts, agreements, arrangements, understandings or practices, whether or not they have legal or equitable force and whether or not they are based on legal or equitable rights, and “controlled” has the same meaning.

“DNFBP” means a designated non-financial business or profession, that is:

- a person or entity that conducts any of the following activities:

- providing a gaming, junket or other related casino service
- acting as a professional intermediary in a real estate transaction
 - dealing in precious metals
 - dealing in precious stones
- providing a trust or company service, including acting as a formation agent, director, secretary, nominee shareholder or trustee, or providing a registered office or correspondence address; or
- an accountant, lawyer, notary public, or other independent legal professional when preparing for, engaging in, or carrying out a transaction for a client concerning any of the following activities:
 - buying or selling real estate
 - managing client currency, securities or other assets
 - managing a bank, savings or securities account
 - organising contributions for the creation, operation or management of a body corporate
 - creating, operating or managing a body corporate or unincorporated entity
 - buying or selling businesses.

“Entity” means any unincorporated body, group, association, organisation, institution or arrangement.

“Extraordinary expense” means any payment that is not a basic expense or a contractual obligation that the Agency considers:

- to be necessary
- does not violate the provisions of a UNSCR listed in Schedule 1; and
- has been approved by the United Nations Security Council or its Committees.

“Financial institution” means a person or entity that conducts any of the following activities for or on behalf of a customer:

- acceptance of deposits and other repayable funds from the public, including private banking
- lending, including consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions, including forfeiting
- financial leasing other than in respect of arrangements relating to consumer products
- the transfer of currency or value
- issuing or managing means of payment, including credit and debit cards, cheques, travellers’ cheques, money orders and bankers’ drafts, and currency in non-physical form
 - issuing financial guarantees or commitments
 - trading in:
 - money market instruments
 - bearer negotiable instruments
 - foreign exchange
 - exchange, interest rate or index instruments
 - transferable securities
 - commodity futures
- participation in securities issues or the provision of financial services related to such issues
 - individual or collective portfolio management
- safekeeping or administration of physical currency, bearer negotiable instruments or liquid securities on behalf of other persons
 - investing, administering or managing assets on behalf of other persons
- providing an insurance service, including insurance intermediary services
- currency changing.

“Financial sanctions” means financial measures specified in UNSCRs listed in and implemented under Articles 7.1.7. and 8.2. of the Anti-Terrorism Law or the provisions of this Regulation.

“Freeze” in relation to an asset means to prevent the sale, supply, lease, transfer, conversion, disposition, movement or use of the asset.

“Owned” means having a legal entitlement, either directly or indirectly, to 25% or more of a body corporate or entity, and “ownership” has the same meaning.

“Person” means natural and legal persons.

“Supervisory authority” means a government authority assigned under Article 17 with responsibility to supervise compliance with financial sanctions under the Anti-Terrorism Law and this Regulation.

ISIL and Al Qaida:

The criteria for adding a name to the ISIL (Da'esh) & Al-Qaida Sanctions List is set out in paragraphs 2 to 4 of resolution 2368 (2017). States are required to impose the measures upon Al-Qaida or ISIL (Da'esh) and other individuals, groups, undertakings and entities associated with them.

Acts or activities indicating that an individual, group, undertaking or entity is associated with ISIL (Da'esh) and Al-Qaida include:

- Participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of;
- Supplying, selling or transferring arms and related materiel to;
- Recruiting for; or otherwise supporting acts or activities of, ISIL (Da'esh), Al-Qaida or any cell, affiliate, splinter group or derivative thereof.

Taliban:

The criteria for adding a name to the 1988 Sanctions List is set out in paragraphs 1 and 2 of resolution 2255 (2015). Individuals and entities are designated on the 1988 Sanctions List as individuals, groups, undertakings and entities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan.

Acts or activities indicating that an individual, group, undertaking or entity is eligible for designation include:

- Participating in the financing, planning, facilitating, preparing or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of;
- Supplying, selling or transferring arms and related materiel to;
- Recruiting for; or
- Otherwise supporting acts or activities of, those designated and other individuals, groups, undertakings and entities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan.

UNSCR 1373:

Persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities,

Iran:

Freeze the funds, other financial assets and economic resources which are on their territories at the date of adoption of the JCPOA, and freeze the funds, other financial assets and economic resources which are on their territories at any time thereafter, that are owned or controlled by the individuals and entities that were specified on the list established and maintained by the Committee pursuant to resolution 1737 (2006) as of the date of adoption of the new resolution, with the exception of those individuals and entities specified in Attachment hereto, or that may be de-listed by the Security Council, and freeze those of additional individuals and entities that may be designated by the Security Council as: having engaged in, directly associated with or provided support for Iran's proliferation - sensitive nuclear activities undertaken contrary to Iran's commitments in the JCPOA or the development of nuclear weapon delivery systems, including through the involvement in procurement of prohibited items, goods, equipment, materials and technology specified in this statement; having assisted designated individuals or entities in evading or acting inconsistently with the JCPOA or the new resolution; having acted on behalf or at the direction of designated individuals or entities; or having been owned or controlled by designated individuals or entities, including through illicit means