TARGETED FINANCIAL SANCTIONS

REQUIREMENTS UNDER THE UNITED NATIONS SECURITY COUNCIL (UNSC) FINANCIAL ACTION TASK FORCE (FATF) AND FIC AMENDMENT BILL (2016)

28 June 2016
ACAMS South Africa

Lize van Schoor
Legal & Policy
TARGETED FINANCIAL SANCTIONS
UNSC, FATF and FICA Requirements

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   • Scope and Focus: TFS and focus of UNSCR, FATF and FICA

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SANCTIONS: WAR BY (ANY) OTHER MEANS ...
Measures/elements in an effective Economic Sanctions Regime:

Targeted Financial Sanctions as a tool of international economic statecraft – “weaponization of finance”:

A key element of a “smart” sanction strategy is the use of Targeted Financial Sanctions – including:

- The freezing of financial and capital assets;
- The blocking of financial flows;
- The cancellation of debt rescheduling;
- The withholding of credit loans and;
- The withholding of non-humanitarian governmental assistance.

These broader measures can have a significant impact on general trade and may result in unintended humanitarian hardships that are equivalent to those caused by more comprehensive trade sanctions. Instead, the focus here is on financial measures, that impose severe constraints on elites and state leaders while doing the least harm to vulnerable populations.
AIMS AND OBJECTIVES
What are Targeted Financial Sanctions?

• Used by the international community for one or more of the following reasons:
  • To encourage a change in the behaviour of a target country or regime.
  • To apply pressure on a target country or regime to comply with set objectives.
  • As an enforcement tool when international peace and security has been threatened and diplomatic efforts have failed.
  • To prevent and suppress financing of terrorists and terrorist acts.

• Under **Chapter VII** of the **UN Charter (Article 39, 41 and 42)**, the UNSC can take enforcement measures that range from economic and/or other sanctions not involving the use of armed force to international military action.

• General types of sanctions:
  • Assets freeze
  • Arms embargo
  • Travel ban
  • Types of exported goods (precious metals, natural resources, arms)
  • Types of imported goods

• Exemptions for the assets freeze and the travel ban can usually be granted by the Committees upon request

• **Targeted Financial Sanctions (TFS)** normally one element of a package of measures used to achieve one or more of the above & can vary from the comprehensive (prohibiting the transfer of funds to a sanctioned country and freezing the assets of a government, the corporate entities and residents of the target country) to targeted asset freezes on individuals and/or entities (involving the freezing of assets and blocking the financial transactions of political elites or entities whose behaviour triggered sanctions in the first place).
REQUIREMENTS

- ASSET FREEZE
  - SWIFT
  - Central Banks
  - Currencies
  - Financial Services (e.g. Insurance, Transshipment, etc.)
  - Proliferation of WMD Financing
- TRAVEL BAN: Denial of Exit or Entry
- WEAPONS EMBARGO (Arms and related material)
- PROLIFERATION OF WEAPONS OF MASS DESTRUCTION (WMD)
  - Dual-Use Goods
- CRUDE OIL:
  - False Flags, Shipping Lines, etc.
- PETROCHEMICALS
- SPORT
- CULTURAL GOODS
- TELECOMMUNICATION, INTERCEPTION, TC AND REPRESSION OF HUMAN RIGHTS
- LUXURY GOODS
- ARTEFACTS
- PRECIOUS METALS AND STONES
- BAN ON IMPORTS AND EXPORTS OF SPECIFIC GOODS (WHOLESOME OR SPECIFICALLY)
OTHER BILATERAL AND UNILATERAL (COUNTRY) TARGETED FINANCIAL SANCTIONS (NB: Not the Focus of FATF and FICA)

  As part of its enforcement efforts, OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Collectively, such individuals and companies are called "Specially Designated Nationals" or "SDNs." Their assets are blocked and U.S. persons are generally prohibited from dealing with them. Click here for more information on Treasury's Sanctions Programs.
  NB: Extra-territoriality and implications for the global financial system (SWIFT, etc.)

• EU CONSOLIDATED LIST [http://eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm]

• OTHER UNILATERAL LISTS
  (E.g. UK (HMT Consolidated List). Australia, Canada, etc.)

• FATF Public Statements and Compliance Notice
  NB: Not a Blacklist, but a list jurisdictions which pose a strategic risk to the global financial system and are currently under FATF review procedures – greylisted.
SCOPE AND FOCUS
TFSs and focus of FATF and FICA

UNITED NATIONS SECURITY COUNCIL RESOLUTIONS
UNSC Sanctions Committees and Lists


Secretariats of each Committee, under Security Council Affairs Division (SCAD)

The Department of Political Affairs (DPA)

Office of Legal Affairs

Dept. of Public Information

Other relevant departments
Global Sanctions Architecture Framework: Chapter VII UNSCR

- Consolidated UNSC Sanctions List
- Focal Point for Delisting
- Ombudsperson (Al Qaida Sanctions List Only)

Security Council Committees Established Pursuant to UNSCRs:
- UNSCR 1267/1989/2253 ISIL (Da'esh) and Al-Qaida Sanctions Committee and UNSCR 1988 (2011) Taliban
- UNSCR 1621 (2003) concerning Liberia
- UNSCR 1533 (2004) concerning the DRC
- UNSCR 1572 (2004) concerning Côte d'Ivoire
- UNSCR 1591 (2005) concerning Sudan
- UNSCR 1636 (2005)
- UNSCR 1770 (2011) concerning Libya
- UNSCR 2048 (2012) concerning Guinea-Bissau
- UNSCR 2127 (2013) concerning the CAR
- UNSCR 2140 (2014)
- UNSCR 2206 (2015) concerning South Sudan
UNITED NATIONS SECURITY COUNCIL RESOLUTIONS


- Sanctions Lists and the Consolidated List:
  - UNSCR Sanctions Committees and Lists
  - List entries and narrative summaries of reasons for listing (Statement of Case/Threshold
  - Format
- Standardization of the formats of UN Sanctions Lists
  - Permanent Reference Number
  - Sanctions regime + individual/entity + sequential number
- Interaction with list users
- Standard format update 2015
- Listing, Amendment and Delisting Process
  - DIRCO CTIDWG Policy
- Translation into Six UN Official Languages
- New Format and New XML Schema
All individuals and entities subject to sanctions measures imposed by the UNSC.
To facilitate the implementation of the measures.
Formats: Provided in .xml, .html and .pdf formats.
2 Sections (24 June 2016):
- Individuals (258 individuals)
- Entities and other groups (75 entities)
Individuals are listed alphabetically by their names as it appears in Latin script.
Entities are also arranged in alphabetical order.
Narrative summaries of reasons for listing, where available, can also be found on the respective Committees’ webpage.
A press release is issued after all changes to the respective sanctions list and is posted in the "Press releases" section of the concerned Committee.
Identifiers and acronyms in the list (Identifying Fields):
- Individuals: Permanent reference number (e.g. “QD” refer to Al-Qaida Sanctions regime)
- Countries: 2 digit country ISO codes.
- The following letter “i” refers to individuals and “e” to entities
UNITED NATIONS SECURITY COUNCIL RESOLUTIONS
Consolidated UNSCR Sanctions List
http://www.un.org/sc/committees/consolidated_list.shtml

Referencing System for Individuals:

- Four separate name fields have been provided in order to accommodate the full range of naming conventions used in all cultures.
- **Name (original script):** Name as it would appear in the original script (e.g. Arabic, Cyrillic, Farsi/Dari, etc.)
- **Title:** Honorary, professional, religious or other title (current or last held).
- **Designation:** Official title/position/occupation.
- **DOB:** Date of birth, including alternative date(s) of birth.
- **POB:** Place of birth, including alternative place(s) of birth.
- **Good quality a.k.a.:** Alias(es) (also known as) sufficient for a positive identification.
- **Low quality a.k.a.:** Alias(es) (also known as) probably insufficient alone for a positive ID.
- **Nationality:** previous or current nationality or citizenship.
- **Passport no.:** Passport, travel or substitute/auxiliary document number(s).
- **National identification no.:** such as ID card numbers, Social Security numbers, Fiscal Code or Tax Identification numbers
- **Address:** permanent, temporary or previous residence(s) or address(es) for correspondence.
- **Listed on:** date on which the Sanctions Committee placed the individual on its Sanctions List and of any amendments it made regarding the listed individual.
- **Other information:** Supplementary information relevant to identification of the individual.
Referencing System for Entities:

- **Permanent reference number.** Similar to the reference system for individuals.
- **Name:** name of entity and any acronyms.
- **Name (original script):** name as it would appear in the original script (e.g. Arabic, Cyrillic, Farsi/Dari,)
- **A.k.a.:** Alias(es) (also known as) and any acronyms.
- **F.k.a.:** formerly known as and any acronyms.
- **Address:** Address(es) where entity is domiciled or registered or has branch(es)/office(s) or correspondence address(es).
- **Listed on:** date on which the Sanctions Committee placed the entity on its Sanctions List and of any amendments it made regarding the listed entity.
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# Referencing System

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<td>CFi.001 CFe.001</td>
<td>CF</td>
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6. DISCUSSION: QUESTIONS & ANSWERS
UNSCR SANCTIONS MEASURES
Financial Action Task Force Recommendations
http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html

FURTHER INFORMATION
FATF Guidance and International Best Practice Papers
http://www.fatf-gafi.org/documents/guidance/
High-Level Objective:
Financial systems and the broader economy are protected from the threats of money laundering and the financing of terrorism and proliferation, thereby strengthening financial sector integrity and contributing to safety and security.

Intermediate Outcomes:

Policy, coordination and cooperation mitigate the money laundering and financing of terrorism risks.

Proceeds of crime and funds in support of terrorism are prevented from entering the financial and other sectors or are detected and reported by these sectors.

Money laundering threats are detected and disrupted, and criminals are sanctioned and deprived of illicit proceeds. Terrorist financing threats are detected and disrupted, terrorists are deprived of resources, and those who finance terrorism are sanctioned, thereby contributing to the prevention of terrorist acts.

Immediate Outcomes:

Money laundering and terrorist financing risks are understood and, where appropriate, actions coordinated domestically to combat money laundering and the financing of terrorism and proliferation.

International cooperation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets.

Supervisors appropriately supervise, monitor and regulate financial institutions and DNFBPs for compliance with AML/CFT requirements commensurate with their risks.

Financial institutions and DNFBPs adequately apply AML/CFT preventive measures commensurate with their risks & report suspicious transactions.

Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.

Financial intelligence and all other relevant information are appropriately used by competent authorities for money laundering and terrorist financing investigations.

Money laundering offences and activities are investigated and offenders are prosecuted and subject to effective, proportionate and dissuasive sanctions.

Terrorist financing offences and activities are investigated and persons who finance terrorism are prosecuted and subject to effective, proportionate and dissuasive sanctions.

Persons and entities involved in the proliferation of weapons of mass destruction are prevented from raising, moving and using funds, consistent with the relevant UNSCRs.
An effective system to combat money laundering and terrorist financing
Immediate outcomes

1 | Risk, Policy and Coordination
   Money laundering and terrorist financing risks are understood and, where appropriate, actions coordinated domestically to combat money laundering and the financing of terrorism and proliferation.

2 | International cooperation
   International cooperation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets.

3 | Supervision
   Supervisors appropriately supervise, monitor and regulate financial institutions and DNFBPs for compliance with AML/CFT requirements commensurate with their risks.

4 | Preventive measures
   Financial institutions and DNFBPs adequately apply AML/CFT preventive measures commensurate with their risks, and report suspicious transactions.

5 | Legal persons and arrangements
   Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.

6 | Financial intelligence
   Financial intelligence and all other relevant information are appropriately used by competent authorities for money laundering and terrorist financing investigations.

7 | Money laundering investigation & prosecution
   Money laundering offences and activities are investigated and offenders are prosecuted and subject to effective, proportionate and dissuasive sanctions.

8 | Confiscation
   Proceeds and instrumentalities of crime are confiscated.

9 | Terrorist financing investigation & prosecution
   Terrorist financing offences and activities are investigated and persons who finance terrorism are prosecuted and subject to effective, proportionate and dissuasive sanctions.

10 | Terrorist financing preventive measures & financial sanctions
    Terrorists, terrorist organisations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the NPO sector.

11 | Proliferation financial sanctions
    Persons and entities involved in the proliferation of weapons of mass destruction are prevented from raising, moving and using funds, consistent with the relevant UNSCRs.
Assessment Methodology:

**Intermediate Outcome 3:** Money laundering threats are detected and disrupted, and criminals are sanctioned and deprived of illicit proceeds. Terrorist financing threats are detected and disrupted, terrorists are deprived of resources, and those who finance terrorism are sanctioned, thereby contributing to the prevention of terrorist acts.

**Immediate Outcome 10:** Terrorists, terrorist organisations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the NPO sector.

**Immediate Outcome 11:** Persons and entities involved in the proliferation of weapons of mass destruction are prevented from raising, moving and using funds, consistent with the relevant UNSCRs.

C TERRORIST FINANCING AND FINANCING OF PROLIFERATION

5) Terrorist financing offence
6) Targeted financial sanctions related to terrorism & terrorist financing
7) Targeted financial sanctions related to proliferation
8) SRVIII Non-profit organisations
Recommendation 6 (TFSs related to terrorism & terrorist financing)

Recommendation 7 (Targeted financial sanctions related to proliferation)
UNSCR 1718 (2006) on Non-proliferation and the Democratic People’s Republic of Korea
UNSCR 1737 (2006) on Non-proliferation and their respective successor resolutions

Recommendation 2 (National cooperation and coordination)
UNSCR 1540 (2004) on the Non-proliferation of weapons of mass destruction

OTHER 12 SANCTIONS REGIMES
Resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea
Resolution 1521 (2003) concerning Liberia
Resolution 1533 (2004) concerning the Democratic Republic of the Congo
Resolution 1572 (2004) concerning Côte d'Ivoire
Resolution 1591 (2005) concerning the Sudan
Resolution 1970 (2011) concerning Libya
Resolution 2048 (2012) concerning Guinea-Bissau
Resolution 2127 (2013) concerning the Central African Republic
Resolution 2206 (2015) concerning South Sudan
Resolutions 1518 (2003), 1636 (2005) and 2140 (2014)
Recommendation 2: National cooperation and coordination
Countries should have national AML/CFT policies, informed by the risks identified, which should be regularly reviewed, and should designate an authority or have a coordination or other mechanism that is responsible for such policies. Countries should ensure that policy-makers, the financial intelligence unit (FIU), law enforcement authorities, supervisors and other relevant competent authorities, at the policymaking and operational levels, have effective mechanisms in place which enable them to cooperate, and, where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.

Recommendation 5: Terrorist financing offence
Countries should criminalise terrorist financing on the basis of the Terrorist Financing Convention and should criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific terrorist act or acts. Countries should ensure that such offences are designated as money laundering predicate offences.
Recommendation 6:
Targeted financial sanctions related to terrorism and terrorist financing
Countries should implement targeted financial sanctions regimes to comply with UNSCRs relating to the prevention and suppression of terrorism and terrorist financing. The resolutions require countries to freeze without delay the funds or other assets of, and to ensure that no funds or other assets are made available, directly or indirectly, to or for the benefit of, any person or entity either:
(i) designated by, or under the authority of, the UNSC Chapter VII of the Charter of the UN, including in accordance with resolution 1267 (1999) and its successor resolutions; or
(ii) designated by that country pursuant to UNSCR 1373 (2001).

Recommendation 7: Targeted financial sanctions related to proliferation
Countries should implement targeted financial sanctions to comply with United Nations Security Council resolutions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. These resolutions require countries to freeze without delay the funds or other assets of, and to ensure that no funds and other assets are made available, directly or indirectly, to or for the benefit of, any person or entity designated by, or under the authority of, the United Nations Security Council under Chapter VII of the Charter of the United Nations.
Recent developments: UN, G20 and FATF

G20 Finance Ministers and Central Bank Governors: Resolved to counter terrorist financing - Call on FATF to intensify efforts

- G20 called on FATF to intensify efforts to identify and tackle terrorist financing loopholes and strengthen the implementation of the FATF Standards. They committed to enhance their cooperation and exchange of information and encouraged other countries to do likewise.
- The FATF updated the G20 on recent progress in countering terrorist financing and the practical challenges that remain.
- During 2015 FATF reviewed the steps taken to combat terrorist financing in 198 jurisdictions and reported to the G20 summit in November 2015 that while most countries had comprehensive legal frameworks, many countries still did not have basic measures in place to combat terrorist financing. Since then, more than 50 countries have amended their legislation, or are in the process of doing so.
- Countries now need to prioritise effective implementation of these measures. This includes ensuring that they have the capacity to use these tools and that they address the barriers to information sharing, whether internationally, within government or with the private sector.
- The FATF’s report to the G20 updated it on progress made, and included a consolidated
- The G20 asked the FATF to report back in July 2016 on the progress made and on jurisdictions that have failed to act.
Recent developments: UN, G20 and FATF focus on CTF

November 2015: FATF Report to G20 Leaders - actions being taken by the FATF

December 2015: FATF Consolidated Strategy on Combating Terrorist Financing:

- Improve and update the understanding of terrorist financing risks of ISIL/Da'esh
- Ensure that the FATF Standards provide up-to-date and effective tools to identify and disrupt TF activity
- Ensure countries are appropriately and effectively applying the tools, including UN TFS (as set out in the Standards) to identify and disrupt terrorist financing activity
- Identify and take measures in relation to any countries with strategic deficiencies for terrorist financing
- Promote more effective domestic coordination and international cooperation to combat the financing of terrorism.

Key statements:

- 14 December 2015: FATF leads renewed global effort to counter terrorist financing
- 27 February 2015: FATF Action on terrorist finance
- 14 October 2014: FATF Action on the terrorist group ISIL
Understand terrorist financing risks

Terrorist constantly adapt how and where they move their funds in order to circumvent safeguards that countries have put in place. They will use new technologies or products such as social media payments to attract and move their money. An important aspect of FATF’s work is to identify and research the most prevalent trends as well as new terrorist financing sources and the methods that terrorist use to manage their assets, and raise awareness with countries and financial institutions. Understanding how a terrorist organisation raises, moves and uses its funds is critical to choking off the funds and to disrupting their atrocities.

Key Reports:
• October 2015: Emerging Terrorist Financing Risks
• February 2016: Financing of the Terrorist Organisation Islamic State in Iraq and the Levant

Up-to-date and effective FATF Standards to combat terrorist financing

The FATF Recommendations, interpretive notes and guidance, provide countries with comprehensive tools to detect and disrupt terrorist financing activity. FATF strengthened R5 in October 2015 to address the threat posed by foreign terrorist fighters, following the adoption of UNSCR 2178 (2015), requiring countries to criminalise financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.
Ensure countries are appropriately and effectively applying the tools (as set out in the Standards) to identify and disrupt terrorist financing activity
Through its assessment and follow-up processes, the FATF determines how well countries are using these tools and provides recommendations to the countries on how they can be more effectively used. FATF updated its Methodology for assessing compliance with the FATF Recommendations to reflect the increased focus on terrorist financing activity.

Identify countries with strategic deficiencies for terrorist financing
Global AML/CFT safeguards are only as strong as the country with the weakest measures. Terrorists can circumvent weak AML/CFT controls to successfully move assets to finance terrorism through the financial system. A key objective of the FATF is to identify countries with significant weaknesses in their AML/CFT system, and to work with them to address these weaknesses.

Promote effective domestic coordination and international cooperation
It is often necessary to use a wide range of information to detect terrorist financing, identify the terrorists involved, and prevent a possible terrorist attack. This information is usually available in various locations, held by different agencies and not linked up. Each individual fragment of this puzzle may not immediately raise concerns. Governments need to make more effective use of financial intelligence, enable and improve better information sharing, and make more use of the powers they have to cut off terrorist financing.
• **17 December 2015:** The importance of urgent action to implement FATF's measures to CFT and help defeat ISIL, speech by FATF President Je-Yoon Shin at the UNSC on the occasion of the adoption of UNSR 2253 (2015) which focuses on ISIL (also known as Da’esh), Al-Qaida, and associated individuals.

• **14 April 2016:** UN/FATF Open Briefing on #StopTerrorFinance: Countering the financing of terrorism and depriving terrorist groups, particularly Al-Qaida, ISIL (Da'esh) and their affiliates, from their sources of funding. FATF President delivered a keynote speech during this open briefing, which highlighted the need for an effective implementation of measures to combat money laundering and terrorist financing and the importance of FATF's partnership with the UN, as well as with the members of the Global Network of 9 regional bodies and 198 jurisdictions.

• The meeting was chaired by two UN Committees: the Security Council's Counter-Terrorism Committee established pursuant to resolution 1373 (2001) and the Security Council 1267/1989/2253 ISIL (Da'esh) and Al-Qaida Sanctions Committee.

• Discuss new and emerging terrorist financing trends and to highlight initiatives including with the private sector to help States enhance their information-sharing and thereby strengthen global efforts to prevent and counter terrorism financing.

#StopTerrorFinance:
Joint UN/FATF open briefing on depriving terrorist groups of sources of funding

14 April 2016 11AM – 6PM Conference Room 2 UN Headquarters New York

@fatfnews | @NZUN | @UN_CTED
Efforts to Combat Terrorist Financing
Outcomes of the 22-24 June 2016 Plenary

- Improve and update the understanding of the financing of ISIL/ Da'esh
- The FATF Standard to combat terrorist financing on NPO’s (Recommendation 8)
- Ensure countries are appropriately and effectively applying targeted financial sanction tools
- Effective domestic coordination and international cooperation in detecting terrorist financing
- Future work on combatting terrorist financing:
  - Since the February 2016 Plenary, world leaders, including G7 and G20, have expressed their support for FATF’s efforts to choke off terrorist financing and called on countries to fully and effectively implement the FATF Recommendations.
  - The FATF has reviewed how its current standards and recent UNSCRs (particularly UNSCR 2199 (2015) and 2253 (2015)) align, to verify that the FATF standards incorporate all UN obligations regarding terrorist financing. On the basis of that review, the FATF will undertake further revisions to its Glossary and standards on criminalising terrorist financing. The FATF also expects to issue guidance later in 2016 which will assist countries in their implementation of these requirements.
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DISCUSSION: QUESTIONS & ANSWERS
SOUTH AFRICAN
Domestic Legal and Policy Framework

Legal Framework:
• POCDATARA (Act 33 of 2004)
• POCA (Act 129 of 1998)
• FICA (Act 38 of 2001) FICA Amendment Bill (2016)

Inter-Departmental Co-ordination:
• DIRCO CTIDWG
  • Designation & Communication Strategy
  • Implementing Departments and Agencies
    • SAPS, DHA, NPA, FIC
  • Coordinate Feedback to UN on Implementing UNSCRs
  • Coordinate Requests and Visits by Expert Panels/Committees
• NICOC Counter Terrorism Working Group
• BRICS Counter Terrorism Sub Committee

FIC TFS Committee:
• Communication
• Guidance, Advisories, PCCs, etc.
FIC Amendment Bill 2016
Proposed Amendments ito TFS

Change FIC Mandate
• Extend the **objectives** of the FIC so as to provide for the FIC to assist in the implementation of TFSs and to administer measures pursuant to resolutions adopted by the UNSCR
• Extend the **functions** of the FIC so as to provide guidance to AIs in respect of the freezing of property and transactions pursuant to UNSCRs
• Set out the **procedure** in respect of **financial sanction control measures** pursuant to the notification of persons and entities identified by the UNSCR

Change FICA Title

Add Additional responsibilities ito UNSCRs (Financial Sanctions)
• Notification/(s) and Communication/(s) (S26)
• Prohibitions (Permitted Services) and Reporting Obligations (S28)
• Intervention by FIC (S34 & S35)
• Guidance and Advice
• **Offense/(s) and Penalties**
  • S51(A) "Failure to report property associated with terrorist and related activities and financial sanctions pursuant to Resolutions of United Nations Security Council"
  • S58 (1)(2) "Failure to comply with [directives] direction of Centre” (AI/SB)
  • S67(A) "Contravention of prohibitions relating to persons and entities identified by Security Council of the United Nations (Any person who contravenes a prohibition under S26B is guilty of an offence."
As a Member State of the United Nations, South Africa is obliged to implement Targeted Financial Sanctions measures to comply with the UNSC Resolutions under Chapter VII of the Charter of the United Nations.

These resolutions often, in conjunction with other forms of sanctions, such as arms embargoes and travel bans, require countries to freeze, without delay, the funds or other assets of, and to ensure that no funds or other assets are made available, directly or indirectly, to or for the benefit of, any person or entity designated by the UNSC Resolutions under Chapter VII of the UN Charter.

The FIC Act is best placed to provide for the mechanism for the implementation of financial sanctions pursuant to the UNSCRs, taking into account the current obligations placed on accountable institutions under the FIC Act.

Extends the objectives of the FIC to include administering measures requiring accountable institutions to freeze property and transactions pursuant to financial sanctions that may arise from UNSCRs.
Providing for the Implementation of the United Nations Security Council Resolutions relating to the Freezing of Assets

(a) The Bill empowers the FIC to administer the measures adopted by the United Nations Security Council ("UNSC") in its Resolutions, which require accountable institutions to freeze property and transactions pursuant to financial sanctions imposed in the UNSC Resolutions. Mechanisms for the implementation of the UNSC Resolutions shall include the publication in the Government Gazette by the Minister of Finance a Notice of the adoption of the UNSC Resolution, and the publication of a Notice by the executive head of the FIC of persons who are subject to the sanction measures ("the sanctions list"). These Notices may be revoked if it is considered that they are no longer necessary to give effect to the applicable UNSC Resolutions.

(b) The acquisition, collection or use of the property of persons or an entity whose names appear in the sanctions list shall be prohibited, including the provision of financial services and products to those persons or entities. Access to financial services and products by persons identified in the sanctions list shall only be for ordinary and necessary expenses, such as food, rent or mortgage and medical treatment. For compliance purposes, an obligation is placed on accountable institutions to report to the FIC, the property in the accountable institution’s possession or under its control which is owned or controlled by or on behalf of a person or an entity identified in the sanctions list.
• **Notification of persons and entities identified by Chapter VII UNSCRs** (S26A(1) - exclude POCDARARA S25 Notifications/proclamations in Government Gazette) By Minister. Outline duties of the Director of the FIC ito notifications for listing and delisting. Revocation by Minister.

• **Prohibitions relating to persons and entities identified by UNSCRs** (S26B (1)(2)(3) – property; any financial or other service; economic support; facilitation; or provision of property, or the provision of any financial or other service, or the provision of economic support linked to listed entities); evasion/circumvention - retain or control, converting, concealing or disguising the nature, source, location, disposition or movement of such property, the ownership thereof or any interest anyone may have therein, removing such property from a jurisdiction, or transferring such property to a nominee.

• **Permitted financial services and dealing with property** (S26C(1)(2) Minister may … permit a person to conduct financial services or deal with property ito:
  • providing for basic expenses;
  • to satisfy a judgment or arbitral award that was made prior to the date of listing;
  • payment to a third party which is due under a contract prior to listing;
  • to accrue interest or other earnings due on accounts holding property affected by 26B;
  • payment due to a person or entity under S26B … provided payment not directly/indirectly being received by listed entity.
Property associated with terrorist and related activities and financial sanctions pursuant to UNSC Resolutions (Clause 20)

(a) Provision is made for an accountable institution to report to the FIC property in its possession or under its control that is owned or controlled by or on behalf of a person or an entity identified pursuant to a UNSC Resolution.

(a) An accountable institution must, after publication of a notice by the President under section 25 of the POCDATARA, or a notice being given by the Director of the FIC, scrutinise its information concerning clients with whom the accountable institution has business relationships, in order to determine whether a client is a person or entity mentioned in a notice by the President or notice by the Director.
When a UNSCR is adopted, the Minister must publish a Notice of the adoption of the resolution in the Government Gazette and other appropriate means of publication. (does not apply to UNSCRs under POCDATARA S25) (Act No. 33 of 2004)

Following the Notice published by the Minister, the Director of the FIC must, from time to time and by appropriate means of publication, give notice of—
(a) persons and entities being identified by UNSC Resolutions; and
(b) decisions of the UNSC to no longer apply UNSCRs to previously identified persons or entities.

Allows the Minister to revoke a Notice

Provides that no person may, acquire, collect, use property or provide or make available, or invite a person to provide or make available any financial or other service, intending that the property, financial or other service will be used for the benefit of or on behalf of a person or an entity identified pursuant to a UNSCR.

The Minister may permit a person to conduct financial services or deal with property if it is necessary to provide for basic expenses, including, among other things, foodstuffs, rent or mortgage and medicines or medical treatment.

Provision is made for the Director of the FIC to publish a notice of the Minister’s permission for the provision of financial services or dealing with property.
QUESTIONS
THANK YOU

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