

GUIDELINES ON TARGETED FINANCIAL SANCTIONS (TFS)

**Institute of Cost and Management
Accountants of Pakistan**

PURPOSE

- 1) ICMA Pakistan Guidance on Sanctions Screening aims to aid Reporting Firms (RFs) to understand their obligations with respect to TFS. The guidance sets out sanctions screening as a control, the fundamentals of which are derived from legal / regulatory requirements and expectations, as well as international best practices.
- 2) Sanctions are prohibitions and restrictions put in place with the aim of maintaining or restoring international peace and security. They generally target specific individuals or entities, or particular sectors, industries or interests. They may be aimed at certain people and targets in a particular country or territory, or some organization or element within them.

LEGAL OBLIGATION

- 3) Pakistan is under legal obligation to implement the UNSCR 1373, on account of being a responsible member of the United Nations.
- 4) In order to combat terrorist financing and fulfill its obligations under UNSCR, Pakistan relies on a number of legal provisions contained in the Anti-Terrorism Act, 1997. These provisions vary from proscription of organizations and persons, freezing and seizure of assets, etc., to criminalizing different forms of terrorist financing and other required measures.
- 5) In view of the above, Pakistan has amended its AML Act 2010 to put its reporting entities under TFS Obligations; The relevant section of the AML Act 2010 is reproduced as under;

Section 7H "Policies and procedures. — Every reporting entity shall implement policies and procedures to ensure their compliance with the provisions of this Act and orders, rules or regulations made thereunder that impose TFS obligations upon reporting entities."

REGULATORY REQUIREMENT

- 6) ICMA Pakistan AML / CFT Regulations "Anti – Money Laundering and Combating Financing of Terrorism Regulations for Cost and Management Accountants Reporting Firms" under Section 25 requires Reporting firms to comply with Section 7H of AML Act.

IMPLEMENTATION OF TFS LEGAL AND REGULATORY OBLIGATION

- 7) Regulations require Reporting Firms not to form business relationship with the individuals / entities and their associates that are either, sanctioned under United Nations Security Council (UNSC) Resolutions adopted by Pakistan or proscribed under the Anti – Terrorism Act, 1997.
- 8) The Ministry of Foreign Affairs (MoFA) issues Statutory Regulatory Orders (SROs) to provide legal cover for implementing sanction measures under UNSC resolutions. These SROs in respect of designated individuals / entities require assets freeze (including funds and other financial assets or economic resources), travel ban and arms embargo, in addition to other measures in accordance with the UNSC resolutions. These SROs are available at the following links:
- a) <http://mofa.gov.pk/unsc-sanctions/>
 - b) <http://www.secdiv.gov.pk/page/sro-unscr-sanctions>
- 9) The Ministry of Interior (MoI) issues Notifications of proscribed individuals /entities pursuant to the Anti – Terrorism Act, 1997, to implement sanction measures under UNSCR 1373(2001). The updated consolidated list of proscribed organizations and proscribed individuals is available at the National Counter Terrorism Authority’s website, at the following links:
- a) <http://nacta.gov.pk/proscribed-organizations/>
 - b) <https://nacta.gov.pk/proscribed-persons/>

ACTIONS TO BE TAKEN BY REPORTING FIRM

- 10) Each RF is required to **immediately scan its customer data bases and their Beneficial Owners / associates for any matches** with the stated designated / proscribed person(s) / entity(ies) on the receipt of notifications; issued by the Ministry of Foreign Affairs on United Nations Security Council Resolutions or intimation from National Counter Terrorism Authority (NACTA) / Law Enforcement Agencies (LEAs) / Home Departments of Provinces / Ministry of Interior regarding updates in list of proscribed persons under the Anti – Terrorism Act, 1997.
- 11) In case of a true match or suspicion of a proscribed / designated person, following actions have to be taken immediately by Reporting Firm under the ICMA Pakistan AML / CFT Regulations;
- a) If it is an existing customer / client, freeze without delay the customer’s fund and other financial assets or economic resources or block the transaction, without prior notice;
 - b) Not provide any services or funds to the designated / proscribed person in accordance with the respective notification;
 - c) Reject the transaction or attempted transaction or the onboarding of the customer, if the relationship has not commenced;

d) Lodge a STR with the Financial Monitoring Unit (FMU) and simultaneously notify the Ministry of Foreign Affairs, in case that person is designated under United Nations Security Council Resolutions or notify the National Counter Terrorism Authority, in case that person is designated under the Anti – Terrorism Act, 1997.

12) Reporting Firm must ascertain potential matches with the UN Consolidated List to confirm whether they are true matches to eliminate any **“false positives”**. The reporting firm must make further enquiries from the client or counter – party (where relevant) to assist in determining whether it is a true match. In case there is not 100% match, but sufficient grounds for suspicion that customer/ funds belong to sanctioned entity / individual, the RFs may consider raising a STR to FMU.

False Positives –

- If your reporting firm is undertaking the screening on a manual basis, there should be no or very few false positives. If you have a 100% match with names, date of birth and location, then it is a true match from your reporting firm’s perspective. They should be reported and transactions frozen, or customer rejected. The authorities will have more information to determine whether it is a true match from their perspective. It is not uncommon for the same name and date of birth to be identified, and then authorities conclude that it is not the person listed in the sanctions list.
- If your reporting firm is using an automatic screening service, and depending on the sophistication of the screening service, false positives will be very common. The reason is some of those screening systems are configured to generate a “match” based purely on name or part name match, and not on all of the identifiers e.g. name, date of birth, address or geographic region. If the electronic system produces a match, the reporting firm will need to check manually whether it is a true match or a false match by reviewing all the identifiers.

13) Reporting Firms shall make their sanctions compliance program an integral part of their overall AML / CFT compliance program, and accordingly should have policies, procedures, systems and controls in place w.r.t to sanctions compliance. RFs shall provide adequate sanctions related training to their staff. When conducting risk assessments, RFs shall, take into account any sanctions that may apply (to customers or countries).

14) RFs should not provide any services to proscribed / designated entities and individuals or their associated persons as required under the ICMA Pakistan AML / CFT Regulations. For this purpose, necessary measures should be taken including but not limited to the following controls:

- a) In case of entity, it should be ensured that their beneficial owners, directors, members, trustees and authorized signatories are not linked with any proscribed / designated entities and individuals, whether under the same name or with a different name.
 - b) The association of individuals / entities with proscribed / designated entities and individuals may be determined on the basis of appropriate screening of sanctions lists, publicly known information or linkages (on the basis of Government or regulatory sources, reliable media information, etc.)
 - c) While establishing new business relationship or extending services to customers, any similarity between the identifying information of the customer and that of proscribed / designated entities and individuals including national identification number, address, etc. may be viewed properly and investigated for necessary action as per requirements.
 - d) RFs should monitor their relationships on a continuous basis. If any relationship with the proscribed entity / individual is found, immediate action shall be taken as per the applicable legislations, including reporting to the FMU.
 - e) RFs shall report to the FMU immediately, all attempted or rejected transactions pertaining to proscribed / designated entities and individuals or their associates.
 - f) RFs shall maintain up to date data / MIS of all frozen assets / funds, attempted or rejected transactions, and the same shall be made available to ICMA Pakistan as and when required.
- 15)** RFs shall, taking note of the circumstances where customers and transactions are more vulnerable to be involved in TF and PF activities by identifying high-risk customers and transactions, and applying enhanced scrutiny. RF shall carry out checks on the names of potential and new customers, as well as regular checks (under a defined frequency) on the names of existing customers, beneficial owners, transactions, and other relevant parties against the names in the abovementioned lists, to determine if the business relationship involves any sanctioned person / entity, or person associated with a sanctioned person / entity / country.
- 16)** RFs are expected to keep track of all the applicable sanctions and where the sanction lists are updated, shall ensure that existing customers are not listed. The Consolidated Lists available at NACTA's and the UNSC Sanctions Committees' websites, are regularly updated and can be accessed at the following links:
- a) <https://www.un.org/securitycouncil/content/un-sc-consolidated-list>
 - b) <https://scsanctions.un.org/search/>
 - c) <https://www.un.org/securitycouncil/sanctions/1267>
 - d) <https://www.un.org/securitycouncil/sanctions/1988>
 - e) <https://www.un.org/securitycouncil/sanctions/1718>
 - f) <https://www.un.org/securitycouncil/content/2231/background>
 - g) <https://nacta.gov.pk/proscribed-organizations-3/>
 - h) <https://nacta.gov.pk/pp/>
 - i) <https://nfs.punjab.gov.pk/>

ILLUSTRATIVE EXAMPLES

<p>AT THE TIME OF ON - BOARDING</p>	<p>DURING ENGAGEMENT</p>	<p>AFTER ENGAGEMENT</p>
<ul style="list-style-type: none"> •Reporting firm should screen the client, its beneficial owner and person acting on behalf of the client against the updated UNSC and ATA list, in line with the requirements of Section # 25 of ICMA PAKISTAN AML / CFT Regulations. 	<ul style="list-style-type: none"> •If during the tenure of the engagement, the UNSC or ATA list is updated, reporting firm is required to screen the existing client, its beneficial owner and person on behalf of the reporting firm again against the updation made in list within in line with the requirements of Section # 25 of ICMA PAKISTAN AML / CFT Regulations. 	<ul style="list-style-type: none"> •Once the business relationship has ended and the reporting firm is no longer rendering any AML related specified services to the client, the reporting firm is not required to screen that client or beneficial owner against any further updates.

FEW EXAMPLES TO UNDERSTAND THE ABOVE TFS SCREENING OBLIGATIONS ARE STATED BELOW

1. ACTING AS A FORMATION AGENT FOR LEGAL PERSONS OR LEGAL ARRANGEMENTS.

This service refers to forming a legal person (such as a company) or legal arrangement on behalf of a customer; for example, registering a company with the SECP.

Examples of this kind of captured service in practice

- Incorporation / Registration of a company with the SECP on behalf of a customer.
- Incorporation of an entity (partnership/firm/society/company etc.) on behalf of a customer.

TFS Obligations

This service is an example of one – time engagement, which only requires the reporting firm to screen its client(s). It's Beneficial Owners and persons acting on behalf of the client at the time of establishing client relationship, once the engagement has ended, Reporting Firm is no longer obliged to perform TFS screening on this client.

However, if during the tenure of this engagement, i.e. from the establishment of Client relationship to the completion of engagement, if UNSC list or ATA list is updated, Reporting Firm is required to screen the client, its beneficial owner or the person acting on behalf of the client against the list updated.

2. ACTING AS A NOMINEE DIRECTOR, SHAREHOLDER OR TRUSTEE.

The reporting firm is engaged to act as a nominee director or shareholder for a company, or as a trustee of a trust.

This is a specified service subject to AML / CFT.

Where the firm has only assisted the company / partnership in appointment of director / partner by sharing the database of the individuals and the firm has no authority with regards to the selection process of the candidate that service is NOT as a specified service subject to AML / CFT.

Examples of this kind of captured service in practice

- The reporting firm or staff member acts as a nominee shareholder or director for a customer
- The reporting firm or staff member act as a trustee for a trust.

The reporting firm or staff member arranges for a person to act as a nominee shareholder for a company.

TFS Obligations

If a Reporting Firm is acting as a nominee director, nominee shareholder for a company or a trustee for a legal arrangement (such as a trust or charity), this type of engagement is considered as an on – going engagement. In this regard, the Reporting Firm is required to screen the client, its Beneficial Owners or persons acting on behalf of the client at the time of establishment of relationship and on an on–going basis throughout the tenure of engagement.

The screening should be conducted as and when the lists (UNSC and ATA) are updated or when there is change in the ownership structure of the Client.

DISCLAIMER

17) All reasonable care has been taken in the preparation of this Guideline document, but it necessarily contains information in summary form and is therefore intended for general guidance only. The publication does not amend or override, and it is not intended to be a substitute for reading the Laws, Regulations and guidance issued in Pakistan as well as by the United Nations.

18) A person should utilize his / her professional judgment and the facts and circumstances involved in each particular case. The information presented in this Guideline document should not be construed as legal, auditing, or any other professional advice or service. The Institute of Cost and Management Accountants of Pakistan (ICMA PAKISTAN) and/or its staff do not accept any liability to any party for any loss, damage or costs howsoever arising, whether directly or indirectly, whether in contract, or otherwise from any action or decision taken (or not taken) as a result of any person relying on or otherwise using this document or arising from any omission from it.

SOURCES

- Guidelines on Anti–Money Laundering, Countering Financing of Terrorism and Proliferation Financing – **Securities and Exchange Commission of Pakistan (SECP)**
- Guidance on Sanctions Screening – **Wolfsburg**
- Guidelines on Actions to be Taken by Competent Authorities for Implementation of United Nations Security Council Resolution 1373 – **NACTA**
- FATF Recommendations