



TARGETED FINANCIAL SANCTIONS for TERRORISM, TERRORIST FINANCING & PROLIFERATION FINANCING

The Financial Action Task Force (FATF) defines Targeted Financial Sanctions (TFS) as 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. Recommendations 6 and 7 of the FATF Recommendations require each jurisdiction to implement TFS regimes to comply with the United Nations Security Council Resolutions (UNSCRs). The United Nations (UN) Sanctions Regime was first established by Resolution UNSCR 1267 (1999). The United Nations Security Council (UNSC) imposes a number of measures against individuals and entities associated with Al-Qaida. The sanctions regime has been further strengthened and modified by a number of subsequent resolutions.

For the full list see <https://www.un.org/securitycouncil/sanctions/information>.

The measures to be implemented by countries according to the resolutions include asset freezing, travel bans and arms embargo in respect of individuals designated by the UN Sanctions Committee. In addition, the Resolutions provide for procedures for the listing and de-listing of individuals, access to funds for basic and extraordinary expenses, and the protection of the rights of third parties, amongst other issues.

Following the terrorist attacks of 11 September 2001, the UN further strengthened the sanctions regime by adopting the UNSCR 1373 (2001), which requires countries to put in place mechanisms enabling the designation of terrorists and persons associated with terrorism at a national level and the consequent application of freezing measures. Procedures introduced should also enable the processing of requests made by foreign countries.

Targeted Financial Sanctions (TFS) for Terrorism and Terrorist Financing

FATF Recommendation 6 requires that countries should implement TFS regimes to comply with the UNSCR relating to the prevention and suppression of terrorism and terrorist financing. These include the following UNSCRs:

1. UNSCR 1297 (1999) and its successor resolutions;
2. UNSCR 1373 (2001); and Any future UNSCRs which impose TFS in respect of terrorist financing.

St. Kitts and Nevis has developed and implemented a robust targeted financial sanctions regime in accordance with the above mentioned UNSCRs which is outlined in the Anti-Terrorism Act, Cap 4.02.

Identification and Designation Procedures

The Anti-Terrorism Act Cap 4.02 (ATA) outlines in Section 3 that the Minister with responsibility for National Security may, on the advice of the Attorney General (AG), by Order, designate any person or group of persons whose activities fall within the definition of terrorist activity, as a terrorist or terrorist group.

Section 114 of the ATA (as amended) also makes provisions for the designation of the Attorney General as the Competent Authority having responsibility for identifying and initiating proposals of persons or entities to the UNSC and its relevant Committees pursuant to the obligations set out in the following UNSCRs.

Additionally, Regulation 16 of the Anti Terrorism (Prevention of Terrorist Financing) Regulations, 2011 (ATR) states that a person or group which is designated as a terrorist or terrorist group shall, within one (1) week of the gazetting of the Order be informed by the Minister of the designation including procedures for the revocation of the designation.

Communication of Designations to Regulated Entities

Designations are communicated through the issuance of Statutory Rules and Orders which are published in the Official Gazette. (Regulation 16 of the ATR).

Procedures for Freezing Funds

Section 47 of the ATA provide for the freezing of funds in the possession of or under control of persons who have been identified as being a member of Al-Quaida, the Taliban or any other terrorist group designated by the United Nations Sanctions Committee (UNSC).

Section 4(3)(c) of the Financial Intelligence Unit (FIU) Act Cap 21.09 states that FIUs upon the request from a Foreign Intelligence Unit or Law Enforcement Authority (LEA) order any person to freeze a person's bank account for a period no longer than five (5) days if the FIU is satisfied that the request relates to the proceeds of any crime.

International Cooperation under the Mutual Assistance Treaty in accordance with Section 110 of the ATA and Section 59 of the Proceeds of Crime Act (POCA) also outline procedures whereby foreign requests in dealing with terrorist freeze orders are facilitated.

Financial Institutions (FIs) and Designated Non Financial Businesses and Professions (DNFBPs) are required to freeze without delay the funds or other assets of the designated persons or entities.

Additionally, the funds or assets of any person acting on behalf of or at the direction of a designated person or entity should also be frozen without delay. (Section 117 of the ATA (as amended)) The term *without delay* means within twenty four hours.

Reporting Obligations

The ATA, in Section 20(2) states that any person who has custody or possession of a property that belongs to a terrorist or terrorist group or has knowledge about a transaction or proposed transaction about the property shall immediately inform the Chief of Police, FIU or any other person whom the Minister designates.

Additionally, Section 20(4) of the ATA requires an FI or DNFBP to report to the FIU and the Financial Services Regulatory Commission (FSRC) every quarter that is it not in possession or control of any asset owned or controlled on behalf of a terrorist or terrorist group. Failure to disclose this information is an offence and no civil or criminal proceedings shall lie against any person for making a disclosure or report in good faith.

Further to the provisions of Section 20 of the ATA, once the funds or assets have been frozen without delay, the FIs or DNFBPs should notify the Attorney General, the FIU and the FSRC of the action taken to prohibit the dealing in funds, assets or other resources and the notification should include any attempted transactions made by the designated person or entity or any person acting on behalf of the designated person. (Section 119 of the ATA (as amended))



Targeted Financial Sanctions for Proliferation Financing



FATF Recommendation 7 requires that countries implement TFS to comply with UNSCRs relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. In 2020, the Anti Proliferation (Financing of Weapons of Mass Destruction) Act, No. 10 of 2020 (APA) was passed in St. Kitts and Nevis to provide the necessary framework and guidance to FIs and DNFBPs in respect of the identification and reporting of Proliferators.

Competent Authority

Section 3 of the APA designates the AG as the Competent Authority with responsibility for designating persons or entities to the UNSC and its relevant Committees, pursuant to the obligations set out in the UNSCRs that impose TFS in respect of the financing of proliferation of Weapons of Mass Destruction (WMD).

In instances where the AG designates a natural person or entity to the UNSC, notification of that designation shall be communicated to FIs and DNFBPs within twenty-four hours of that designation.

Identification of Targets for Designation

Where the AG receives notification, through the filing of a Suspicious Transaction Report (STR) in relation to proliferation financing, he or she shall make a determination, on a reasonable basis, on the sufficiency of the evidence, as to whether the natural person, group, undertaking or entity

- a. should be proposed to the 1718 Sanctions Committee, for designation as appropriate, based on the specific criteria for designation, as set forth in Security Council Resolution 1718 (2006) and its successor resolutions; or
- b. should be proposed to the Security Council, for designation as appropriate, persons or entities as set forth in Security Council Resolution 2231(2015) and any future successor resolutions. (Section 7 of the APA).

Identification and Reporting of Suspicious Proliferation Activity

As outlined in Section 6 of the APA, where a FI or DNFBP becomes aware of any suspicious activity by a natural or legal person, group, undertaking or entity that may be connected with the financing of proliferation of WMD, that regulated business or entity shall file an STR with the Financial FIU within twenty-four hours of the identification.

In instances where the FSRC, the Customs and Excise Department (CED), the Inland Revenue Department (IRD), Immigration Department (ID) and all other relevant government agencies or statutory bodies become aware of any suspicious activity by a natural or legal person, group or entity that may be connected with the financing of proliferation of WMD notification of that suspicious activity should be made without delay to the AG and the FIU.

Procedures for De-Listing Persons

Section 3(2) of the ATA provides for the addition or removal of a person or group of persons from the List of Designated Terrorists by the Minister acting on the advice of the AG. Additionally, Regulation 3 of the Anti-Terrorism De-Listing Procedures Regulations No. 62 of 2011 provides for the submission of an application for de-listing to the Minister.

Regulation 4 of the De-Listing Procedures makes provision for the Minister to appoint a Special Committee to hear any requests for de-listing that may be forwarded to him or her.

Procedures for Unfreezing Funds or Assets

Section 52 of the ATA states that a person who has an interest in funds in respect of which a freezing order is made may, at any time apply to the court for:

- A. An order that:
 - i. the funds or any part thereof of be returned to the applicant;
 - ii. revoke the freezing order; or
 - iii. vary it to include the funds or any interest therein or any part thereof from the application of the order; or
- B. For permission to examine the funds.

The Applicant must give the Director of Public Prosecutions (DPP) at least three (3) days' notice in writing of his/her intention to apply to the Court.

De-Listing Procedures

Procedures for the removal for persons or groups from the list of designated persons in respect of proliferation financing are outlined in Regulations 21 – 24 of the Anti-Proliferation (Financing of Weapons of Mass Destruction) Regulations, 2021 (APR). Applications for de-listing should be made, in writing, to the Minister and he or she may appoint a Special Committee to hear such requests for de-listing.

Freezing Procedures

Where the UNSC designates persons or entities pursuant to the UNSCRs for proliferation financing or any other UNSC resolutions that relate to the prevention or disruption of the financing of the proliferation of WMD, all FIs and DNFBPs within Saint Christopher and Nevis shall freeze without delay (within 24 hours) or prior notice,

1. the funds or other assets that are owned or controlled by those designated persons or entities notwithstanding that those funds or assets may not be linked to a particular act, plot or threat of proliferation;
2. those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; and
3. the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly, by designated persons or entities;
4. funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities; and ensure that no funds or other assets are made available in Saint Christopher and Nevis to and for the benefit of any designated person or entity without the prior authorization of the UNSC.

Where an FI or a DNFBP takes freezing action or any other relevant action in response to the designation of a natural person or entity, the FI or DNFBP shall promptly notify the Attorney General, the FSRC and the FIU of that action and shall comply with the guidelines prescribed in respect of freezing and unfreezing mechanisms as well as any procedures in respect of listing or delisting of natural persons and entities where necessary. (Section 4 of the APA).

What's Your Role?

The Anti-Proliferation (Financing of Weapons of Mass Destruction) Regulations, 2021 (APR) were established to provide guidance to FIs and DNFBPs to identify and prevent designated persons and entities from conducting transactions using their facilities and through their institutions.

FIs and DNFBPs are required to adopt appropriate policies to aid in the forestalling, preventing and deterring proliferation financing. These include the following procedures:

- ⇒ Identification;
- ⇒ Record Keeping;
- ⇒ Reporting; and
- ⇒ Internal Controls and Communication

Regulation 3A of the APR requires all Regulated Persons to identify, assess and understand its proliferation financing risks for customers, countries, geographic areas, products, services, transactions and delivery channels.

Regulation 9 of the APR requires all Regulated Businesses to maintain a Register of all enquiries made of it by the FSRC, FIU or other LEA in respect of proliferation financing. The Register shall at a minimum include the following information:

- ⇒ Date;
- ⇒ Nature of Enquiry;
- ⇒ Name and Agency of Enquiring Officer;
- ⇒ Powers Being Exercised; and
- ⇒ Details or Accounts or Transactions Involved.

Regulated Entities are encouraged to maintain the most recent UN Sanctions List and cross reference clients periodically.

<https://scsanctions.un.org/consolidated/>

Targeted Financial Sanctions Word Search

T O F P F K S G K O N F D T D	◆ Delisting
S N H E U U N Z S Q V Z O E N	◆ Designated
E A O N P I F C X S N D S S O	◆ Destruction
K P S X Z B B D R J Q T T U I	◆ Freezing
N C I E Q D C B F B R R E S T	◆ Identification
J Y E M A O E T W U C S R P A	◆ Proliferation
V R I B C V H S C L J A R I C	◆ Reporting
F R E S O L U T I O N S O C I	◆ Resolutions
R E P O R T I N G G M Z R I F	◆ Suspicious
X K T E M O H L C M N F I O I	◆ Terrorist
J X P Y N N T Z Q T Y A S U T	
G N I T S I L E D W Q Z T S N	
F P B X Q K D I R F J Q T E E	
N O I T A R E F I L O R P B D	
S C L H Z P K W Q Y B Q H P I	

References

- FATF Recommendations
- Anti-Proliferation (Financing of Weapons of Mass Destruction) Act, No. 10 of 2020
- Anti-Proliferation (Financing of Weapons of Mass Destruction) Regulations, 2021
- Anti-Terrorism Act Cap 4.02
- Anti-Terrorism (Prevention of Terrorist Financing) Regulations, 2011
- www.un.org

What is your role?



If a transactions meets two or more of the following conditions, a proliferation risk might be involved.

- ✓ The transaction concerns dual use or military goods, whether licensable or not;
- ✓ The goods are destined for high risk countries;
- ✓ The goods are destined for a transit port that is probably not the end use location;
- ✓ The client is unknown and not prepared to reveal his identity through references;
- ✓ The client is not familiar with the civilian use of the goods to be delivered;
- ✓ The client is vague about the end user and end use;
- ✓ The client is not or insufficiently prepared to reveal the nature and location of the plant where the goods are to be used or processed;
- ✓ The client evades answers to normal technical or commercial questions;
- ✓ The client demands extraordinary discretion in relation to the order;
- ✓ The quantity of the order differs from regular civilian use;
- ✓ The nature of the clients organization does not correspond to the ordered goods;
- ✓ The client demands unusual terms of guarantee.
- ✓ The client is not interested in after sales service, such as training, installation and maintenance at the end use location; and
- ✓ The client insists on unconventional conditions for transport and packing.