



Financial
Intelligence Centre

**DRAFT PUBLIC COMPLIANCE
COMMUNICATION
PUBLIC COMPLIANCE COMMUNICATION**

No 104

**GUIDANCE ON THE APPLICATION OF
TARGETED FINANCIAL SANCTIONS REGIMES
WITHIN SOUTH AFRICA**

PCC SUMMARY

The Financial Intelligence Centre Act 2001 (Act No. 38 of 2001) (the FIC Act) places certain obligations on accountable institutions, reporting institutions and other persons to implement certain measures in relation to the targeted financial sanctions regimes.

This PCC (Public Compliance Communication 104) discusses South Africa's targeted financial sanctions regime, which is implemented through the country's anti-money laundering and combating of financing of terrorism (AML/CFT) legislative framework. The targeted financial sanctions regime is implemented through the FIC Act and the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No 33 of 2004) (POCDATARA Act).

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OBJECTIVE

The objective of this PCC is to provide guidance to all persons on the different sanctions regimes which are part of the regulatory framework of South Africa.

GLOSSARY

“**The Centre**” means the Financial Intelligence Centre established in terms of section 2 of the FIC Act.

“**FIC Act**” refers to the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) as amended by the Financial Intelligence Amendment Act, (Act No. 1 of 2017).

“**UNSC**” refers to the United Nations Security Council

“**ML**” refers to money laundering

“**Proliferation**” refers to the dictionary definition of the rapid increase in the number, or the amount of something.

“**PF**” refers to proliferation financing

“**TF**” refers to terrorist financing

“**TFS**” refers to targeted financial sanctions

“**TFS List**” refers to targeted financial sanctions list as published on the FIC website

“**POCDATARA Act**” refers to the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No 33 of 2004)

“**FATF**” refers to the Financial Action Task Force

1. INTRODUCTION

- 1.1. South Africa does not have an autonomous or domestic sanctions regime (as is the case with other countries, including the United States of America, the United Kingdom, Australia etc.). Rather, South Africa has two targeted financial sanctions regimes solely predicated upon the country's obligation as a United Nations Charter member.
- 1.2. The targeted financial sanctions regimes originate from resolutions of the United Nations Security Council (UNSC) under Chapter VII of the Charter of the United Nations (UN). South Africa implements two distinct targeted financial sanctions regimes, which form part of the anti-money laundering/counter financing of terrorism (AML/CFT) regulatory framework through the FIC Act and the POCDATARA.
- 1.3. The targeted financial sanctions regimes are in line with the principles as set out in FATF Recommendations 6 and 7.

2. APPLICATION OF THIS PUBLIC COMPLIANCE COMMUNICATION

- 2.1. This PCC applies to all accountable institutions, reporting institutions and all other persons.
- 2.2. This PCC must be read with Guidance Note 6A (insert link) that details the reporting obligations of both targeted financial sanctions regimes, as imposed by section 28A of the FIC Act and in terms of section 12 of POCDATARA.

3. INTERNATIONAL STANDARDS

The Financial Actions Task Force Recommendations

- 3.1 The Financial Action Task Force (FATF) International Standards on combatting money laundering and the financing of terrorism and proliferation, (the FATF recommendations), Part C deals with terrorist financing (TF) and financing of proliferation (PF).

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 designed 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 United Nations Security Council resolutions 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 United Nations Security Council under Chapter VII of the Charter of the United Nations, including in accordance with resolution 1267 (1999) and its successor resolutions; or (ii) designated by that country pursuant to resolution 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.

- 3.2. The Centre endorses the principles as sets out in the FATF recommendation 6 and 7 and the interpretive notes thereto.

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4. SANCTIONS FRAMEWORK

Sanctions aimed against terrorism and terrorist related activity

- 4.1. Section 4, read with section 15 of POCDATARA criminalises the financing and facilitating of terrorist and related activity, which offense applies to everyone not just accountable institutions and or reporting institutions.
 - 4.2. In terms of section, 25 of POCDATARA the President of South Africa must give notice of a sanctions designation of a specific entity in a resolution of the UNSC, which resolutions designates the following sanctioned persons and/ or entities; ISIL (Da'esh), Al-Qaida, and associated individuals, groups, undertakings and entities in relation to terrorist financing. This list relates to the UNSCR 1267 (1999), 1989 (2011) and 2253 (2015) and their successor resolutions.
 - 4.3. Sanctions regulated in terms of section 25 of POCDATARA are referred to as targeted financial sanctions in terms of POCDATARA.
 - 4.4. The list as published by the President is available on the South African Police Services (SAPS) website https://www.saps.gov.za/resource_centre/acts/downloads/terrorism/37758_proc39.pdf and the consolidated list is available on the UNSC Website https://www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list.
- Screening and reporting
- 4.5. Section 28A of the Financial Intelligence Centre Act, 2001 (FIC Act), places a direct obligation on accountable institutions to scrutinise their information concerning clients to determine whether they are listed as per Section 25 of POCDATARA.
 - 4.6. Should an accountable institution identify that a client is an entity listed as per section 25 of POCDATARA, they would be required to freeze all property (including funds) associated to the designated person/entity, and would have to report this to the FIC.
 - 4.7. Guidance Note 6A provides further clarity on the scrutinising/screening, freezing and reporting of clients. The obligation to scrutinise client information only applies to accountable institutions, the Centre however advises reporting institutions and all other persons that it is

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good practice to scrutinise their client information against both the UNSC consolidated sanctions list and TFS List.

- 4.8. South Africa's legislation aligns to the requirements as set out in the FATF recommendation 6 in this regard.
- 4.9. Institutions that are not accountable institutions are advised to implement a form screening functionality to ensure they do not enter into impermissible financial arrangements with a sanctioned person/entity, which would result in them breaching the sanctions provisions. Such functionality need not required a sophisticated system to be implemented.

Sanctions aimed at the proliferation of weapons of mass destruction, oppressive regimes and human right abuses

- 4.10. Section 26B of the FIC Act read together with section 49A of the FIC Act, prohibits the financing of a person who is subject to targeted financial sanctions in terms of section 26A of the FIC Act.
- 4.14. As per section 26A of the FIC Act, the Director of the FIC must give notice of persons who have been designated as a sanctioned person in a resolution of the UNSC. Such designations is not due to terrorist or related activities, but rather related to threats to international peace and security which includes the proliferation of weapons of mass destruction, oppressive regimes and or human rights abuses.
- 4.11. Sanctions regulated in terms of S26A, S26B and S26C of the FIC are referred to as targeted financial sanctions in terms of the FIC Act.
- 4.12. The list as published by the Director of the FIC is made available on the FIC website and is referred to as the TFS list.

Screening and reporting

- 4.13. With targeted financial sanctions section 28A of the FIC Act places a direct obligation on accountable institutions to scrutinise its information concerning clients to determine whether they are listed as per section 26A of the FIC Act.

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- 4.14. Should an accountable institution identify that a client is a person listed as per section 26B of the FIC Act, they would be required to freeze all property (including funds) associated to the designated person/entity and would have to report this to the FIC.
- 4.15. Guidance Note 6A provides further clarity on the scrutinising/screening, freezing and reporting of clients.
- 4.16. Institutions that are not accountable institutions are advised to implement a form screening functionality to ensure they do not enter into impermissible financial arrangements with a sanctioned person/entity, which would result in them breaching the sanctions provisions. Such functionality need not required a sophisticated system to be implemented.
- 4.17. South Africa's legislation aligns to requirements as set out in the Financial Action Task Force recommendations 7 in this regard.
- 4.18. The following UNSC resolutions currently form part of the TFS in terms of the FIC Act regimes at 10 December 2019, which lists is subject to updating, refer to the latest list on the FIC website:
- 4.18.1. UNSCR 1483(2003); Iraq and Kuwait
 - 4.18.2. UNSCR 1596(2005); Democratic Republic of Congo
 - 4.18.3. UNSCR 1591(2005); Sudan
 - 4.18.4. UNSCR 1636(2005); Lebanon*
 - 4.18.5. UNSCR 1718(2005), 2094(2013), 2270(2016), 2321(2016), 2356(2017), 2371(2017), 2375(2017), 2397(2017); Democratic People's Republic of Korea
 - 4.18.6. UNSCR 1844(2006); Somalia
 - 4.18.7. UNSCR 1907(2009); Somalia and Eretria
 - 4.18.8. UNSCR 1970(2011); Libya
 - 4.18.9. UNSCR 2140(2014); Yemen
 - 4.18.10. UNSCR 2206(2015); Sudan and South Sudan
 - 4.18.11. UNSCR 2374(2017) Mali
- Note: this list is as per the Government Gazette Notice No. 42369 and is subject to change.*
- 4.19. UNSC resolution 1636 (2005) is an example of a UNSC resolution which falls within the ambit of Chapter VII, Article 41 of the UN Charter. However, no designations have been made by the Committee pursuant to the UNSC resolution 1636 (2005) to date. Therefore, no names of individuals or entities to screen against are contained in either the UNSC Consolidated list or

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the FIC TFS list. Accountable institutions are advised to apply business judgement and apply the approach contained in its RMCP in monitoring UNSC Resolution 1636 (2005).

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5. COMPARISON OF THE SANCTIONS REGIMES IN SOUTH AFRICA

| | Targeted financial sanctions in terms of POCDATARA | Targeted Financial Sanctions in terms of FIC Act |
|---|---|---|
| Applicable UN resolution(s) | UNSCR 1267 (1999), 1989 (2011) and 2253 (2015) and their successor resolutions. | UNSCR 1483(2003), 1596(2005), 1591(2005), 1636(2005), 1718(2005), 2094(2013), 2270(2016), 2321(2016), 2356(2017), 2371(2017), 2375(2017), 2397(2017), 1844(2006), 1907(2009), 1970(2011), 2140(2014), 2206(2015), 2374(2017). |
| Issuer of resolution | UNSC | UNSC |
| South African implementer of resolution | SAPS | FIC |
| Focus of resolution | Designates sanctioned persons and/or entities, ISIL (Da'esh), Al-Qaida, and associated individuals, groups, undertakings and entities in relation to terrorist financing. | Related to threats to international peace and security which includes the proliferation of weapons of mass destruction, oppressive regimes and or human rights abuses. |
| Applicable legislation | Section 25 POCDATARA | Section 26A, 26B and 26C of the FIC Act |
| Reporting obligation | Section 28A of the FIC Act, applies to accountable institutions only. Section 29 applies to all accountable institutions, reporting institutions and business-related persons. Section 12 of POCDATARA applies to all persons | Section 28A of the FIC Act applies to accountable institutions only. Section 29 applies to all accountable institutions, reporting institutions and business-related persons. |
| Applicable to | All persons (including accountable and reporting institutions and the general public) | All persons (including accountable and reporting institutions and the general public) |
| Process when client, or potential | Freeze funds and or property. | Freeze funds and or property. |

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| | | |
|------------------------------------|---|---|
| client is flagged on UN resolution | Do not proceed with transaction or business relationship. Report accordingly | Do not proceed with transaction or business relationship. Report accordingly |
|------------------------------------|---|---|

6. PRACTICAL CONSIDERATIONS OF IMPLEMENTING THE TARGETED FINANCIAL SANCTIONS REGIME (IN RELATION TO BOTH THE FIC ACT AND POCDATARA)

Risk Management and Compliance Programme

- 6.1. The scrutinising (screening) of client data must be well documented in the accountable institutions Risk Management and Compliance Programme (RMCP) (Refer to Guidance Note 7).
- 6.2. Accountable institutions are advised to follow a conservative approach to ensure compliance with the FIC Act and POCDATARA. Where there is time delays in adding and removing individuals or entities these issues should be factored into the RMCP and form part of the accountable institutions AML/CFT risk assessment process.
- 6.3. The TFS in terms of POCDATARA and TFS in terms of FIC Act, are not dependent on the risk identification, or classification of a client. Should the client, or potential client be identified as a person on the relevant UNSC resolutions, the accountable institution must freeze all property (including funds) associated with the client and may not proceed with any further transactions, regardless of the risk rating of the client.
- 6.3. Scrutiny (screening) of clients and potential clients must take place regardless of the risk associated with the client. In other words, an accountable institution would not be permitted to reduce the screening of a low risk client against the relevant UNSC resolutions as compared to that of a higher risk client.
- 6.4. Dependent upon the size of the accountable institutions client base and sophistication of systems, the accountable institution must consider the likelihood that a client may potentially flag against the targeted financial sanctions lists based upon various factors including the jurisdiction within which it operates when implementing screening processes. Following a risk based approach, the higher the terrorist financing risk that a particular client, product or

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service poses to the institution, based on certain risk indicators in the accountable institutions RMCP, the greater the level of scrutiny towards the clients would be required. Such could include more frequent screening of a certain client base.

- 6.5 It is not the expectation of the FIC that small accountable institutions, specifically within the Designated Non-Financial Business and Professions (DNFBP), perform extensive monitoring, with sophisticated or complex systems to support this process. The process adopted for purposes of scrutinising (screening) client information against the TFS list and UNSC consolidated sanctions lists can be done manually or can be an automated process.
- 6.6 The sanctions regime requires that no person may directly, indirectly, in whole or in part enter into or facilitate a transaction for a person and or entity that is listed on the UNSC resolutions. This would mean that the scrutiny extends beyond the direct relationship with the institution's client, and could include the underlying client, ultimate beneficial owner, intermediaries, beneficiary banks and beneficiaries to a transaction.

Issued By:

The Director Financial Intelligence Centre

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