



**PUBLIC COMPLIANCE
COMMUNICATION
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COMMUNICATION
No 44
GUIDANCE ON THE
APPLICATION OF THE
TARGETED FINANCIAL
SANCTIONS REGIME WITHIN
SOUTH AFRICA**

PCC SUMMARY

The Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) places certain obligations on accountable and reporting institutions and other persons to implement certain measures in relation to the targeted financial sanctions regimes.

This Public Compliance Communication 44 (PCC 44) discusses South Africa's targeted financial sanctions regimes, which are implemented through the country's anti-money laundering and combating of the 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 33 of 2004) (POCDATARA Act).

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OBJECTIVE

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

GLOSSARY

“**The FIC**” 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 38 of 2001) as amended by the Financial Intelligence Amendment Act, 2017 (Act 1 of 2017).

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

“**ML**” refers to money laundering

“**Proliferation**” refers to 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’s website

“**POCDATARA Act**” refers to the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act 33 of 2004)

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

“**Person/entity**” refers to a person and / or entity, as well as persons and/ or entities

1. INTRODUCTION

- 1.1. South Africa does not have an autonomous or domestic sanctions regime (as do countries such as the United States of America, the United Kingdom, Australia etc.). Rather, South Africa has two targeted financial sanctions regimes based upon the country's obligation as a member of the United Nations (UN).
- 1.2. South Africa's targeted financial sanctions regimes originate from resolutions of the United Nations Security Council (UNSC) under Chapter VII of the Charter of the United Nations. South Africa implements two distinct targeted financial sanctions regimes through the FIC Act and the POCDATARA Act, which form part of the AML/CFT regulatory framework.
- 1.3. The UNSC resolutions relate to the financing, prevention and suppression of terrorism and terrorist financing, as well as the prevention, suppression and disruption of the proliferation of weapons of mass destruction and its financing.
- 1.4. The Financial Action Task Force (FATF) Recommendations 6 and 7 also requires the implementation of the UNSC Resolutions on targeted financial sanctions regime for all FATF member countries.
- 1.5. The application of the UNSC resolutions and FATF Recommendations by South Africa are reflected in sections 26A, 26B, 26C and 28A of the FIC Act and sections 4 and 25 of the POCDATARA Act.

2. APPLICATION OF THIS PUBLIC COMPLIANCE COMMUNICATION

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

3. SANCTIONS FRAMEWORK

Sanctions aimed at combating terrorism and terrorist related activity

- 3.1. Section 4 of the POCDATARA Act read together with section 15 of the POCDATARA Act criminalises the financing and facilitating of terrorist and related activity, which offence applies to everyone, not just accountable institutions and reporting institutions.
- 3.2. In terms of section 25 of the POCDATARA Act, the President of South Africa must give notice when any specific entity is designated in a resolution of the UNSC. Such resolutions designate the following sanctioned persons/entities; ISIL (Da'esh), Al-Qaida, and associated individuals, groups, undertakings and entities in relation to terrorist financing.
- 3.3. The provisions as set out in section 25 of the POCDATARA Act are part of the targeted financial sanctions.
- 3.4. 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/terrorism.php. A consolidated list is available on the UNSC website https://www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list.

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

- 3.5. Sanctions regulated in terms of sections 26A, 26B and 26C of the FIC Act are referred to as targeted financial sanctions in terms of the FIC Act.
- 3.6. Section 26B read together with section 49A of the FIC Act, prohibits the financing of persons/entities who are subject to targeted financial sanctions in terms of section 26A of the FIC Act.
- 3.7. In terms of section 26A of the FIC Act, the Director of the FIC must give notice of persons/entities who have been designated as sanctioned persons/entities in a resolution of the UNSC. Such designations are 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.

- 3.8. The list as published by the Director of the FIC is made available on the FIC website and is referred to as the FIC targeted financial sanctions list (TFS list).

Scrutinising client information

- 3.9. Section 28A of the FIC Act places a direct obligation on accountable institutions to scrutinise client information to determine whether their clients are listed in terms of section 25 of the POCDATARA Act.
- 3.10. The accountable institution must obtain and scrutinise sufficient information for it to make a determination with a certain level of confidence, that it does not inadvertently have a sanctioned person/entity as a client.
- 3.11. Should an accountable institution identify that a client is a person/entity listed in terms of section 25 of the POCDATARA Act, they are required to freeze all property (including funds) associated to the sanctioned person/entity and would have to report this to the FIC within 5 business days.
- 3.12. [Guidance note 6A](#) provides further clarity on the scrutinising, freezing and reporting of clients. The obligation to scrutinise client information only applies to accountable institutions. The FIC however advises reporting institutions and all other persons that it is good practice to scrutinise their client information against both the UNSC consolidated sanctions list and the FIC TFS list.
- 3.13. Institutions that are not accountable institutions are therefore advised to implement a process to scrutinise their client information to ensure that they do not enter into impermissible financial arrangements with a sanctioned person/entity, which would result in them breaching the sanctions provisions.
- 3.14. Refer to [Guidance note 6A](#) for further clarity on the scrutinising, freezing and reporting of clients.
- 3.15. Institutions that are not accountable institutions are advised to implement measures to ensure they do not enter into impermissible financial arrangements with sanctioned persons/entities, which would result in them breaching the sanctions provisions. Such measures need not include implementing sophisticated systems to scrutinize client information.

3.16. The following UNSC resolutions currently form part of the targeted financial sanctions regime in terms of the FIC Act as at 10 December 2019. The list is subject to updating, for the most recent listing updates, refer to the FIC website:

- 3.16.1. UNSCR 1483 (2003): Iraq and Kuwait
- 3.16.2. UNSCR 1596 (2005): Democratic Republic of Congo
- 3.16.3. UNSCR 1591 (2005): Sudan
- 3.16.4. UNSCR 1636 (2005): Lebanon*
- 3.16.5. UNSCR 1718 (2005), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017), 2375 (2017), 2397 (2017): Democratic People's Republic of Korea
- 3.16.6. UNSCR 1844 (2006): Somalia
- 3.16.7. UNSCR 1907 (2009): Somalia and Eretria
- 3.16.8. UNSCR 1970 (2011): Libya
- 3.16.9. UNSCR 2140 (2014): Yemen
- 3.16.10. UNSCR 2206 (2015): Sudan and South Sudan
- 3.16.11. UNSCR 2374 (2017): Mali

Note: this list is in terms of Government Gazette Notice No. 42369 and is subject to change.

3.17. These UNSC resolutions listed in the Government Gazette above relate specifically to financial sanctions that have an associated asset freeze obligation.

3.18. 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 UNSC pursuant to the UNSC resolution 1636 (2005) to date. Therefore, no names of persons/entities are contained in either the UNSC consolidated list or the FIC targeted financial sanctions list. Accountable institutions are advised to apply business judgement and apply the approach contained in its Risk Management Compliance Programme (RMCP) in monitoring UNSC Resolution 1636 (2005).

4. COMPARISON OF THE SANCTIONS REGIMES IN SOUTH AFRICA

	Targeted financial sanctions in terms of POCDATARA Act	Targeted financial sanctions in terms of FIC Act
Applicable UNSC resolution(s)	UNSCR 1267 (1999), 1989 (2011) and 2253 (2015). <i>Note: this list is in terms of Government Gazette Notice No.40981 and is subject to change.</i>	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). <i>Note: this list is in terms of Government Gazette Notice No. 42369 and is subject to change.</i>
Issuer of resolution	UNSC	UNSC
South African implementer of resolution	South African Police Service	FIC
Focus of resolution	Designates sanctioned persons/entities, ISIL (Da'esh), Al-Qaida, and associated individuals, groups, undertakings and entities in relation to terrorism and 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 Act	Section 26A, 26B and 26C 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 persons who carry on a business, is in	Section 28A of the FIC Act applies to accountable institutions only. Section 29 applies to all accountable institutions, reporting institutions and persons who carry on a business, is in

	charge of, manages or who is employed by a business. Section 12 of POCDATARA Act applies to all persons	charge of, manages or who is employed by a business
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 client is flagged on UN resolution	Freeze funds and or property. Do not proceed with transaction or business relationship. Report accordingly	Freeze funds and or property. Do not proceed with transaction or business relationship. Report accordingly
Where searchable lists could be found	SAPS website https://www.saps.gov.za/resource_centre/acts/terrorism.php and https://www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list	FIC website http://www.fic.gov.za/International/sanctions/SitePages/Home.aspx

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

Risk and risk management and compliance programme considerations

- 5.1. The process of scrutinising client information must be comprehensively documented in the accountable institutions' RMCP (Refer to [Guidance note 7](#)).
- 5.2. Targeted financial sanctions, in terms of the FIC Act and the POCDATARA Act, are not dependent on the risk identification or classification of a client. Should the client, or potential client be identified as a person/entity on the UNSC resolutions list, the accountable institution must freeze all property (including funds) associated with the client and may not proceed with any further transactions.
- 5.3. There can be no scenario whereby a client's details are not scrutinised to ensure that the accountable institution is not dealing with sanctioned persons/entities. Scrutiny of clients and potential clients must take place regardless of the risk associated with the clients. In other words, an accountable institution would not be permitted to refrain from scrutinising the

information of low risk clients against the relevant UNSC resolutions based upon the fact that they are low risk.

- 5.4. There may, however, be scenarios whereby certain clients' details are scrutinised more frequently than others in order to identify and mitigate the heightened risk of an institution dealing with a sanctioned person/entity. Following a risk-based approach, the higher the targeted financial sanctions risk that, a particular client type, product/service, and jurisdiction poses to the institution, the greater the level of scrutiny required of the client's information.
- 5.5. Although the FIC Act does not require an accountable institution to have a screening functionality, should the accountable institution fail to identify that a client is listed as a sanctioned person/entity, the accountable institution will be found to be in contravention of the targeted financial sanctions.
- 5.6. Where there is a delay in the implementation of a sanction in relation to a South African targeted financial sanctions regimes lists (i.e. the addition, removal or alteration of a name), the accountable institution should consider preparing their internal processes to immediately accommodate this change once implemented. Although there is no risk of non-compliance to the South African targeted financial sanctions regime during this delay, consideration must be given to international sanctions provisions and the business risk that may result.

Application of the targeted financial sanctions regimes

- 5.7. The prohibitions relating to the targeted financial sanctions regimes are absolute and must be applied by all persons in respect of all sanctioned person/entities that are either the accountable institutions clients and/or potential clients.
- 5.8. The targeted financial sanctions regimes require that no person may directly, indirectly, in whole or in part enter into or facilitate a transaction for persons/entities that is listed on the UNSC resolutions.
- 5.9. In an attempt to circumvent detection that a person/entity is listed on a targeted financial sanctions regime, such listed person/entity may attempt to hide behind the structure of an entity or structure transactions in such a way so as to distance themselves. Accountable institutions must consider the risk of being misused unwittingly and unknowingly in this manner to facilitate a transaction for, or on behalf of a sanctioned person/entity and implement controls as part of its RMCP to mitigate the targeted financial sanctions risk.

- 5.10. It is for this reason that the sanctions prohibition extends beyond the specific person/entity designated by the UNSC and could include instances where the clients are acting on behalf of another person, or where another person is acting on behalf of the client, or where the client is linked to a sanctioned person/entity.
- 5.11. For an accountable institution to ensure that they do not participate or are not party to any transactions which would seek to circumvent the targeted financial sanctions regimes, they must implement targeted financial sanctions provisions where:
- 5.11.1. A client/potential client is a sanctioned person/entity; and/or
 - 5.11.2. The client is not a sanctioned person/entity, but the associated parties to the client are sanctioned persons/entities. In this instance, the client is subject to the targeted financial sanctions provisions through association with the sanctioned entity/person.
- 5.12. The information relating to such associated persons/entities who may be linked to clients, where available and to the extent to which it is known by the accountable institution, should be scrutinised by the accountable institution to determine if such an indirect persons/entity are sanctioned.
- 5.13. An accountable institution should determine the likelihood of its client being a sanctioned person/entity, and the likelihood that the client may later become sanctioned person/entity. The effort and resources applied in mitigating this sanctions risk are dependent on this likelihood.

Methods for scrutinising information

- 5.14. Depending upon the size of the accountable institution's client base, and sophistication of systems, the accountable institution must consider the likelihood that a client may potentially be listed on a targeted financial sanctions list or linked to sanctioned persons/entities based upon various factors including but not limited to; the jurisdiction within which the accountable institution operates, the type, complexity and destinations of international fund transfers conducted by the client and the ownership structures. This would enable the accountable institution to have a better understanding of the targeted financial sanctions risks.
- 5.15. It is not the expectation of the FIC that the accountable institution performs extensive monitoring, with sophisticated or complex systems to scrutinise client information. The

process adopted for purposes of scrutinising client information against the TFS list and UNSC consolidated sanctions list can be done manually or can be an automated process.

- 5.16. The FIC TFS list is an up to date searchable list, that is downloadable and printable for audit records of all searches done. The FIC recommends accountable institutions make use of this free tool to assist in the scrutiny of client information against the section 26A FIC Act list.
- 5.17. The FIC TFS list has a free subscription functionality that will notify the subscriber of any changes made to the FIC TFS list in real time. This may be an added functionality to enable accountable institutions to scrutinise their client information against a smaller database.

Issued By:

The Director Financial Intelligence Centre

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