

GUIDELINES ON IMPLEMENTATION OF TARGETED FINANCIAL SANCTIONS RELATING TO PROLIFERATION FINANCING FOR CAPITAL MARKET INTERMEDIARIES

SC-GL/2-2018

1st Issued: 6 April 2018

**GUIDELINES ON IMPLEMENTATION OF TARGETED FINANCIAL SANCTIONS
RELATING TO PROLIFERATION FINANCING FOR CAPITAL MARKET
INTERMEDIARIES**

Effective Date upon 1 st Issuance:	6 April 2018
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1.0 INTRODUCTION

- 1.1 In response to growing concerns over the proliferation of nuclear, biological and chemical weapons and their means of delivery which continue to pose a significant threat to international peace and security, the United Nations Security Council (UNSC) has intensified efforts to strengthen its global sanctions regime in order to prevent, suppress and disrupt proliferation of weapons of mass destruction and its financing.
- 1.2 As is the case with other UNSC sanctions programmes, targeted financial sanctions (TFS) on countries and specifically identified individuals and entities (i.e. designated persons) is the primary aspect of its overall sanctions regime to effectively disrupt financial flows across known proliferation networks.
- 1.3 Recommendation 7 of the Financial Action Task Force (FATF) Standards requires countries to implement proliferation financing-related TFS made under United Nations Security Council Resolutions (UNSCRs). Under this standard, countries are required to implement targeted financial sanctions without delay to comply with UNSCRs relating to the prevention, suppression and disruption of the proliferation of weapons of mass destruction and its financing.
- 1.4 "Proliferation financing" refers to the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations.
- 1.5 Targeted Financial Sanctions relating to Proliferation Financing (TFS-PF) are applicable to persons designated by the UNSC or the relevant committees set up by the UNSC. Designation or listing criteria are:
 - (a) person engaging in or providing support for, including through illicit means, proliferation-sensitive activities and programmes;
 - (b) acting on behalf of or at the direction of designated person;
 - (c) owned or controlled by designated person; and
 - (d) person assisting designated person in evading sanctions, or violating UNSCR provisions.

1.6 In the context of Malaysia, the following legislation provides the legal basis for domestic implementation of TFS-PF in relation to UNSCRs imposed on the designated countries and persons:

- (a) *Strategic Trade Act 2010 (Act 708) (STA)*;
- (b) *Strategic Trade (United Nations Security Council Resolutions) Regulations 2010 (P.U. (A) 481/2010)*¹;
- (c) *Strategic Trade (Restricted End-Users and Prohibited End-Users) Order 2010 (P.U. (A) 484/2010)*;
- (d) *Strategic Trade (Delisting of Prohibited End-Users) Regulations 2014 (P.U. (A) 289/2014)*; and
- (e) *Strategic Trade (Unfreezing of Property in relation to Prohibited End-Users) Regulations 2014 (P.U. (A) 290/2014)*.

1.7 The *Guidelines on Implementation of Targeted Financial Sanctions relating to Proliferation Financing for Capital Market Intermediaries* is issued under section 158 and section 160A of the *Securities Commission Malaysia Act 1993 (SCMA)*.

1.8 The Securities Commission Malaysia (SC) may, upon application, grant an exemption from or variation to the requirements of these Guidelines if the SC is satisfied that–

- (a) such variation is not contrary to the intended purpose of the relevant requirement in these Guidelines; or
- (b) there are mitigating factors which justify the said exemption or variation.

¹ Regulation 3 of Strategic Trade (United Nations Security Council Resolutions) Regulations 2010 (P.U. (A) 481/2010) is set out in Appendix I.

2.0 APPLICABILITY

- 2.1 These Guidelines are applicable to a relevant capital market intermediary and its branches in Malaysia.
- 2.2 These Guidelines provide requirements for relevant capital market intermediaries regulated under the CMSA to comply with the obligations imposed under the relevant laws.
- 2.3 Where a capital market intermediary is jointly regulated by the SC and Bank Negara Malaysia (BNM) and is subjected to differing requirements, the more stringent requirements shall apply.
- 2.4 The Strategic Trade Controller may from time-to-time issue new guidelines or directives under the STA which a capital market intermediary may need to comply with. In this regard, the SC will notify all relevant capital market intermediaries of such issuances accordingly. Where there are differing requirements, the more stringent requirements shall apply.
- 2.5 These Guidelines are made in addition to and not in derogation of any other guidelines issued by the SC or any requirements as provided under the securities laws.
- 2.6 The board of directors must ensure that the capital market intermediary regularly reviews its policies, procedures and controls to ensure that they are effective and in line with these Guidelines and the relevant laws.
- 2.7 The board of directors are expected to keep abreast with international developments, including the relevant UNSCRs on weapons of mass destruction and FATF recommendations on proliferation financing.

3.0 DEFINITIONS

AML/CFT	means Anti-Money Laundering / Counter Financing of Terrorism;
Capital Market Intermediary	<p>means the following :</p> <p>(a) A holder of a Capital Market and Services License (CMSL) under section 58 of the CMSA carrying out regulated activities of -</p> <ul style="list-style-type: none"> (i) dealing in securities; (ii) dealing in derivatives; or (iii) fund management; <p>(b) A recognised market operator registered under section 34 of the CMSA; or</p> <p>(c) A registered person under section 76 of the CMSA that is registered under the <i>Guidelines on the Registration of Venture Capital and Private Equity Corporations and Management Corporation</i>;</p>
CMSA	means <i>Capital Market and Services Act 2007</i> ;
Designated Person	means person who has been designated under the Second Schedule of the Strategic Trade (Restricted End-Users and Prohibited End-Users) Order 2010 (<i>P.U. (A) 484/2010</i>);
FIED	means the Financial Intelligence and Enforcement Department of Bank Negara Malaysia;
Related Party	<p>means -</p> <p>(a) person acting on behalf of or at the direction or under the control of designated person;</p> <p>(b) person engaged in or providing support for, including through illicit means, proliferation-sensitive activities and programmes;</p>

	<p>(c) person assisting designated person in evading sanctions, or violating resolution provisions; and</p> <p>(d) person with joint ownership or the beneficiaries of the assets (which includes property) of a designated person;</p>
Relevant Laws	<p>means -</p> <p>(a) <i>Strategic Trade Act 2010</i> (Act 708) (STA);</p> <p>(b) Strategic Trade (United Nations Security Council Resolutions) Regulations 2010 (<i>P.U. (A) 481/2010</i>);</p> <p>(c) Strategic Trade (Restricted End-Users and Prohibited End-Users) Order 2010 (<i>P.U. (A) 484/2010</i>);</p> <p>(d) Strategic Trade (Delisting of Prohibited End-Users) Regulations 2014 (<i>P.U. (A) 289/2014</i>); and</p> <p>(e) Strategic Trade (Unfreezing of Property in relation to Prohibited End-Users) Regulations 2014 (<i>P.U. (A) 290/2014</i>);</p>
STR	means a Suspicious Transaction Reporting, to be submitted to FIED as in Appendix V ;
Strategic Trade Controller	has the same meaning assigned to the word Controller in the <i>Strategic Trade Act 2010</i> ;
TFS-PF	means Targeted Financial Sanctions relating to Proliferation Financing;
UN	means United Nations;
UNSCR	means United Nations Security Council Resolution.

4.0 COMBATING PROLIFERATION FINANCING

Requirements on maintenance of sanctions list

- 4.1 A capital market intermediary must put in place and implement policies and procedures to-
- (a) keep itself updated with the various resolutions passed by the United Nations Security Council on TFS-PF, in particular the list of countries and persons designated under the relevant UNSCR published on the UN website as and when there are new or subsequent decisions by the relevant UNSC Sanctions Committee; and
 - (b) maintain an updated and current database of names and particulars of designated persons in the UN Consolidated List to enable it to detect suspected proliferators.
- 4.2 Explanatory notes in relation to maintenance of sanctions list are set out in **Appendix II.**

Requirement to conduct screening on customers

- 4.3 A capital market intermediary must conduct screening on its existing, new and potential customers, to check for any positive name matched with any designated person.
- 4.4 A capital market intermediary must screen its entire customer database without delay when new names are listed in an UNSCR.
- 4.5 The obligation to conduct screening on customers also includes funds derived from property owned or controlled directly or indirectly by the designated person or by any of its related party. In this regard, a capital market intermediary must conduct checks on–
- (a) relationship and transactions connected with the designated person;
 - (b) properties or accounts that are jointly owned and/or indirectly controlled by the designated person; and

- (c) parties related to the frozen accounts including beneficial owners, signatories, power of attorney relationships, guarantors, nominees, trustees, assignees and payors.

4.6 If there is a positive name match, a capital market intermediary must take reasonable and appropriate measures to verify and confirm the identity of its customer against the designated person.

Guidance

- (a) *According to the standards prescribed by the FATF, "without delay" means, ideally within a matter of hours of a designation by the UNSC or its relevant Sanctions Committee. The phrase "without delay" should be interpreted in the context of the need to prevent the flight or dissipation of funds or other assets which are linked to the financing of proliferation of weapons of mass destruction.*
- (b) *A capital market intermediary is also advised to search, examine and analyse past financial activities of the designated person or related party, where relevant.*
- (c) *A capital market intermediary must always be wary of the possible use of among others, false identities, dual nationalities, multiple names and identities when performing name searches for each designated person to prevent unintended omissions.*
- (d) *The screening obligations under these Guidelines extend to the delisting of affected customers from the list of countries and persons designated under the relevant UNSCRs.*
- (e) *A capital market intermediary is encouraged to undertake their own proliferation financing risk assessment, including the consideration of proliferation financing typologies, when reviewing transactions and customer information collected through their existing AML/CFT obligations and customer due diligence programmes, if applicable.*

Requirement to freeze, block and reject

- 4.7 Once a customer's identity as a designated person is confirmed, a capital market intermediary must freeze the customer's funds, properties or accounts or any transaction executed by the customer to prevent the flight or dissipation of the funds, other properties or assets owned or controlled directly or indirectly by the customer without delay.
- 4.8 The freezing of funds, properties or accounts shall remain in effect until-
- (a) the designated person is delisted by the UNSC; or
 - (b) it is confirmed that the customer's funds, properties or accounts have been inadvertently affected by virtue of him having a same or similar name with a designated person (false positive).

Guidance on False Positives

- (a) *A capital market intermediary may forward queries to the SC to determine whether the customer is a designated person in the case of similar or common names.*
- (b) *Any query submitted to the SC must include any additional information, copies of identification documents and relevant analysis conducted by the capital market intermediary.*
- (c) *A capital market intermediary should advise any customers who complain about their accounts being inadvertently frozen or transactions being erroneously rejected or blocked to contact the Strategic Trade Controller under the STA to verify the false positive match.*

- 4.9 If circumstances in paragraph 4.8(b) arose, an application may be made by the customer to the Strategic Trade Controller under the Strategic Trade (Unfreezing of Property in relation to Prohibited End-Users) Regulations 2014 (*P.U.(A) 290/2014*) for the unfreezing of such funds, properties and accounts.

- 4.10 Where the screening assessment results in a match with a potential or new customer, a capital market intermediary must reject the customer if the transaction has not commenced.

Guidance

- (a) *Funds, properties or accounts that are owned or controlled indirectly by the designated person includes situation where the designated person is a director of a customer. In such instance, once the capital market intermediary is satisfied that the director owns or controls directly or indirectly the funds, properties or accounts of the customer, the capital market intermediary is required to freeze.*
- (b) *The obligation to freeze funds, properties or accounts of a designated person continues until the person is delisted from the sanction lists. The freezing obligations remains even after the designated person passed away.*
- (c) *If an asset is owned or controlled by a designated person and the interest owned or controlled by the designated person cannot be segregated, then the entire asset should be subjected to freezing.*
- (d) *Notwithstanding the funds, properties or accounts are frozen, a capital market intermediary may continue receiving dividends, interests, or other benefits, but such benefits shall still remain frozen, so long as the designated person continue to be listed.*
- (e) *No outgoing payment should be made from the frozen funds, properties or accounts including payment of any fees or service charges for maintaining the frozen fund without prior written authorisation of the Strategic Trade Controller in consultation with the SC.*

5.0 Reporting requirements

- 5.1 A capital market intermediary must immediately report to the SC on any freezing, blocking or rejection actions undertaken in accordance with paragraph 4.7 towards the identified funds, properties or accounts.
- 5.2 The form for reporting to the SC upon determination of a name match and actions taken by the capital market intermediary is attached as **Appendix III**.
- 5.3 A capital market intermediary who has reported positive name matches and has control of frozen funds, properties or accounts of a designated person must report to the SC on any change to such frozen funds, properties or accounts by 31 January in the next calendar year (periodic reporting).

Guidance

Examples of changes to the frozen funds, properties or accounts of customers includes among others, an increase in the funds or value of the property frozen due to interest payments or dividends pay outs.

- 5.4 The form for periodic reporting to the SC is set out in **Appendix IV**.
- 5.5 A capital market intermediary must submit a suspicious transaction report (STR) to the FIED in the following circumstances:
- (a) In the event of positive name matches arising from ongoing screening of their customer database involving designated person or person identified as related party related to the designated person; and
 - (b) Where there is an attempted transaction by any of the designated person or its related party.
- 5.6 The details on the lodgement of STR with FIED are set out in **Appendix V**.

6.0 Contact Information

6.1 The contact point for the SC and Strategic Trade Controller in relation to TFS-PF are:

Securities Commission Malaysia

Director,
Intermediary and Fund Supervision,
Securities Commission Malaysia,
3 Persiaran Bukit Kiara,
Bukit Kiara,
50490 Kuala Lumpur
Tel: 03-6204 8000
Website: www.sc.com.my

Strategic Trade Controller

Strategic Trade Secretariat,
Ministry of International Trade and Industry,
Level 4, MITI Tower, No.7, Jalan Sultan Haji Ahmad Shah,
50622 Kuala Lumpur
Tel: 03-8000 8000
E-mail: admin.sts@miti.gov.my
Website: <http://www.miti.gov.my/index.php/pages/view/sta2010>

REGULATION 3 OF STRATEGIC TRADE (UNITED NATIONS SECURITY COUNCIL RESOLUTIONS) REGULATIONS 2010 (P.U. (A) 481/2010)

Regulation 3 of the Strategic Trade (United Nations Security Council Resolutions) Regulations 2010 (P.U. (A) 481/2010) requires the following counter-proliferation financing measures to be taken in relation to the countries and persons designated under the Strategic Trade (Restricted End-Users and Prohibited End-Users) Order 2010 (P.U. (A) 484/2010) in accordance with the relevant UNSCRs:

- (a) Freezing of the funds and other financial assets or economic resources of such countries or persons that are located in Malaysia;
- (b) Prohibition of investment in Malaysia by such countries or persons involving any restricted activities²;
- (c) Prevention of the provision of financial services, including insurance or re-insurance, or the transfer to, through, or from Malaysia, or to or by Malaysian nationals or entities organised under Malaysian law (including branches abroad), or persons or financial institutions in Malaysia, of any financial or other assets or resources if there is information that provides reasonable grounds to believe that such services, assets or resources could contribute to any restricted activity in any designated country;
- (d) Prohibition of such other activities as may be required under the relevant decision of the UNSC.

² "Restricted activity" is defined under section 2 of the STA to mean:

- a) Any activity that supports the development, production, handling, usage, maintenance, storage, inventory or proliferation of any weapon of mass destruction and its delivery systems; or
- b) Participation in transactions with persons engaged in such activities;

EXPLANATORY NOTES IN RELATION TO MAINTENANCE OF SANCTIONS LIST

1. The sanction lists are available in the respective UNSCR sanctions webpage (e.g. 1718 for DPRK and 2231 for Iran), under the heading of 'Sanction List Materials' or '2231 List' including:
 - (a) DPRK: United Nations Security Council Committee established pursuant to Resolution 1718 (2006)
 - (b) Iran: United Nations Security Council Resolution 2231 (2015)
2. The updated UN Consolidated List can be obtained at <http://www.un.org/> or <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>
3. A capital market intermediary must take note that Strategic Trade (Restricted End-Users and Prohibited End-Users) Order 2010 (*P.U. (A) 484/2010*) provides for an automatic application of the UNSCR lists by making reference to the updated list in the UN website. Therefore, for the UNSCR lists, a capital market intermediary is advised to update its database regularly, without delay.
4. A capital market intermediary may consider subscribing to electronic subscription services to maintain the updated UNSCRs.
5. The delisting of any designated country or designated person under UNSCRs shall automatically take effect when the designated country or person is removed by the relevant UNSC Sanctions Committee.

**MEASURES PURSUANT TO THE STRATEGIC TRADE (UNITED NATIONS SECURITY COUNCIL RESOLUTIONS)
REGULATIONS 2010([P.U. (A) 481/2010)**

REPORTING UPON DETERMINATION

UNSCR Number (If Available) :
Date of UN Listing :

Match with Designated Person(s) (YES / NO) :
If YES, please fill-up the details in the form below

No	UNSCR Permanent Ref No	Customer Name	Address	NRIC / Passport No.	Intermediary Name - if reporting done on group basis	Branch maintaining the account/facility	Account No.	Account Facility/ Type	Date services given (DD/MM /YYYY)	Account/ Facility Status (<u>on date of freezing</u>)	Date account frozen (DD/MM /YYYY)	Account Balance as at: _____	Related Parties	Remarks
1														
2														
3														
4														
5														

Details of Capital Market Intermediary

Name of Capital Market Intermediary :
Contact Person :
Designation :
Tel & Fax No. :
Email :
Reporting Date :

MEASURES PURSUANT TO THE STRATEGIC TRADE (UNITED NATIONS SECURITY COUNCIL RESOLUTIONS) REGULATIONS 2010 (P.U. (A) 481/2010)

PERIODIC REPORTING ON ANY CHANGES TO THE FROZEN OR BLOCKED FUNDS, PROPERTIES OR ACCOUNTS

(By 31 January of the following calendar year after first reporting on positive name match)

Custo mer No	UNSCR Permanent Ref No (e.g. KPi.001, IRi.001)	Custo mer Name	NRIC / Passport No.	Account No.	Account Facility/ Type	Date account frozen (DD/MM /YYYY)	Account/ Facility Status	Previous Account Balance (previous reporting)	Transaction Details (line by line transaction)					New Account Balance as at: (DD/MM/YYYY)	Remarks	
									Transaction No	Date (DD/MM /YYYY)	Transaction Type (for e.g. purchases, sales, redemptions, injections / deposits, withdrawals)	Remarks	Amount (MYR)			
1.									1.							
									2.							
									3.							
2.									1.							
3.									1.							

Note: Please provide supporting documents, i.e. copies of invoices and receipts for each transaction.

Details of Capital Market Intermediary

Name of Capital Market Intermediary :
 Contact Person :
 Designation :
 Tel & Fax No. :
 Email :
 Reporting Date :

SUBMISSION OF SUSPICIOUS TRANSACTION REPORT (STR)

1. A STR should be lodged with the FIED using the prescribed STR form which can be downloaded via the BNM's website.
2. The lodgement of the STR may be made by any of the following means:

Mail	<p>The physical forms should be placed in a sealed envelope and addressed to the following:</p> <p>Director Financial Intelligence and Enforcement Department Bank Negara Malaysia Jalan Dato' Onn 50480 Kuala Lumpur</p>
Fax	03-2693 3625
Email	str@bnm.gov.my
Others (where and if available)	<p>FIED's Financial Intelligence System (FINS)</p> <p>https://bnmapp.bnm.gov.my/fins2</p>