

IMPLEMENTATION OF TARGETED FINANCIAL SANCTIONS IN ZAMBIA

1.0 INTRODUCTION

Sanctions are an important tool in the hands of the international community to promote international peace and security. However, because not all sanctions have succeeded in preventing certain individuals, entities and UN Member States from undertaking activities prohibited by the UN Security Council, such as the proliferation of weapons of mass destruction (WMD), international organizations have introduced targeted financial sanctions. To prevent and suppress terrorist and proliferation financing activities, countries are required to implement targeted financial sanctions in accordance with the United Nations Security Council resolutions (UNSCRs or resolutions). These requirements are contained in the Financial Action Task Force (FATF) standards. In particular, FATF Recommendations 6 and 7 require countries to have the legal authority and to identify domestic competent authorities responsible for implementing and enforcing targeted financial sanctions.

In Zambia, significant steps have been taken to implement these standards through the designation of the relevant authorities and the introduction of a regulatory framework that guides both the public and private sector stakeholders.

2.0 TARGETED FINANCIAL SANCTIONS

The UNSC is one of the six principal organs of the UN, charged with ensuring international peace and security. One of the functions of the UNSC is to enact international sanctions against targeted entities. These sanctions are designed to focus on groups of people responsible for breaches of peace or threats to international peace and security¹.

¹ Thomas J Watson Jr Institute for International Studies, 2001, Targeted Financial Sanctions; A Manual for Design and Implementation

Some sanctions have been criticized as causing excessive suffering to civilian populations or inflicting economic damage on other states which are neighbors of target states². To address such concerns, the concept of targeted sanctions was developed.

The Thomas J. Watson Jr Institute of International Studies defines targeted financial sanctions as the use of financial instruments and institutions to apply coercive pressure on transgressing parties such as government officials and the elites that support them in an effort to restrict their behaviour.

Accordingly, countries are required to freeze immediately the **funds, other financial assets and economic resources** which are on their territories or under their jurisdiction at the date of adoption of the resolution or at any time thereafter that are owned or controlled, directly or indirectly by the sanctioned persons/entities; and further ensure that no funds or other assets and economic resources are made available to such persons and entities, except in specific situations, and under conditions specified in the UNSC resolutions.

3.0 THE FINANCIAL ACTION TASK FORCE (FATF) RECOMMENDATIONS

In the aftermath of the terrorist attacks in 2001, the international community introduced measures to track and block funds financing terrorism. The development of standards in the fight against terrorist financing was added to the mission of the FATF³ in the same year. The standards have since been expanded to deal with new threats such as the financing of proliferation of weapons of mass destruction. Targeted Financial Sanctions are covered under Recommendations 6 and 7 of the FATF standards.

The obligation referred to in recommendations 6 and 7 is to freeze *without delay*⁴ funds or other assets of designated persons and entities. Furthermore, the obligations expressed in these FATF recommendations cover any assets including, but not limited to, financial assets, economic resources, property of every kind, whether tangible or

² Ibid

³ The FATF is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.

⁴ The term “without delay” is defined in the Glossary of the FATF Recommendations

intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including, but not limited to, bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets⁵.

Recommendation 6 is intended to assist countries in implementing the targeted financial sanctions contained in the UNSCRs relating to the prevention and suppression of terrorism and terrorist financing –

- (i)* UNSCR 1267(1999) and its successor resolutions (the Al-Qaida/Taliban sanctions regimes);
- (ii)* UNSCR 1373(2001); and
- (iii)* any future UNSCRs which impose targeted financial sanctions in the terrorist financing context.

Recommendation 7 focuses on preventive measures that are necessary and unique in the context of stopping the flow of funds or other assets to proliferators or proliferation; and the use of funds or other assets by proliferators or proliferation, as required by the United Nations Security Council.

The UN Security Council has a two-tiered approach to counter proliferation financing⁶:

- a) a broad-based provisions both prohibiting the financing of proliferation-related activities by non-state actors and requiring countries to establish, develop, review and maintain appropriate controls on providing funds and services, such as financing, related to the export and trans-shipment of items that would contribute to WMD proliferation.
- b) country-specific resolutions or designation lists against or involving individuals and entities in the Democratic People's Republic of Korea (DPRK) and the Islamic Republic of Iran (Iran).

⁵ FATF, 2013, International Best Practices, Targeted Financial Sanctions Related to Terrorism and Terrorist Financing

⁶ FATF, 2018, FATF Guidance on Counter Proliferation Financing

It should be noted however that although the UN embargo against Iran has now ended (October 2020) together with the other UN sanctions on Iran, the UN still maintains a smaller designation list of Iranian entities and individuals designated for a travel ban/asset freeze for their involvement in ballistic missile programs etc. Currently there are 23 individuals and 61 entities on the list.

For ease of reference, see the list available here: <https://www.un.org/securitycouncil/content/2231/list>

4.0 IMPLEMENTATION OF TARGETED FINANCIAL SANCTIONS

To ensure adequate compliance, controls, and reporting in the private sector, countries are expected to work with the private sector to:

- (i) facilitate co-operation and compliance by the private sector in identifying and freezing funds or other assets of designated persons and entities, and
- (ii) prevent designated persons and entities from conducting financial or other transactions within their territories or through their financial institutions⁷.

The requirements to comply with asset freeze obligations should be clearly articulated to the private sector, and should include not just Financial Service Providers (FSPs), but also designated non-financial businesses and professions (DNFBPs). These private sector players are known as reporting entities under the Financial Intelligence Centre Act No. 46 of 2010.

The authorities should therefore regularly review and update lists of persons and entities subject to asset freeze measures, to provide the most current and accurate identifiers on listed entities. Reporting entities on the other hand need to ensure that the necessary systems and procedures are in place to allow them to screen their customers and implement an asset freeze without delay, once there is a positive match.

Effective freezing regimes are critical to combating the financing of terrorism and proliferation of WMDs, and as a preventive tool, accomplish much more than freezing

⁷ FATF, 2013, International Best Practices Targeted Financial Sanctions Related to Terrorism and Terrorist Financing

funds or other assets. According to the FATF International Best Practices on Targeted Financial Sanctions, effective freezing regimes combat terrorism by:

- a) Deterring non-designated persons or entities who might otherwise be willing to finance terrorist activity.
- b) Exposing terrorist financing “money trails” that may generate leads to previously unknown terrorist cells and financiers.
- c) Dismantling terrorist financing networks by encouraging designated persons or entities to disassociate themselves from terrorist activity and renounce their affiliation with terrorist groups.
- d) Terminating terrorist cash flows by shutting down the pipelines used to move terrorist related funds or other assets.
- e) Forcing terrorists to use more costly and higher risk means of financing their activities, which makes them more susceptible to detection and disruption.
- f) Fostering international co-operation and compliance with obligations under the AlQaida/Taliban sanctions regimes, and resolution 1373(2001).

Zambia has a legal framework, though with limitations, to implement the UNSCRs relating to the financing of terrorism and proliferation. The legal regime governing the implementation of freezing measures for targeted financial sanctions pursuant to the UN Security Council Resolutions is the Anti-Terrorism and Non-Proliferation Act, No. 6 of 2018 and the Anti-Terrorism (United Nations Resolutions Implementation) Regulations, 2017.

The implementation of the sanction lists is enforced by the National Anti-Terrorism Centre (NATC) which has the mandate to implement the Regulations by managing the listing and de-listing of designated persons or entities and facilitating the receipt and dissemination of the sanctions lists to the supervisory authorities and reporting entities.

In 2017, the NATC issued Guidelines on how to access and implement the Sanctions List to supervisory bodies, reporting entities and other stakeholders. Through these guidelines reporting entities have been provided with guidance on what course of

action to take in case of a positive match. Zambia has in the recent past (2019) collaborated with the UN Panel of Experts to strengthen the system to guard against North Korean entities and individuals operating in Zambia.

5.0 CONCLUSION

Targeted financial sanctions are a preventive tool that helps to disrupt and suppress terrorist and proliferation financing activities and to protect the global financial system from abuse by terrorist organizations and proliferators. Efforts to combat terrorist and proliferation financing are greatly undermined if countries do not freeze the funds or other assets of designated persons and entities quickly and effectively. For reporting entities the importance of complying with the asset freezing obligations cannot be over-emphasized, as non-compliance could result in sanctions being imposed on both the institution and the country.

For Zambia to effectively implement the UNSC resolutions and comply with the FATF recommendations relating to targeted financial sanctions, the country must continue to improve its legal framework to deal with proliferation financing and adopt clear mechanisms for the dissemination of sanctions lists to supervisory authorities, reporting entities and other stakeholders. In particular, the NATC should develop and implement mechanisms to ensure Supervisors disseminate the updated list to the reporting entities without delay after receiving it from the NATC and channels feedback to it in the event of a positive match. The NATC in collaboration with the FIC should continue to raise awareness on targeted financial sanctions relating to financing of proliferation. Reporting entities should voluntarily and effectively implement Targeted Financial Sanctions. Lastly, one cannot overemphasize the importance of collaboration among competent authorities for effective implementation of Targeted Financial Sanctions.

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