



AML/CFT REFRESHER NOTE CONSIDERING THE RECENT INTERNATIONAL SANCTIONS ADOPTED IN RESPONSE TO THE PREVAILING SITUATION OF UKRAINE

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Acronyms:

| | |
|-------------------------------|---|
| AML/CFT | Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation |
| CDD | Customer Due Diligence |
| EDD | Enhanced Due Diligence |
| FATF | Financial Action Task Force |
| FIAMLA | Financial Intelligence and Anti Money Laundering Act 2002 |
| FIAMLR 2018 | Financial Intelligence and Anti-Money Laundering Regulations 2018 |
| FIU | Financial Intelligence Unit |
| ML/TF/PF | Money Laundering/ Terrorism Financing/ Proliferation Financing |
| NSS | National Sanctions Secretariat |
| STR | Suspicious Transaction Report |
| TFS | Targeted Financial Sanctions |
| UN | United Nations |
| UNSCR | United Nations Security Council Resolutions |
| UNSC Consolidated List | United Nations Security Council Consolidated List |
| UNSA | United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019 |

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Introduction

In light of the recent invasion of Ukraine by Russia, the Financial Intelligence Unit (FIU) wishes to highlight the importance of ensuring that reporting persons with exposure to jurisdictions that present higher risks have adopted the appropriate governance and internal systems and controls in place for dealing with clients representing higher risk. The purpose of this publication is to remind reporting persons of their obligations under The United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Act 2019 ('UNSA 2019')¹ and other related AML/CFT obligations. Reporting persons should review and assess the adequacy of their own systems and controls for identifying and mitigating existing and/or increased, risks arising within their client bases.

Senior Management, including the board of directors and MLROs, are responsible for the effective management and assessment of a reporting person's risks, and have to ensure that the risk management system adapts to the sanctions risks exposed.

Targeted Financial Sanctions (TFS)

The Financial Action Task Force (FATF) Recommendations² 6 and 7 require countries to implement Targeted Financial Sanctions related to Terrorism, Terrorism Financing (Rec6) and Proliferation Financing (Rec7).

- TFS are sanctions imposed through United Nations (UN) Security Council Resolutions (UNSCRs).
- TFS are:
 - (i) *Targeted* because they apply to specific individuals and entities identified by the UN Security Council (or relevant UN Committees) as contributing to a particular threat to, or breach of, international peace and security;
 - (ii) *Financial* because they involve the use of financial instruments – e.g. asset freezes/blocking of transactions/prohibitions; and
 - (iii) *Sanctions* because they are coercive measures applied to effect change.
- As a member state of the UN, Mauritius is committed to implement the UNSCRs.
- The UNSA enacted in May 2019 provides the legal framework for implementing TFS.

¹ [UNSA 2019
http://www.fiumauritius.org/English/AML%20CFT%20Framework/Documents/2019/The%20United%20Nations\(%20Financial%20Prohibitions,%20Arms%20Embargo%20and%20Travel%20Ban\)%20Sanctions%20Act%202019.pdf](http://www.fiumauritius.org/English/AML%20CFT%20Framework/Documents/2019/The%20United%20Nations(%20Financial%20Prohibitions,%20Arms%20Embargo%20and%20Travel%20Ban)%20Sanctions%20Act%202019.pdf)

² [FATF Recommendations 2012.pdf \(fatf-gafi.org\)](http://www.fatf-gafi.org)

Obligation to implement internal controls under the UNSA

Reporting persons must **implement internal controls** and other procedures as required under Section 41 of the UNSA to enable them to effectively comply with their obligations set under Section 23, 24, 25 the UNSA;

The internal controls **should include the screening of all clients and transactions against sanctions lists** with an effective system that is appropriate to the nature, size and risk of the business of the financial institution;

Reporting persons should **regularly check** relative sanction lists and screen on a regular basis their client databases against the same. Screening is to be carried out also with respect to prospective or potential clients. One should be aware of any revision or update of a sanction list, any revision or update is to be considered as a triggering event to recheck immediately one's client database.

The FIU has also published on its website a **video presentation** ([Targeted Financial Sanctions Overview and Obligations under the United Nations Sanctions Act 2019](#)) which explains the main provisions of the UNSA 2019.

What is Screening?

Screening of clients is defined as the comparison of one string of text against another to detect similarities which would suggest a potential match. The FIU has published a power point presentation on its website on [How to conduct TFS screening](#) (as one of the ways that such screening could be performed subject to nature & size of the reporting person).

As per Section 44 of the Guidelines on the implementation of TFS under the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019 (UNSA) (['UN Sanctions Act Guidelines'](#)), reporting persons are required to screen their clients against the **United Nations Security Council Consolidated List** ('UNSC Consolidated List')

The UNSC Consolidated List is available on [FIU's website](#) and UNSC website at the following link: <https://www.un.org/securitycouncil/content/un-sconsolidated-list>.

When to screen the UNSC Consolidated List and who to screen?

Reporting entities should ensure that they have the adequate screening system to maintain up-to-date information about its clients throughout the lifecycle of the client relationships. Screening should be conducted:

- prior & during on-boarding of clients;
- whenever the UNSC Consolidated List changes;
- upon a trigger event (for example change in directors or ownership); and
- throughout the life cycle of the client relationship.

The provisions are applicable to persons and entities specifically designated on the lists, as well as those who are acting on behalf of or at the direction of designated persons or entities and/or those who are owned or controlled by them, directly or indirectly. As such, reporting persons should not only conduct screening on names of designated persons/entities listed on the UN Sanctions Lists, but also identify the persons and entities linked to them.

At time of transaction, screening should be conducted for a potential match with sanctions lists. Screening should be focused at a point in the transactions where detection of sanctions risk is actionable – where a transaction can be stopped and funds frozen if required – and before a potential violation occurs.

TFS screening obligations apply to all clients and transactions, and there is no minimum financial limit, risk assessment or any other threshold as to when to conduct screening. TFS Screening has to be performed.

Prohibitions under section 23 and 24 of the UNSA

The FIU disseminates the list of parties ('Listed Parties') against which targeted sanctions have been imposed to reporting persons, investigatory authorities, supervisory authorities and any other relevant public and private agencies, registered on the goAML platform.

As soon as there is a designation or a listing, two prohibitions prevail under the UN Sanctions Act:

- A prohibition to deal with the funds or other assets of the designated or listed party under section 23; and

- A prohibition to make available funds or other assets to the designated or listed party under section 24.

Reporting persons are required to immediately freeze the assets of designated persons. In other words, this means ceasing any communications and securing the funds and other assets, including financial assets and economic resources, that are owned or controlled, directly or indirectly, by the persons or entities designated by the UNSC or the NSSEC. This also encompasses the freezing of funds, other financial assets and economic resources of persons or entities acting on behalf of, or at the direction of, those designated by the UNSC or NSSEC.

Reporting persons must also ensure that any funds or other assets, including financial assets and economic resources, are not made available to or for the benefit of designated persons or entities, persons or entities owned or controlled by them, or persons or entities acting on their behalf or at their direction.

Compliance with the above prohibitions will only be possible if reporting persons conduct screening and have procedures in place that can be followed when screening yields a positive match or even when it does not.

Obligations to Report under Section 25 of the UNSA

Pursuant to Section 25 of the UNSA, reporting persons are required to:

- immediately (**within 24 hours**), verify whether the details of the designated party or listed party match with the particulars of any client;
- identify whether the client (if matched with a name on the sanctions list) **owns any funds or other assets in Mauritius**;
- make a **report to the National Sanctions Secretariat (NSS)** and to their **AML/CFT supervisor** where funds or other assets have been found and also in cases where funds or other assets have not been found;
- Use the **reporting forms provided by the NSS** for the purpose of Section 23(4) and Section 25(2) of the UNSA to make reports of positive matches of their clients and of any funds or other assets identified. These forms can be accessed under the “Guidelines” tab of the NSS website³. Additionally, the forms are also accessible on the [FIU website](#); and

³ [National Sanctions Secretariat \(govmu.org\)](http://NationalSanctionsSecretariat.govmu.org)

- Other than reporting to **NSS and its AML/CFT supervisor**, under Section 39 of UNSA 2019, a reporting person must immediately **file a Suspicious Transaction Report (STR)** to the FIU in accordance with section 14 of FIAMLA.

AML/CFT obligations and TFS

The imposition of sanctions and other restrictive measures can have an impact on reporting persons' compliance with their AML/CFT obligations, including when carrying out Customer Due Diligence (CDD) measures.

The following are some key areas where additional attention should be exercised by reporting persons:

- **Risk Understanding and Assessment**

The FIU expects that reporting persons periodically, and as a result of trigger events, review, assess and document the adequacy of their entity risk assessment. Reporting persons are encouraged to conduct those reviews and assessment in a timely manner to ensure that the financial crime risk associated to their client bases, and the associated mitigating controls, are accurately reflected and should also adapt to changes in the risk profile of the client base. It is therefore recommended that reporting persons update their entity risk assessment due to the ongoing situation in Ukraine.

Section 17 of the FIAMLA stipulates that every reporting person has to consider jurisdictions, entities and individuals who are subject to sanctions and restrictive measures when assessing the associated ML/TF/PF risks.

Client risk assessment is also fundamental in driving a risk-based approach to customer due diligence measures and ongoing monitoring. The client risk assessment should consider all risk factors which are associated to the reporting person, its client base and the products and services offered and should be updated in the event of changes in these risk factors.

Reporting persons should ensure that they have a documented business risk assessment and client risk assessment procedure and methodology which are periodically reviewed and assessed to ensure that they are appropriate for their business and risk profile.

Remember:

- Failure to comply with obligation of conducting risk assessment measures under Section 19 of the FIAMLA, shall commit an offence and shall, on conviction, be

liable to a fine not exceeding 10 Million rupees and to imprisonment for a term not exceeding 5 years.

- It is an offence for any Reporting Person not to comply with the FIAMLA and FIAMLR provisions concerning CDD and Record Keeping and on conviction, shall be liable to a fine not exceeding 10 Million rupees and imprisonment for term not exceeding 5 years.

- **Ongoing Monitoring and Reporting**

Ongoing monitoring, of both client transactions and their activities should be undertaken routinely throughout the course of a business relationship to enable the identification and scrutiny of complex or unusually large transactions, unusual patterns of transactions and any other activity that might by its nature present an increased risk of financial crime.

The frequency and intensity of ongoing monitoring should be driven by the level of risk presented by a client, particularly those having direct or indirect exposures to countries and individuals subject to sanctions or restrictive measures, and shall be subject to enhanced scrutiny.

Up-to-date and consistent policies and procedures will promulgate effective ongoing monitoring and adequately equipped the reporting persons' employees to identify high risk transactions or activities and being aware of relevant steps to be taken.

Should any part of ongoing monitoring be outsourced to a third party, including within the same group of companies, appropriate due diligence should be undertaken of the outsourcing provider to ensure that the services are carried out to the required standard. The legal obligation and liability lie with the Reporting persons and its Board of Directors to ensure that proper transactions monitoring and due diligence are carried out regularly.

Without prejudice to any reporting obligation to which the reporting person may be subject to under the FIAMLA or any other law, the breach of legally binding sanctions is a predicate offence. Any earnings related to this are therefore to be considered as proceeds of criminal activity. In case of positive matches, reporting persons have the obligation to report to the National Sanctions Secretariat and FIU as the supervisory body, to immediately freeze assets, if any, and to file a Suspicious Transaction Report (STR) to the FIU.

It should be noted that, in relation to the AML/CFT area, reference is not only being made those sanctions and restrictive measures which are legally binding and enforceable in terms of the FIAMLA 2002 and UNSA Act 2019, but also to those imposed by jurisdictions like the United Kingdom through the Office of Financial Sanctions Implementation

(‘OFSI’), the United States through the Office of Foreign Assets Control (‘OFAC’), the European Union through the European Commission Restrictive Measures (Sanctions) list and other jurisdictions. Though these other sanctions and restrictive measures are not legally binding under the Mauritian Law, they have a bearing on the application of AML/CFT measures by the reporting persons.

Remember:

- Failure to register with the FIU is an offence under section 14 of FIAMLA and regulation 7 of the 2019 Regulations.
- Failure to report STRs and Tipping Off are criminal offences and on conviction Reporting persons are liable to a fine not exceeding 1 million rupees and to imprisonment for a term not exceeding 5 years; and to a fine not exceeding 5 million rupees and to imprisonment for a term not exceeding 10 years as applicable

- **Beneficial Ownership**

The FIU advised reporting persons to be vigilant against potential efforts to evade sanctions and other restrictive measures imposed by relevant jurisdictions and these increased risks must be appropriately managed. Attention should be paid to whether any attempt to divest oneself of beneficial ownership is genuine or merely an attempt to conceal who is the actual beneficial owner, whilst the original beneficial owner retains control over the entity or arrangement through other means.

Reporting persons should ensure that they have proper policies and procedures in place to identify beneficial owners of legal persons and legal arrangements, pursuant to Regulations 6 and 7 of FIAMLR 2018 respectively. When onboarding new clients and conducting their screening for adverse information, subject persons should pay particular attention to information which may place the client or the beneficialowner in proximity of a sanctioned individual or of one that is very likely to be sanctioned.

Additionally, the onboarding of new client relationships should be able to identify whether or not the client relationship should be subject to the application of Enhanced Due Diligence (EDD) measures in accordance with the requirements of Section 17 of the FIAMLA. Such measures should proportionate and commensurate with the specific risks associated with each client.

EDD measures are required in instances where it is clear that there is a higher risk of money laundering and terrorism financing, and in a number of specific scenarios which include:

- Where a client has a connection to a high-risk jurisdiction;
- Where a client is a PEP

Remember:

Failure to keep BO information would have the following implications:

- Under S19(1)(a) of the FIAMLA, it is an offence punishable upon conviction with a fine not exceeding Rs 10 Million and a term of imprisonment not exceeding 5 years;
 - Under the FIAMLR 2018: a person who contravenes the above-mentioned sections of the FIAMLR 2018 shall commit an offence and on conviction be liable to a fine not exceeding Rs 1 Million and a term of imprisonment not exceeding 5 years;
 - Under the Companies Act 2001 (Act): As per the Companies Act 2001 (Act), where a company fails to comply with the Act, including BO information obligations, the company and every director of the company shall commit an offence and shall, on conviction, be liable to a fine not exceeding MUR 100,000.
- *Employee training and awareness*

Reporting persons need to ensure that regular AML/CFT trainings are provided to the relevant employees which would also include raising awareness of the reporting persons' own internal controls and procedures for dealing with higher risk clients and red flag indicators. Adequate and accurate training is imperative for an effective AML/CFT controls in place.

Enforcement Actions by Regulator for non-compliance

The FIU, in its function of AML/CFT regulator for the Real Estate, Dealer in Precious Metal and Stones and Individual Legal Professionals sectors determines the enforcement actions necessary in relation to identified AML/CFT breaches, and subsequently ensures, by engaging with the reporting persons, that the breaches identified are remediated.

Non-Compliance in carrying out effective customer due diligence measures, including the screening of the relevant sanctions lists such as the UNSC consolidated list is considered as a severe breach and the FIU ensures outright enforcement actions are taken in these cases.

In discharge of its functions, the FIU possesses an array of tools set out in the legislation to deal with reporting persons who have been found to be in breach of the relevant laws and guidelines and who have failed to take corrective measures to remediate deficiencies identified. The application of these sanctions varies according to the proportionality of the offence and the type of offence

The FIU is empowered to impose administrative sanctions, directions and compounding of offence on the reporting persons falling under its purview pursuant to sections 19H, 19L and 19P of the FIAMLA respectively.

Conclusion

Remember strong leadership and engagement by reporting persons, their senior management and the board of directors is crucial in the fight against ML/TF/PF. Reporting Persons must create a culture of compliance, ensuring that its relevant officers are well aware of and adhere to the AML/CFT obligations, policies & procedures designed to identify, mitigate and manage the risks being involved in ML/TF/PF.

Reporting persons are to bear in mind the importance of adhering to any applicable sanctions and of complying with the screening and freezing obligations emanating from the UNSA 2019, as well as with their AML/CFT obligations under FIAMLA and FIAMLA Regulations.

Reporting persons may submit any questions related to their obligations under the UNSA 2019 on compliance@fiumauritius.org. They may likewise submit any questions related to sanctions to the NSS on <https://nssec.govmu.org> and/or nssec@govmu.org.