REPUBLIC OF KENYA
FINANCIAL REPORTING CENTRE
OLD MUTUAL TOWERS, UPPER HILL, UPPER HILL ROAD
PRIVATE BAG 00200, NAIROBI TEL: +254 709858000

FINANCIAL REPORTING CENTRE CIRCULAR NO. 13 OF 2023

November 17, 2023

TO: CHIEF EXECUTIVES OF REPORTING INSTITUTIONS

Dear Sirs/Madams,

IMPLEMENTATION OF TARGETED FINANCIAL SANCTIONS RELATING TO PROLIFERATION FINANCING

---

1 Background

1.1. United Nations Member States are required to comply with the United Nations Security Council Resolutions, adopted under Chapter VII of the Charter of the United Nations, and in this case, on proliferation of weapons of mass destruction including their financing and delivery.

1.2. In particular, the United Nations Security Council Resolution (UNSCR) 1540 (2004) places obligations on member states to take necessary measures to penalize and prevent the activities that contribute to proliferation activities to ensure no state or non-state actor is a source or beneficiary of proliferation of nuclear, chemical, or biological weapons and their means of delivery.

1.3. The Financial Action Task Force (FATF), re-emphasizes the need for countries to implement the United Nations Security Council Resolutions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and it's financing.

1.4. As a United Nations member state, and a country subscribing to the FATF standards, Kenya is required to adopt and enforce appropriate laws and other effective measures to prevent persons and entities involved in the proliferation of weapons of mass destruction from raising, moving and using funds, consistent with the relevant UNSCRs.

2 Legal and Regulatory Framework

2.1 The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act of 2023 which came into effect on September 15, 2023 amended the Prevention of Terrorism Act, 2012 (POTA) and the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) to also cover the combating of the financing of weapons of mass destruction.

2.2 Section 4B of the amended POTA criminalizes the financing of proliferation acts and provides for penalties for committing the offence.

2.3 The POCAMLA now requires reporting institutions to also apply preventative measures to combat proliferation financing in addition to combating of money laundering and terrorism financing.

2.4 Section 42A of the amended POTA provides for the role of the Financial Reporting Centre and Supervisory Bodies to supervise and enforce the application of preventative measures covered under Part IV of the POCAMLA in relation to combating the financing of terrorism and combating the financing of proliferation acts by reporting institutions.

2.5 The split of measures relating to the implementation of the United Nations Security Council Resolutions on the Prevention and Suppression and Disruption of Terrorism Financing and those relating to the Prevention, Suppression and Disruption of Proliferation Financing has resulted into 2 pieces of subsidiary legislations namely; the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention and Suppression and Disruption of Terrorism Financing) Regulations, 2023 and the Prevention of Terrorism (Implementation of

the United Nations Security Council Resolutions on Prevention and Suppression and Disruption of Proliferation Financing) Regulations, 2023.

2.6 In particular, the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention and Suppression and Disruption of Proliferation Financing) Regulations, 2023 provide for the implementation of United Nations Security Council Resolution 1718 (2006) on Democratic People's Republic of Korea (DPRK) and United Nations Security Council Resolution 2231 (2015) on the Islamic Republic of Iran; and their subsequent resolutions or any future UNSCRs which impose targeted financial sanctions in the context of proliferation financing.

2.7 The new Regulations, the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention and Suppression and Disruption of Proliferation Financing) Regulations, 2023 were issued on November 14, 2023 and can be accessed through the Financial Reporting Centre's website https://frc.go.ke.

2.8 Pursuant to Regulation 12 (1), the Financial Reporting Centre, Supervisory Bodies and Self-Regulatory bodies shall ensure monitoring and compliance with the Implementation of United Nations Security Council Resolutions on Prevention and Suppression and Disruption of Proliferation Financing by reporting institutions.

2.9 The targeted financial sanctions[1] under UNSCRs 1718 & 2231 and subsequent resolutions as covered in the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention and Suppression and Disruption of Proliferation Financing) Regulations, 2023 include: -

[1] Targeted Financial Sanctions refer to both asset freezing and prohibitions to prevent funds or other assets from being made available, directly or indirectly, for the benefit of designated persons and entities.

2.8.1 Immediate[2] freezing[3] of the funds, other financial assets and economic resources[4] within the Kenyan territory that are owned or controlled, directly or indirectly by: -

a. designated persons or entities[5]
b. persons or entities engaging in or providing support for, including through illicit means, proliferation-sensitive activities and programmes;
c. persons or entities acting on behalf of or at the direction of designated persons or entities;
d. persons or entities assisting designated persons or entities in evading sanctions, or violating resolution provisions

2.8.2 Prohibition to Kenyan nationals or other persons and entities within the Kenyan territory from making any funds or other assets and economic resources available to or for the benefit of persons or entities listed in Para. 2.8.1 above, except in specific situations and specified conditions under the specific United Nations Security Council Resolutions.

3 Accessing the United Nations Security Council Listing[6]

3.8 The Secretary[7] to the Counter Financing of Terrorism Inter- Ministerial Committee is responsible for receiving and circulating the United Nations Security Council designations in connection to PF, including any updates to the sanctions list to reporting institutions, among the persons identified in Regulation 5(3) of the Prevention of Terrorism (Implementation of the

---

2 "without delay" or within twenty-four hours of a designation by the United Nations Security Council or its relevant Sanctions Committee

3 Prevent or restrain specific property or funds from being used, transferred, transacted, converted, altered, concealed, moved or disposed of without affecting the ownership thereof

4 Assets of every kind, whether movable or immovable, tangible or intangible, actual or potential, which are not funds and which may be used to obtain funds, goods or services

5 A person or entity designated pursuant to the applicable United Nations Security Council Resolutions adopted under Chapter VII of the United Nations Charter

6 identification of a person, organization, association or group of persons that is subject to targeted sanctions pursuant to the applicable United Nations Security Council Resolutions

7 Refers to the Director-General of the Financial Reporting Centre.

United Nations Security Council Resolutions on Prevention and Suppression and Disruption of Proliferation Financing) Regulations, 2023 in a timely manner and subject to Regulation 7.

3.9 The Centre shall electronically circulate the designations to reporting institutions using a wide range of mechanisms, including but not limited to the goAML platform, notice in the Financial Reporting Centre's website and access links to the lists in both the Financial Reporting Centre's website https://frc,go.ke and the goAML website https://goaml.frc.go.ke. Reporting institutions are also encouraged to visit the United Nations consolidated list in the Security Council's website https://www.un.org/securitycouncil/content/un-sc-consolidated-list.

4 Identifying Customers or Assets Owned or Controlled by Designated Persons

4.8 Upon receipt or access to the UNSC Listing, a reporting institution shall: -

a. immediately identify customers or any person, funds or other assets owned or controlled by persons or entities listed in section 2.8.1 above by verifying whether the details of a designated person or entity match with the particulars of any of their customers.

b. where funds or other assets are identified by a reporting institution, the institution shall freeze, without delay[8], the funds or assets held by the customer or any person in compliance with the relevant United Nations Security Council Resolution.

4.9 A reporting institution shall determine if a name is a true match by checking whether the identifiers of the designated persons or entities are similar to the identifiers of their customers, potential customer or beneficial owner. The identifiers for natural and legal persons or entities may include the following: -

[8] "without delay" means within twenty-four hours of a designation by the United Nations Security Council or its relevant Sanctions Committee.

a. Individuals- the Name, Aliases, Date of Birth, Nationality, ID or Passport information and last known address amongst others.
b. Legal persons or entities – the Name(s), Aliases, Address of registration, Address of branches and other information, amongst others.

4.10 While some identifiers may be the same and others differ, reporting institutions should take cognizance of the possibility of sanctions evasion through name variations or other methods and hence the need to demonstrate how these matches have been discounted.

4.11 As such, a reporting institution should not only take into consideration the knowledge they have with regards to their customer, potential customer, beneficial owner or transaction but also rely on other sources of information such as open source to assist in discounting the matches. If satisfied that the individual or entity is not a target[9], the reporting institution should not implement any targeted financial sanctions measures. However, the institution is required to maintain records relating to this process as required in POCAMLA and its Regulations.

5 Asset Freezing

5.8 Regulation 6 requires reporting institutions to freeze all funds or other assets that are owned or controlled by the designated person or entity "without delay" and take such actions as may be necessary to give effect to the requirements of the relevant resolution(s). As such, reporting institutions act as caretakers of the funds or properties frozen by them until they are provided with further directions by the Counter Financing of Terrorism Inter-Ministerial Committee (CFTIMC).

5.9 Any funds or assets subject to freezing may not be acquired, used, transferred, converted concealed, removed or otherwise dealt with in any

[9] Target means designated person or entity i.e. a person or entity designated pursuant to the applicable United Nations Security Council Resolutions adopted under Chapter VII of the United Nations Charter

manner by any person except with prior written approval by the CFTIMC in accordance with the UNSC procedures.

6 Ongoing Monitoring of Transactions

Regulation 9 requires reporting institutions to regularly review the sanctions list and monitor transactions in relation to designated persons or entities in an on-going basis to mitigate proliferation financing risks.

7 Prohibition to Making Funds and Other Assets Available.

7.1 Pursuant to Regulation 10, no person within Kenya shall make available any funds or other assets to or for the benefit of designated persons or entities unless licensed, authorised or otherwise notified in accordance with the relevant United Nations Security Council Resolutions.

7.2 Similarly, providing financial services for the benefit of persons or entities listed in section 2.8.1 above is prohibited.

8 Proliferation Financing Sanctions Evasion

A reporting institution should take cognizance of indicators of proliferation financing sanctions evasion which may include, amongst others: -

a. Customers hiding their identities by omitting or altering information.
b. Customers hiding their identities through use of corporate vehicles or creating structured mechanisms involving persons acting on behalf of designated persons or entities to obfuscate detection.
c. Transactions or customers with connections to high-risk countries for proliferation financing.

Any attempt to circumvent targeted financial sanctions constitutes a breach of the sanctions requirements, and as such, reporting institutions are required to have in place mechanisms to identify and disrupt sanctions evasion attempts.

9 Reporting Obligations

9.1 A reporting institution should report to the Counter Financing Inter-Ministerial Committee (CFTIMC) and the Financial Reporting Centre (FRC) any assets frozen or any actions they take in compliance with the prohibition requirements of the relevant UNSCRs, including attempted transactions.

9.2 Regulation 8 of POT-PFR provides the current procedures for reporting which include: -

a. Making a report on any funds or assets frozen or any action taken pursuant to the requirements of United Nations Security Council Resolutions to the Committee, within twenty four hours, in order to comply with the prohibitions under the relevant UNSCRs.

b. Making a report of any attempted transaction by a designated person or entity, by filing a suspicious transaction report to the Financial Reporting Centre.

9.3 Regulation 8(2) requires that the reports made to CFTIMC under this Regulation shall be made in the form as specified by the Centre. The Committee has provided the form in *Appendix 1* below for purposes of making this report. The completed form should be submitted via the email: tfs@frc.go.ke and within the timelines specified in the mentioned Regulation.

9.4 Regulation 8(3) further stipulates that the reports made to the Financial Reporting Centre under this Regulation shall be made in the form as specified by the Centre. In this regard, the Centre hereby specifies that the report shall be done in a similar way as other suspicious transactions

through the goAML application available at https://goaml.frc.go.ke . The suspicious transaction report should include the following information:-

(i) the account number;

(ii) the name of the account owner or holder;

(iii) the time of freezing of all subject accounts;

(iv) the balance of the account as at the time of freezing the funds;

(v) the related accounts, if any, including the balance of monies in the accounts as at the time of freezing; and

(vi) an explanation as to the ground for the identification of related accounts.

10 Non-compliance with Proliferation Financing Targeted Financial Sanctions

Non-compliance with the provisions of the targeted financial sanctions obligations communicated in this Circular is an offense under Regulation 25 of the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention and Suppression and Disruption of Proliferation Financing) Regulations, 2023.

11 Directive to Reporting Institutions

Based on the foregoing, the Centre hereby directs Financial Institutions and Designated Non-Financial Businesses and Professions to:

i. take note of the new developments in the Country's counter proliferation financing legal and regulatory framework and in particular, the new subsidiary legislation to the Prevention of Terrorism Act, the Prevention of Terrorism Act, 2012, and the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention and Suppression and Disruption of Proliferation Financing) Regulations, 2023.

ii. to immediately access the consolidated sanction lists in the United Nations Security Council's website https://www.un.org/securitycouncil/content/un-sc-consolidated-list.

iii. comply with all the obligations highlighted in this circular which include; identification of customers or assets owned or controlled by designated persons or entities; asset freezing; ongoing monitoring of transactions; prohibition to make funds and other assets available to designated persons and entities; monitor for attempted sanctions evasion; and reporting obligations.

iv. update their internal control policies, measures and other procedures to combat proliferation financing risks; and

v. ensure compliance with all Counter Proliferation Financing obligations covered in the Proceeds of crime and Anti-money Laundering Act, 2009, the Proceeds of crime and Anti-money Laundering Regulations, 2023, the Prevention of Terrorism Act, 2012, and the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention and Suppression and Disruption of Proliferation Financing) Regulations, 2023.

12 For any clarifications or further guidance, please contact the Centre through 0709858000 or compliance@frc.go.ke.

Please be guided accordingly.



SAITOTI K. MAIKA, MBS
DIRECTOR GENERAL, FINANCIAL REPORTING CENTRE

cc **The Governor**
Central Bank of Kenya
NAIROBI

The Chief Executive Officer
Insurance Regulatory Authority
NAIROBI

The Chief Executive Officer
Betting Control and Licensing Board
NAIROBI

The Chief Executive Officer
Capital Markets Authority
NAIROBI

The Chief Executive Officer
Sacco Societies Regulatory Authority
NAIROBI

The Chief Executive Officer
Retirement Benefits Authority
NAIROBI

The Chairperson
Estate Agents Registration Board
NAIROBI

The Chief Executive Officer
Institute of Certified Public Accountants of Kenya
NAIROBI

Name of person submitting the return	
Name of person submitting the return	
Date of submitting the return	

	DATE	DETAILS OF DESIGNATED PERSON OR ENTITY					SANCTIONS REGIME	DETAILS OF FUNDS/ACCOUNTS/ASSETS/PROPERTIES FROZEN						OTHER RELEVANT INFORMATION
	Date and time of freezing funds or asseets	Name of designated person or entity	Key identifiers (i.e. Date of Birth, Aliases, Nationality, ID/Passport information, Registration number, Address of registration e.t.c)	Name of person or entity if owned and/or controlled by a designated person or entity	Name of persons and entities acting on behalf of, or at the direction of designated persons or entities	Name of persons that jointly own or control, directly or indirectly, funds or assets with designated persons or entities	Name of relevant Sanctions Regime (UNSCR 1267/1089, UNSCR 1988, UNSCR 1373, UNSCR 1718, or UNSCR 2231	Account or Reference Number	Name of owner or holder of the account/ funds or assets	Type of funds or assets frozen	Currency of funds/account frozen	Value of funds or assets frozen	Balance of account as at the time of freezing	Please provide any additional information relevant to this report
1														
2														