

Obligations of Financial Institutions under the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019

The United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019 (the 'Act') enables the Government of Mauritius to implement targeted sanctions, including financial sanctions, arms embargo and travel ban, and other measures imposed by the United Nations Security Council under Chapter VII of the Charter of the United Nations, with a view to addressing threats to international peace and security, including terrorism, the financing of terrorism and proliferation of weapons of mass destruction.

The Act provides for the establishment of the National Sanctions Committee and National Sanctions Secretariat respectively.

The National Sanctions Committee

The National Sanctions Committee is vested with the following functions and powers under the Act:

- (a) Direct the Secretary for Home Affairs to declare, for the purposes of UNSCR 1373 or any other international obligations, a party as a designated party
- (b) Be responsible for identifying a party that meets the listing criteria for designation as a listed party on a United Nations Sanctions List
- (c) Make proposals for the listing of a party as a listed party to the relevant United Nations Sanctions Committee
- (d) Recommend the Secretary for Home Affairs to request another country to designate a party for the purposes of UNSCR 1373
- (e) Coordinate and promote effective implementation of the obligations under the UNSCRs in Mauritius
- (f) Coordinate international cooperation in the cross-border implementation of the UNSCRs between Mauritius and other countries and foreign counterpart agencies
- (g) Coordinate the development of, review and implement, national policies and activities for the effective implementation of the UNSCRs
- (h) Approve such guidelines developed by the National Sanctions Secretariat and
- (i) Make recommendations for legislative, regulatory and policy reforms for the purposes of the Act.

The National Sanctions Secretariat

The National Sanctions Secretariat provides assistance to the National Sanctions Committee in the administration of the Act and shall, in the discharge of its functions and exercise of its powers, inter alia,

- (a) keep and maintain, in such form and manner as the National Sanctions Committee may determine, a list of designated parties and provide access to the list of designated parties;
- (b) keep and maintain a list of funds or other assets frozen pursuant to a freezing order granted under the Act;
- (c) collect or solicit information from public sector agencies and any party that is reasonably believed to hold, control or has in his or its custody or possession, funds or other assets of a listed party;
- (d) facilitate the sharing of information with other agencies for the purposes of the Act;
- (e) issue such guidelines and disseminate such other relevant information as may be necessary for the effective implementation of the Act;
- (f) maintain a website with publicly available information relating to the Act;
- (g) publish information on relevant procedures for the purposes of the Act;
- (h) attend to the request forwarded by the Ministry of Foreign Affairs for a determination by the National Sanctions Committee as to whether there are reasonable grounds to declare a party as a designated party.

Listed Party

A listed party is any party listed by or under the authority of the United Nations Security Council.

The United Nations has established a list of parties ('Listed Parties') against which targeted sanctions have been imposed. The United Nations Security Council Consolidated List may be accessed at the following link: <https://www.un.org/securitycouncil/content/un-sc-consolidated-list>.

Designated Party

A designated party means a party declared as such by the Secretary for Home Affairs pursuant to section 9 or 10 of the Act.

The National Sanctions Committee is, under section 9(1) of the Act, empowered to direct the Secretary for Home Affairs to declare a party as a designated party where the National Sanctions Secretariat is satisfied on reasonable grounds that the party has committed any of the acts listed under the said section. On the said direction of the National Sanctions Committee, the Secretary for Home Affairs is required under section 9(2) of the Act to immediately declare that party as a designated party.

Further, where there is a third party request for declaration of a party as designated party under section 10 of the Act, the Secretary for Home Affairs is required, on the direction of the National Sanctions Committee under section 10(4) of the Act, to immediately declare that party as a designated party.

Guidance issued by the National Sanctions Secretariat

The National Sanctions Secretariat has issued a [Notice](#) under section 18 of the Act as well as an Explanatory Note on the implementation of [United Nations Sanctions Measures](#) which have been published in the Government Gazette of 5 October 2019.

The National Sanctions Secretariat has further, on 25 August 2020, issued Guidelines on the implementation of Targeted Financial Sanctions under the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019 (the ‘Guidelines’) under section 7(2) (f) of the Act.

The Guidelines provide for, *inter alia*, an overview of Proliferation Financing, Targeted Financial Sanctions Obligations, Implementation by reporting persons of the targeted financial sanctions obligations through sanctions screening, reporting obligations and procedures, authorisations and exemptions. Case studies are also provided in the annexes to the Guidelines.

The purpose of the Guidelines is to assist reporting persons, namely banks and other financial institutions licensed by the Bank of Mauritius, amongst others, with the implementation of the restrictive measures, in particular the financial prohibitions prescribed under the Act.

The National Sanctions Secretariat has also issued two templates with respect to the reporting obligations vested on reporting persons under the Act, as explained at (ii) above, namely:

- (i) Template for Notification to the National Sanctions Secretariat under section 23(4) of the Act; and
- (ii) Template for Reporting Positive Name Match under section 25(2) of the Act.

The Guidelines and Templates may also be accessed on the website of the National Sanctions Secretariat at the following link <http://nssec.govmu.org>, under the heading Guidelines.

Prohibitions imposed under the Act

The Act imposes three main targeted sanctions, namely financial prohibitions, arms embargo and travel ban, against listed parties or designated parties.

Accordingly, as from the date of any Notice given by the National Sanctions Secretariat under section 18(1)(a) of the Act, the following targeted sanctions shall apply immediately and shall continue to apply for as long as the party remains listed on the relevant United Nations Sanctions List or remains a designated party:

- (i) the prohibition to deal with funds or other assets of a listed party or designated party under section 23 of the Act;
- (ii) the prohibition on making funds or other assets available to a listed party or designated party under section 24 of the Act;
- (iii) the arms embargo under section 35 of the Act; and
- (iv) the travel ban under section 36 of the Act.

Obligations of Financial Institutions under the Act

Financial institutions are required to ensure adherence to the provisions of the Act, especially sections 23, 24 and 25 thereof, including the requirements of section 23(4) of the Act which provides as follows:

“Any person who holds, controls or has in his custody or possession any funds or other assets of a designated party or listed party shall immediately notify the National Sanctions Secretariat of –

- (a) details of the funds or other assets against which action was taken in accordance with subsection (1);*
- (b) the name and address of the designated party or listed party;*
- (c) details of any attempted transaction involving the funds or other assets, including –*
 - (i) the name and address of the sender;*
 - (ii) the name and address of the intended recipient;*
 - (iii) the purpose of the attempted transaction;*
 - (iv) the origin of the funds or other assets; and*
 - (v) where the funds or other assets were intended to be sent.”*

Financial institutions are required to **regularly** consult the United Nations Security Council Consolidated List and take immediate action with respect to any changes brought thereto. They must also regularly consult the newspapers for any notice which may be issued by the National Sanctions Secretariat and immediately act upon it.

Financial Institutions must comply with following obligations imposed under the Act with respect to Listed Parties/Designated Parties:

(i) *Financial prohibitions*

- (a) Prohibition to deal with the funds or other assets of Listed Parties/Designated Parties under section 23 of the Act;
- (b) Prohibition to make funds or other assets available to Listed Parties/Designated Parties under section 24 of the Act.

There is no minimum financial limit to apply financial prohibitions.

(ii) *Reporting obligations*

Pursuant to section 25 of the Act,

- (a) financial institutions must immediately (i.e without delay and not later than 24 hours) verify whether the details of the Listed Party/Designated Party match with the particulars of any of its customer;
- (b) if there is a positive match, the financial institution must identify whether the customer owns any funds or other assets with it, including the funds or assets mentioned in section 23(1) of the Act;
- (c) the financial institution is required to make a report to the National Sanctions Secretariat and the Bank of Mauritius where funds or other assets have been identified by it;
- (d) a nil report must be submitted to the above authorities if no funds or other assets are identified.

Financial institutions must immediately (i.e. without delay and not later than 24 hours) report any positive or negative match as per the Template for Notification to the National Sanctions Secretariat under section 23(4) of the Act and the Template for Reporting

Positive Name Match under section 25(2) of the Act to the Bank of Mauritius and the National Sanctions Secretariat, whenever there is any dissemination of the United Nations Security Council Consolidated List, the notice issued by the National Sanctions Secretariat with respect to listed parties or declaration of designated parties.

(iii) *Reporting of suspicious information*

A financial institution must, in accordance with section 14 of the Financial Intelligence and Anti-Money Laundering Act, immediately submit to the FIU, any information relating to a Listed Party/Designated Party which is known to it.

(iv) *Internal controls*

Financial institutions must implement internal controls and other procedures to ensure effective compliance with the obligations under the Act.

(v) *Sanctions screening*

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. Screening against sanctions lists should also take place when establishing a new relationship, and subsequently at a regular intervals or upon trigger events.

(vi) *Policies and procedures*

Financial institutions should also have in place clear policies and procedures to investigate and escalate alerts generated by a potential match which indicates a sanctions risk.

Supervision by the Bank of Mauritius

The Bank of Mauritius is required, under section 40(2) of the Act, to supervise and enforce compliance by its licensees with the requirements imposed under the Act. Failure to comply with the requirements of the Act and guidelines and instructions issued by the Bank of Mauritius regarding the implementation of the provisions of the Act is an offence and may be subject to monetary penalties.