

Implementation of Targeted Financial Sanctions

Guidance Note A.

Objective:

The objective of this guidance note is to advise the recipients about their obligations for implementing Pakistan's legal obligations regarding the implementation of the Targeted Financial Sanctions (TFS) pursuant to the United Nations Security Council 1267 Sanctions Regime. The guidance note will provide brief information on the various aspects of TFS related obligations. For further details please refer to the "Guidelines on the Implementation of the Targeted Financial Sanctions, Travel Ban and Arms Embargo", available at the following link on the website of the Ministry of Foreign Affairs <http://www.mofa.gov.pk/documents/1267-Guidelines.pdf>.

Entities regulated by the State Bank of Pakistan and the Securities and Exchange Commission of Pakistan will continue to follow the regulations under which they operate. **B. Legal Framework:**

The UNSC 1267 Sanctions Regime was adopted under Chapter VII of the United Nations Charter which makes its implementation obligatory for all UN Member States. Under this regime all States have to implement the measures of assets freeze (targeted financial sanctions), arms embargo, and travel ban on the individuals and entities that are "designated" by the Sanctions Committee on the UN Consolidated list (available at: <https://www.un.org/securitycouncil/content/un-sconsolidated-list>).

In Pakistan this Sanctions Regime is implemented through the United Nations (Security Council) Act, 1948 (Act XIV of 1948) under which the Ministry of Foreign Affairs issues Statutory Regulatory Orders (SROs). The SROs are issued whenever any addition, deletion or amendment is made by the Sanctions Committee and notified to Member States.

The United Nations Security Council (Freezing and Seizure) Order, 2019 (available at: <http://www.mofa.gov.pk/documents/sro/Freezing-Seizure.PDF>) provides legal and procedural framework for the freezing and seizure of assets.

C. Explanation of Asset Freeze and associated terms:

The terms assets freeze and targeted financial sanctions are used interchangeably and mean freezing the **funds and other financial assets** or **economic resources** of these individuals, groups, undertakings and entities, including funds derived from **property owned or controlled directly or indirectly**, by them or by persons acting on their behalf or at their direction. It is also to be ensured that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly for such persons' benefit, by Pakistani nationals or by persons within the Pakistani territory. No person shall make donations to individuals and entities or those acting on behalf of or at the direction of the entities.

i. Funds and other financial assets

Funds and other financial assets should be understood to include, but not limited to:

- a. cash, cheques, claims on money, drafts, money orders, bearer instruments, internet-based payment instruments such as virtual currencies and other payment instruments;
- b. deposits with financial institutions or other entities and balances on accounts, including but not limited to: (1) fixed or term deposit accounts, (2) balances on share trading accounts with banks, brokerage firms or other investment trading accounts;
- c. debts and debt obligations, including trade debts, other accounts receivable, notes receivable, and other claims of money on others;
- d. equity and other financial interest in a sole trader or partnership;
- e. publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
- f. interest, dividends or other income on or value accruing from or generated by assets;
- g. credit, right of set-off, guarantees, performance bonds or other financial commitments;
- h. letters of credit, bills of lading, bills of sale; notes receivable and other documents evidencing an interest in funds or financial resources and any other instruments of export financing;
- i. insurance and reinsurance.

ii. Economic resources

Economic resources should be understood to include assets of every kind, whether tangible or intangible, movable or immovable, actual or potential, which potentially may be used to obtain funds, goods or services, such as:

- a. land, buildings or other real estate, including funds or negotiable benefit arising from this property such as rents¹;
- b. equipment, including computers, computer software, tools, and machinery;
- c. office furniture, fittings and fixtures and other items of a fixed nature;
- d. vessels, aircraft and motor vehicles;
- e. inventories of goods;
- f. works of art, cultural property, precious stones, jewellery or gold;
- g. commodities, including oil, minerals, or timber;

- h. arms and related materiel, including all items mentioned in the arms embargo at paragraph 1 (c) of resolution 2161 (2014);
- i. raw materials and components that can be used to manufacture improvised explosive devices or unconventional weapons, including but not limited to chemical components, detonating cord, or poisons;
- j. patents, trademarks, copyrights, trade names, franchises, goodwill, and other forms of intellectual property;
- k. internet hosting or related services;
- l. any other assets.

iii. Assets owned directly or indirectly

If a person is a designated person their name will be recorded on the consolidated list. However, an asset freeze and some financial services restrictions will also apply to entities that are owned or controlled, directly or indirectly, by a designated person. Those entities may not be designated in their own right, so their name may not appear on the consolidated list. However, those entities are similarly subject to the assets freeze sanctions.

D. Implementing Stakeholders:

The obligations for implementing the Assets Freeze/TFS apply to all persons, including any agency, association, authority, body, company, department, entity, firm, office or individual (as defined in Article 2 (h) of the UNSC Order 2019) i.e. **all natural and legal persons** that are in effective control of any property of a designated entities or designated individuals. These would include government departments, financial institutions, designated non-financial businesses and professions (DNFBPs e.g. accountants, lawyers, jewelers and gemstone dealers, and real estate agents). Key obligations include (for details please refer to United Nations Security Council (Freezing and Seizure) Order, 2019):

Article 4: Properties to be frozen or seized.-(1) The properties liable to be frozen or seized pursuant to the Act include:-

- (a) the properties owned or controlled, wholly or partly, directly or indirectly, by a designated entity or designated individual;
- (b) the properties owned or effectively controlled by any person acting on behalf of or at the direction of any designated entity or designated individual; and
- (c) the income, rents, profits, returns and any other increase or addition to such properties.

(2) The seizing agency shall act as the caretaker of the properties frozen or seized by it until further directions are issued by the Authorized Agency.

Article 5: Prohibition.-As and when a property is frozen or seized, no further use, transfer, conversion, disposal, removal or dealing of such property shall take place except with prior written approval of the Authorized Agency.

Article 14: Movable property:-The seizing agency shall not deliver possession of a movable property to the designated entity or designated individual and shall be responsible for the due custody thereof until further directions are issued by the Authorized Agency:

Provided that when the property seized is perishable or subject to speedy and natural decay, the seizing person may sell or auction it at once with permission of the Authorized Agency and submit a report about details of the sale to the Authorized Agency.

Article 15: Immovable property.- An immovable property shall be frozen by way of avoiding or restraining the transfer of, or creation of an encumbrance over, such property. **E. Penalty:**

It is strongly advised that all recipients should take their obligations to implement the SROs seriously. Failure to comply or violations would attract a penalty of up to Rs. 10 million. In addition, criminal penalties for violations can be imposed under Sections 11H, 11I, 11J, and 11K of ATA 1997, as applicable.