

# SANCTIONS GUIDELINES

2020



# 28 May 2020

The Sanctions Guidelines<sup>1</sup> was prepared by the Anti-Money Laundering Council (AMLC) pursuant to Section 11 of the Terrorism Financing Prevention and Suppression Act of 2012 and the implementing Resolutions under AMLC Resolution No. TF-01 and TF-02 to assist Covered Persons in the implementation of the freezing mechanisms and outlines their obligations thereunder.

The Guidelines is general in nature. Covered persons should also refer to the relevant, up-to-date legislation and rules, as well as specific AMLC guidance where it is available. Please note that each case will be considered on the facts and the specific legal requirements that apply.

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<sup>1</sup> The Guidelines was largely modeled after the 2018 Financial Sanctions Guidance issued by the Office of Financial Sanctions Implementation, HM Treasury of the United Kingdom.

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## **ANNEXES**

# 1 Overview of the Financial Sanctions

## 1.1 What are targeted financial sanctions or TFS?

The term targeted financial sanctions means 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.<sup>2</sup>

## 1.2 In the Philippine context, who are designated persons?

"Designated persons" - refers to:

(a) Any person or entity designated as a terrorist, one who finances terrorism, or a terrorist organization or group under the applicable United Nations Security Council Resolution or by another jurisdiction or supra-national jurisdiction;

(b) Any organization, association, or group of persons proscribed pursuant to Section 17 of the Human Security Act (HSA) of 2007; or

(e) Any person, organization, association, or group of persons whose property or funds, based on probable cause are subject to seizure and sequestration under Section 39 of the HSA of 2007.<sup>3</sup>

## 1.3 Why do we have financial sanctions?

Financial sanctions are restrictions put in place by the United Nations and its Security Council, a supra-national jurisdiction (e.g. European Union), another jurisdiction or by the Philippine government to achieve a specific foreign policy or national security objective. They can:

- limit the provision of certain financial services
- restrict access to financial markets, funds and economic resources.

Financial sanctions are generally imposed to:

- **coerce** a regime, or individuals within a regime, into changing their behavior (or aspects of it) by increasing the cost on them to such an extent that they decide to cease the offending behavior
- **constrain** a target by denying them access to key resources needed to continue their offending behavior, including the financing of terrorism or nuclear proliferation;
- **signal** disapproval, stigmatizing and potentially isolating a regime or individual, or as a way of sending broader political messages nationally or internationally; and/or

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<sup>2</sup> FATF Methodology Glossary page. 161.

<sup>3</sup> Rule 3.a.5, Implementing Rules and Regulations of the Terrorism Financing Prevention and Suppression Act of 2012 (R.A. No. 10168) or TF-IRR.

- **protect** the value of assets that have been misappropriated from a country until these assets can be repatriated

## 1.4 Types of financial sanctions

Financial sanctions come in many forms as they are developed in response to a given situation. The Terrorism Financing Prevention and Suppression Act (TF law) provides two (2) types of sanctions:

- **Targeted asset freezes**<sup>4</sup>: these apply to named individuals, entities and bodies, restricting access to funds and economic resources. Someone subject to an asset freeze will be listed on the Consolidated List or proscribed and posted under the AMLC or Anti-Terrorism Council (ATC) websites.
- **Prohibition against Dealing**<sup>5</sup>: prohibits any person from (a) dealing, directly or indirectly, in any way and by any means, with any property or funds that he knows or has reasonable ground to believe is owned or controlled by a designated person, organization, association or group of persons, including funds derived or generated from property or funds owned or controlled, directly or indirectly, by a designated person, organization, association or group of persons; or (b) makes available any property or funds, or financial services or other related services to a designated person, organization, association or group of persons.

*"Dealing, with regard to property or funds" refers to receiving, acquiring, transacting, representing, concealing, disposing, converting, transferring or moving, using as security or providing financial services.*

*"Making available property or funds, financial services or other related services to designated persons, organizations, associations or groups of persons" shall mean making or capacitating such designated persons, organizations, associations or groups of persons to obtain benefit or benefits from property or funds, or financial services or other related services.*

*"Financial benefit" includes, but is not limited to, the discharge of a financial obligation of such designated persons, organizations, associations or groups of persons.*

*"Dealing" with a designated person or entity is a criminal offense under Section 8 of the TF law penalized with imprisonment (reclusion temporal in its maximum period to reclusion perpetua) and a fine of not less than Five Hundred Thousand Pesos (Php500,000.00) nor more than One Million Pesos (Php1,000,000.00).*

<sup>4</sup> Under Section 11 of the TF law.

<sup>5</sup> Section 8, Ibid.

## 1.5 What is the AMLC's mandate with regard to financial sanctions?

The AMLC's mandate is found under paragraph 3, Section 11 (Authority to Freeze) of the TF law which provides:

*SEC. 11. Authority to Freeze. – The AMLC, either upon its own initiative or at the request of the ATC, is hereby authorized to issue an ex parte order to freeze without delay: (a) property or funds that are in any way related to financing of terrorism or acts of terrorism; or (b) property or funds of any person, group of persons, terrorist organization, or association, in relation to whom there is probable cause to believe that they are committing or attempting or conspiring to commit, or participating in or facilitating the commission of financing of terrorism or acts of terrorism as defined herein.*

[...]

*Notwithstanding the preceding paragraphs, the AMLC, consistent with the Philippines' international obligations, **shall be authorized to issue a freeze order** with respect to property or funds of a designated organization, association, group or any **individual to comply with binding terrorism-related Resolutions, including Resolution No. 1373, of the UN Security Council pursuant to Article 41 of the Charter of the UN. Said freeze order shall be effective until the basis for the issuance thereof shall have been lifted.** During the effectivity of the freeze order, an aggrieved party may, within twenty (20) days from issuance, file with the Court of Appeals a petition to determine the basis of the freeze order according to the principle of effective judicial protection.*

## 1.6 Has the AMLC issued any freeze order to comply with the terrorism-related Resolutions of the UN Security Council (UNSC)?

Yes. In 2012, the AMLC issued two (2) freeze orders under AMLC Resolution No. TF 01<sup>6</sup> and TF-02<sup>7</sup>.

Freeze Orders under Resolution TF-01 and TF-02 are sanctions targeting the individuals and entities listed under the UN Security Council **Consolidated lists** respectively under UNSC Resolution No. 1267/1989 (known as the "Al Qaeda" Sanctions List) and UNSC Resolution No. 1988 (known as the "Taliban" Sanctions List).

## 1.7 What is the directive and coverage of the freeze orders under Resolution Nos. TF-01 and TF-02?

The freeze orders direct all covered persons and relevant government agencies to freeze and preserve without delay property or funds, including related accounts, that are maintained or registered with, possessed or controlled by them, in any, which belong to any of the persons, organizations, associations or group of persons mentioned in the Al Qaeda and Taliban Consolidated Sanctions Lists.

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<sup>6</sup> Annex A (see: [amlc.gov.ph/laws/terrorism-financing/resolutions-related-to-terrorism-financing](http://amlc.gov.ph/laws/terrorism-financing/resolutions-related-to-terrorism-financing)).

<sup>7</sup> Annex B (see: [amlc.gov.ph/laws/terrorism-financing/resolutions-related-to-terrorism-financing](http://amlc.gov.ph/laws/terrorism-financing/resolutions-related-to-terrorism-financing)).

The freeze orders cover not only those listed at the time of the issuance of Resolution Nos. TF-01 and TF-02 but also those included in the subsequent updates, modifications and amendments to the Consolidated Lists.

The Consolidated Lists and the updates thereto may be downloaded from the UN Security Council website (<https://www.un.org/securitycouncil/content/un-sc-consolidated-list>) or on the AMLC website (<http://www.amlc.gov.ph/un-sanctions-list/al-qaeda> and <http://www.amlc.gov.ph/un-sanctions-list/taliban>).

### **1.8 Who needs to comply with financial sanctions?**

TF-01 and TF-02 directs the following to comply with the financial sanctions (freeze order and prohibition against dealing) imposed on the individuals and entities under the Consolidated List:

- a. Covered persons as defined under the AMLA, as amended<sup>8</sup>;
- b. Relevant government agencies (e.g. Land Transportation Office, Land Registration Authority, Register of Deeds, Maritime Industry Authority [MARINA], and the Civil Aviation Authority of the Philippines); and
- c. The general public, particularly with regard to the prohibition against dealing under Section 8 of the TF law.

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<sup>8</sup>

# 2 Who is subject to financial sanctions

## 2.1 Designated persons and entities under the Consolidated List

They include those individuals and entities in the Consolidated Lists under UNSC 1267/1989 (Al Qaeda), 1988 (Taliban), those proscribed under the HSA of 2007<sup>9</sup> (e.g. the Abu Sayyaf Group), those subject to seizure and sequestration under Section 39 thereof, and those subject to freeze orders pursuant to UNSC 1373.<sup>10</sup>

The Consolidated Lists and the updates thereto may be downloaded from the UN Security Council website (<https://www.un.org/securitycouncil/content/un-sc-consolidated-list>) or on the AMLC website (<http://www.amlc.gov.ph/un-sanctions-list/al-qaeda> and <http://www.amlc.gov.ph/un-sanctions-list/taliban>).

## 2.2 Using the Consolidated List

The consolidated list contains a range of information to aid the identification of designated persons. For an individual this can include their:

- aliases
- date of birth
- passport details
- nationality
- last known address
- employment or government role

You may find that the name of an individual or entity you are dealing with matches one or more entries on the consolidated list. This is known as a **name match**. However, it does not necessarily mean that the individual or entity you are dealing with is the same one on the list. If you are satisfied that this is the case, you do not need to take further action. If the individual or entity you are dealing with matches **all the information** on the consolidated list, this is likely to be a **target match**.

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<sup>9</sup> An entity designated by a foreign jurisdiction or supra-national jurisdiction may be proscribed as a terrorist group in the Philippines and subject to financial sanctions:

*“Rule 22. e. Other designations. - Pursuant to Sec.54 (7) of the HSA of 2007 and consistent with the national interest, all requests for designations made by another jurisdiction or supra-national jurisdiction shall be referred by the DFA to the ATC to determine if proscription under Sec.17 of the HSA of 2007 is warranted and, if so, the ATC shall correspondingly commence proscription proceedings.”*

<sup>10</sup> Rule 15.b (iv) of the TF-IRR.



If having consulted the consolidated list you are still unsure on whether you have a target match, you can contact the AMLC for assistance.

### 2.3 Name and Target Matches

Situation	Assessment
<p>You have a name match for a person who is a Filipino national listed as a member of the Abu Sayyaf Group (ASG) based in Basilan and involved in kidnapping for ransom.</p> <p>However, the person you are dealing with is a European foreign exchange student.</p>	<p><i>Name match</i></p>
<p>You have a name match for an Indonesian identified as a foreign terrorist fighter.</p> <p>However, the man you are dealing with is a regular bank client with a different date of birth.</p>	<p><i>Name match</i></p>
<p>You have a close name match for a person subject to a terrorist asset freeze and they have a similar date of birth but a different address.</p>	<p><i>Potential target match.</i></p> <p>You may have identified a new <i>alias</i> being used to circumvent financial sanctions.</p> <p>Subject to the rules and guidelines prescribed herein, funds actually received or in the possession of the covered person shall be frozen.</p> <p>Apart from filing an STR, covered persons should, inform the AMLC <b>on the same day the freeze is implemented</b>, through email to the <a href="mailto:secretariat@amlc.gov.ph">secretariat@amlc.gov.ph</a>, copy furnish the Executive Director, that a freeze has been implemented pursuant to these guidelines. Said information shall be accompanied by the following details:</p> <ol style="list-style-type: none"> <li>a. The subject's account name, number and amount frozen;</li> <li>b. The subject's entry under the relevant Consolidated List; and</li> <li>c. The date and time the freeze or hold order is implemented.</li> </ol> <p>The AMLC, within 36 hours from receipt of the information, shall confirm the propriety of the freeze.  <b><i>If no confirmation is received within the said 36-hour period, the freeze shall be automatically lifted.</i></b></p>

# 3 Financial Sanctions Restrictions

This Chapter provides an overview of asset freezing, which is the most common form of financial sanction.

## 3.1 Asset freezes

The assets freeze, as set out in paragraph 1 (a) of UNSC Resolution 2161 (2014),<sup>11</sup> applies to individuals, groups, undertakings and entities whose names are referred to in the Al Qaida Sanctions List of the Al-Qaida Sanctions Committee<sup>12</sup>. It obliges Member States to:

*Freeze without delay 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, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly for such persons' benefit, or by their nationals or by persons within their territory.*

The purpose of the assets freeze is to deny listed individuals, groups, undertakings and entities the means to support terrorism. To achieve this, it seeks to ensure that no funds, financial assets or economic resources of any kind are available to them for so long as they remain subject to the sanctions measures.<sup>13</sup>

### 3.1.1 What do they do?

Where the financial sanction is an asset freeze, it is generally prohibited to:

- deal with the frozen funds or economic resources, belonging to or owned, held or controlled by a designated person
- make funds or economic resources available, directly or indirectly, to, or for the benefit of, a designated person
- engage in actions that, directly or indirectly, circumvent the financial sanctions prohibitions

The funds and economic resources are to be frozen immediately by the person in possession or control of them. An asset freeze does not involve a change in ownership of the frozen funds or economic resources, nor are they confiscated or transferred to the AMLC for safekeeping.

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<sup>11</sup> Asset Freeze. Explanation of Terms, page 1 (approved by the Al Qaeda Sanctions Committee on 24 February 2015). [www.un.org](http://www.un.org)

<sup>12</sup> Applies also to the Taliban Sanctions List.

<sup>13</sup> Asset Freeze. Explanation of Terms (supra.)

**Freeze** - refers to the blocking or restraining of specific property or funds from being transacted, converted, concealed, moved, or disposed of without affecting the ownership thereof (Rule 3.a.8, TF-IRR)

### 3.1.2 What must you do?

If you know or have “probable cause” that you are in possession or control of, or are otherwise dealing with, the funds or economic resources of a designated person you must:

- freeze them
- not deal with them or make them available to, or for the benefit of, the designated person, unless: a) the transaction is an **authorized dealing**; or b) the transaction is exempted as a duly authorized expense (See Chapter 7 of this Guidance)
- file a return (See Chapter 5)

**Probable cause** - refers to a reasonable ground of suspicion supported by circumstances warranting a cautious person to believe that property or funds are in any way related to terrorism financing, acts of terrorism or other violations under the TF Suppression Act (Rule 3.a.9, TF –IRR)

**Authorized Dealings.** - Subject to the procedure as hereafter provided, the prohibition against dealing with property or funds under Section 8 of the TF Suppression Act shall not apply to the following:

*i) Payments falling under humanitarian exemptions, as provided for under Section 13 of the TF Suppression Act;*

*ii) Payments necessary to satisfy a judicial, administrative or arbitral judgment rendered or lien encumbered, prior to the date of designation or listing of the designated persons, organizations, associations or groups of persons;*

*iii) Payments of (a) interest or other earnings due on frozen deposit accounts or other assets, provided that, interest or other earnings due thereon shall similarly be frozen once received; or (b) obligations under a valid contract entered into before the accounts or other assets were frozen by reason of the account holder's designation (Rule 8.b, TF-IRR)*

### 3.1.3. Scope of the asset freeze

The assets freeze applies to all assets owned or controlled by listed individuals, groups, undertakings and entities. It also applies to the funds that derive from property that they own or control, directly or indirectly, or that are owned or controlled by persons acting on their behalf or at their direction.

### 3.1.4. What must be frozen

The TF law requires the freeze of "**property or funds**" which refers to financial assets, property of every kind, whether tangible or 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, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends, or other income or value accruing from or generated by such funds or other assets.

#### ***Mistaken Identity/Safe Harbor Provision***

*In case a freeze has been effected based on mistaken identity, no administrative, criminal or civil proceedings shall lie against any person or entity, including covered persons and relevant government agencies, for effecting a freeze on the property or funds in the absence of bad faith, gross negligence or malice (Rule 11.b, TF-IRR)*

# 4 Ownership and Control

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 financial sanctions.

## 4.1 Ownership

Ownership under these Guidelines include "**beneficial ownership**". A "**beneficial owner**" refers to any natural person who:

- Ultimately owns or controls the customer and/or on whose behalf a transaction or activity is being conducted; or
- Has ultimate effective control over a legal person or arrangement.<sup>14</sup>

If the ultimate beneficial owner of a juridical person is a designated person, the financial sanctions shall also apply to the said juridical person.

If the ultimate beneficial ownership of an entity rests with a designated person (for example, they own a corporate body which owns another corporate body), the AMLC takes the view that all entities that are part of the ownership chain are subject to financial sanctions.

Example:

**Entity X** is not listed under the consolidated list. However, your research shows that the majority owner or the beneficial owner of **Entity X** is designated **Entity Y**.

As the ownership criterion has been met, **Entity X** is also subject to the same restrictions as designated **Entity Y**.<sup>15</sup>

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<sup>14</sup> Guidelines on Identifying Beneficial Ownership, AMLC Regulatory Issuance A, B and C, No. 3 (s. 2018).

<sup>15</sup> Lifted from (and modified) the 2018 Financial Sanctions Guidance, Office of the Financial Sanctions Implementation (OFSI), UK.

### 4.1.1 Minority interests

If a designated person has a minority interest in another legal person or entity this does not necessarily mean that financial sanctions also apply to them as the ownership criterion has not been met. However, you should remain vigilant to any changes in the stake held by the designated person in case it increases to greater than 20% (or they obtain a majority interest) at which point financial sanctions will also apply to that legal person or entity.

You should also consider whether a designated person is in 'control' of another legal person or entity. Financial sanctions apply in this situation even where a designated person only possesses a minority interest.

### 4.2 Control

The AMLC considers that the satisfaction of at least one of the following criteria<sup>16</sup> is sufficient to establish whether a legal person or entity is controlled by another legal person or entity, alone or pursuant to an agreement with another shareholder or other third party:

- Having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity.
- Having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person or entity who have held office during the present and previous financial year.
- Controlling alone, pursuant to an agreement with other shareholders in or members of a legal person or entity, a majority of shareholders' or members' voting rights in that legal person or entity.
- Having the right to exercise a dominant influence over a legal person or entity, pursuant to an agreement entered into with that legal person or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person or entity permits its being subject to such agreement or provision.
- Having the power to exercise the right to exercise a dominant influence referred to in the point above, without being the holder of that right (including by means of a front company)

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<sup>16</sup> Page 22, VII Ownership and Control, EU Best Practices for the effective implementation of restrictive measures, 24 June 2015.

The aforementioned list of criteria is intended to be indicative of the factors leading to control being established and should not be seen as exhaustive.

It's possible that a designated person may have control or use of another person's bank accounts or economic resources and may be using them to circumvent financial sanctions.

Examples could include a designated person registering assets in the name of associates or family members, or using non-designated persons' bank accounts to hold funds and facilitate transfers.

Such actions by the designated person may constitute a breach of the prohibitions or circumvention of financial sanctions and may result in a criminal prosecution.

***Rule 16.a Duty to Preserve the Frozen Property or Funds.<sup>17</sup>*** - Upon receipt of the notice of a freeze order, the covered persons and/or relevant government agencies shall immediately preserve the subject property or funds in accordance with the order of the AMLC and shall forthwith serve a copy of the notice of the freeze order upon the owner or holder of the property or funds.

*Any responsible officer or person who fails to comply with a freeze order shall suffer the penalty of imprisonment ranging from six (6) months to four (4) years and a fine of not less than Five Hundred Thousand Pesos (Php500,000.00) at the discretion of the court, without prejudice to the administrative sanctions that the AMLC may impose on the erring covered person.*

#### ***"Notice of Freeze Order"***

The "Notice of Freeze Order" generally refers to AMLC Resolutions Nos. TF-01 and TF-02 notices which were published and posted on the AMLC website on 2 and 9 October 2012, respectively. Resolutions TF-01 and TF-02 are regularly updated every time the Consolidated List is updated by the UN Security Council through a *Note Verbale* posted on the AMLC website.

The foregoing notwithstanding, the AMLC is authorized to issue TF Resolutions directing the freeze of accounts or assets which were not in the name of designated persons but, upon investigation, were found to be owned or controlled by them. In such cases, the duty to freeze and preserve the subject assets will begin upon receipt of the specific TF Resolution by the covered person or concerned government agency.

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<sup>17</sup> Rule 16, TF Law-IRR.

# 5 Filing a Return

## 5.1. When must a return be filed?

Under the Guidelines, there are three (3) instances wherein covered persons are required to file a return:

- a. When there is a **target match**, i.e., the subject person or entity fully matches the description in the Consolidated List, covered persons shall file a detailed electronic return within 24 hours from effecting the freeze.
- b. In cases where there is merely a *potential* target match, covered persons shall file a detailed electronic return within 24 hours from receipt of the AMLC's confirmation (See Chapter 2 of this Guidelines).
- c. For cases where the AMLC directs the freeze of the funds and other assets of a person or entity who, although not specifically included in the Consolidated List, was nevertheless found to be acting for and in behalf of or under the direction of those designated under the Consolidated List.<sup>18</sup> United Nations Security Council Resolution No. 1988, par.1(a), covered persons shall file the detailed electronic return within 24 hours from receipt of the AMLC Resolution to freeze.

In all of the above instances, the detailed electronic return (E-return)<sup>19</sup> shall specify the following information:

For covered persons:

1. The account number(s);
2. The name(s) of the account owner(s) or holder(s);
3. The time of freezing of all subject accounts;
4. The balance of the account as of the time of freezing;
5. The related accounts, if any, including the balance thereof as of the time of freezing; and
6. Explanation as to the ground for the identification of related accounts.

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<sup>18</sup> United Nations Security Council Resolution No. 1988, par. 2 (a).

<sup>19</sup> AMLC Registration and Reporting Guidelines (ARRG)



For relevant government agencies:

1. The nature and description of the property;
2. The name(s) of the owner(s) and/or holder(s) of the property;
3. The mode and date of acquisition of the property by the owner(s); and
4. The location of the property.<sup>20</sup>

*Non-compliance with the requirement to submit to the AMLC within twenty-four (24) hours from receipt of the freeze order a detailed written return on the accounts subject of the freeze order, and their related accounts amounts to a Less Serious Violation under the Rules 4, Section 2 of the AMLC Rules of Procedure in Administrative Cases (RPAC) penalized with a monetary penalty.*

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<sup>20</sup> Rule 16.c, TF-IRR.

# 6 Reporting Obligations

## 6.1. Reporting of Suspicious Transactions

As defined under Rule 3.a.15 of the TF law-IRR, a "Suspicious transaction" refers to a transaction with a covered person, regardless of the amount involved that is, in any way, related to terrorism financing or terrorist acts.

It includes attempted transactions made by suspected or designated terrorist individuals, organizations, associations or groups of persons.

If you are a covered person or Designated Non-Financial Business or Profession (DNFBP) you must promptly submit a Suspicious Transaction Report (STR) to the AMLC on the next working day from occurrence<sup>21</sup>, if you know or have reasonable grounds to suspect that the transaction is being made by:

- a designated person, e.g. a potential target match (See Chapter 2.3 of this Guidelines on the requirement to freeze and immediately inform the AMLC); or
- an entity owned or controlled by a designated person.

Attempted dealings as defined under Rule 16.d of the TF law-IRR are likewise reported as suspicious transactions.

If the transaction is made by a person who matches all the description and identifier information provided in the Consolidated List, (i.e. a **target match**), the obligation is to *not* to file an STR but **to freeze** the account or assets and file a return within 24 hours to the AMLC.

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<sup>21</sup> Section 2.2, Rule 22 of the 2018 Implementing Rules and Regulations (IRR) of R.A. No. 9160, as amended (See:AMLC Regulatory Issuance A, B and C No.1 [s. 2020]).

# 7 Authorized Dealings and Exemptions

## 7.1 Authorized Dealings

The effect of a freeze order is to block or restrain a specific property or funds from being transacted, converted, concealed, moved, or disposed of without affecting the ownership thereof.<sup>22</sup> Once a freeze order is effected, persons are prohibited from dealing<sup>23</sup> with the subject property or funds unless the transactions would qualify as “authorized dealings” such as the following:

- i) Payments falling under humanitarian exemptions, as provided for under Section 13 of the TF Suppression Act; or
- ii) Payments necessary to satisfy a judicial, administrative or arbitral judgment rendered or lien encumbered, prior to the date of designation or listing of the designated persons, organizations, associations or groups of persons.

### 7.1.1 Crediting Frozen Accounts

Crediting frozen accounts under the TF Law generally permits a person to make the following payments into a frozen account without the need for a prior authorization, so long as the funds involved are payments of:

- (a) interest or other earnings due on frozen deposit accounts or other assets, provided that, interest or other earnings due thereon shall similarly be frozen once received; or
- (b) obligations under a valid contract entered into before the accounts or other assets were frozen by reason of the account holder's designation.<sup>24</sup>

The provision on authorized dealings under the TF Law is interpreted to allow a relevant institution to credit a frozen account with payments from a third party, provided that the incoming funds are also frozen and that it informs the AMLC is informed of the transaction without delay.

## 7.2 Exemptions

Despite the implementation of freeze order, any listed individual or group may apply to the 1267 Committee for an exemption to get access to a certain amount of the frozen asset. This exemption is solely for basic necessities expenses only such as food, fees, utilities and medicines.

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<sup>22</sup> Rule 3.a.8, TF Law-IRR.

<sup>23</sup> As previously defined herein, "**dealing, with regard to property or funds**" refers to receiving, acquiring, transacting, representing, concealing, disposing, converting, transferring or moving, using as security or providing financial services.

<sup>24</sup> Rule 8.b, TF Law-IRR.

Information on this matter is available on the 1276 Committee website ([click for more details](#)). This application must be submitted to the AMLC.

In addition, any person who is wrongfully sanctioned by the asset freezing mechanism for having a similar name as the designated individual or group may apply for the lifting of the freeze by submitting to the AMLC relevant identification documents such as the national ID, passport, birth certificate, certificate of registration issued by appropriate government agency, and the like.

### 7.2.1 Assets Freeze

#### I. Relevant Security Council resolutions and Committee Guidelines

The exemptions from the assets freeze are provided for by the following:

- Security Council Resolution 2368 (2017): paragraph 10 and paragraphs 81-82.
- Security Council Resolution 1452 (2002), as amended by resolution 1735 (2006)
- Committee Guidelines: Section 11

#### II. Who is entitled to submit the request for exemptions to the assets freeze?

Member States who intend to authorize, where appropriate, access to frozen funds or other financial assets or economic resources.

#### III. What type of exemptions to assets freeze can be requested?

There are two types of exemptions to assets freeze:

- For basic expenses
- For extraordinary expenses

##### 1. The basic expenses exemption

Pursuant to paragraph 1(a) of resolution 1452 (2002), as amended by paragraph 15 of resolution 1735 (2006) as well as Section 11 (d) of the Committee's [Guidelines](#), notifications regarding the basic expenses exemption are to be submitted for Committee's consideration and must, as appropriate, include the following information:

1. Recipient (name and address)
2. Recipient's permanent reference number on the ISIL (Da'esh) & Al-Qaida Sanctions List
3. Recipient's bank information (name and address of bank, account number)
4. Purpose of payment and justification of the determination of the expenses falling under the basic expenses exemption:
  - Basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

- Payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;
- Fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources.
  1. Amount of instalment
  2. Number of instalments
  3. Payment starting date
  4. Bank transfer or direct debit
  5. Interests
  6. Specific funds being unfrozen
  7. Other information.

## **2. The extraordinary expenses exemption**

Pursuant to paragraph 1 (b) of resolution 1452 (2002) as well as Section 11 (d) of the Committee's [Guidelines](#), requests for the extraordinary expenses are to be submitted for Committee's consideration and must, as appropriate, include the following information:

1. Recipient (name and address)
2. Recipient's permanent reference number on the ISIL (Da'esh) & Al-Qaida Sanctions List
3. Recipient's bank information (name and address of bank, account number)
4. Purpose of payment and justification of the determination of the expenses falling under the extraordinary expenses (other categories than the ones mentioned under paragraph 1(a) of resolution 1452 (2002)).
5. Amount of installment
6. Number of installments
7. Payment starting date
8. Bank transfer or direct debit
9. Interests
10. Specific funds being unfrozen
11. Other information.

## 7.2.2 How to make the request for exemptions to the assets freeze?

### Member States

Please send the requests/notifications for exemptions to the assets freeze to:

- The Chair of the Committee, His Excellency Mr. Dian Triansyah Djani, through the Permanent Mission of Indonesia to the United Nations, Email address: [ptri@indonesiamission-ny.org](mailto:ptri@indonesiamission-ny.org)

With a copy to:

- The Secretary of the Committee, Mr. Kiho Cha Email address: [SC-1267-Committee@un.org](mailto:SC-1267-Committee@un.org)

For further details on how to apply for exemptions to the assets freeze measures in paragraph 1(a) of resolution 2368 (2017), please see the link below.

[Explanation of form and process for asset freeze exemption request](#) 

Taliban

For further details on how to apply for exemptions to the assets freeze measures in paragraph 1(a) of resolution 2255 (2015), please see the link below.

[Explanation of form and process for asset freeze exemption request](#) 

## 7.2.3 Decision Making of the Committee

The Committee, through the Secretariat, will immediately acknowledge receipt of the basic expense notification. Should no negative decision be taken by the Committee within the requisite 3 working day period, the Committee, through its Chair, will inform the notifying Member State thereof. The Committee will also inform the notifying Member State if a negative decision has been taken regarding the notification.

The Committee, through its Chair, will inform the Member States requesting an exemption for extraordinary expenses about its decision.

## 7.2.4 How to make the request for exemptions to the assets freeze? (Taliban Sanctions List)

Please send the requests/notifications for exemptions to the assets freeze to:

- The Chair of the Committee, His Excellency Mr. Dian Triansyah Djani, through the Permanent Mission of Indonesia to the United Nations, Email address: [ptri@indonesiamission-ny.org](mailto:ptri@indonesiamission-ny.org)

With a copy to:

- The Secretary of the Committee, Mr. Kiho Cha, Email address: [SC-1267-Committee@un.org](mailto:SC-1267-Committee@un.org)

For further details on how to apply for exemptions to the assets freeze measures in paragraph 1(a) of resolution 2255 (2015), please see the link below.

[Explanation of form and process for asset freeze exemption request](#) 


# 8 De-Listing from the Consolidated List

Any individual or group listed in this list may submit an application to de-list their names from the list. Forms and procedures for de-listing are available on the 1267 Committee website ([click for more details](#)). Completed forms must be submitted to the AMLC.

The result of the application shall be decided by the 1267 Committee.

## 8.1 Procedures for Delisting

### I. Relevant Security Council resolutions /Committee Guidelines

- Security Council [resolution 2368 \(2017\)](#) : paragraphs 60 - 80
- [Committee Guidelines](#): Sections 4 and 7

### II. Who is entitled to submit a delisting request?

#### Member States

Member States may at any time submit to the Committee requests for delisting of individuals and entities inscribed on the ISIL (Da'esh) & Al-Qaida Sanctions List.

#### Listed individuals and entities

A petitioner seeking to submit a request for delisting can do so directly, or through a representative, by contacting the [Office of the Ombudsperson](#). The website of the Ombudsperson sets out the procedures and requirements for making such a request.

### III. What should be included in a delisting request from a Member State to the Committee?

Delisting requests should contain the following information:

1. explanation as to why the designation does not or no longer meets the [listing criteria](#) (through countering the reasons for listing as stated in the list entry for that particular individual or entity);
2. the designee's current occupation and/or activities, and any other relevant information, such as information on assets;
3. any documentation supporting the request can be referred to and/or attached together with the explanation of its relevance, where appropriate.

For a deceased individual, the following information should be included:

1. death certificate or similar official documentation confirming the death whenever possible;
2. whether or not any legal beneficiary of the deceased's estate or any joint owner of his /her assets is on the Sanctions Lists.


## 8.2 Decision-making of the Committee

If the Committee approves a delisting request, the Secretariat shall notify the Permanent Mission of the State or States where the individual or entity is believed to be located and, in the case of individuals, the country of which the person is a national or resident (to the extent this information is known).

### 8.2.1 Member State requests for de-listing

In accordance with Section 7 of the [Committee's Guidelines](#), the Committee will consider all complete delisting requests. If a delisting request is made by a State that did not propose the name in question for inclusion on the ISIL (Da'esh) & Al-Qaida Sanctions List, then the Committee's normal decision-making procedures apply and a decision will be taken by consensus.

Member States wishing to propose a Delisting request should use the [attached form](#), which is available in all official languages.

If a de-listing request is made by the State that proposed the name in question for de-listing (or, if there are multiple designating States, the request is made jointly by all States concerned), then the name will be removed from the List after a fixed time period unless (a) all fifteen members of the Committee are in favour of maintaining the listing; or (b) the matter is referred to the Security Council for a decision. These procedures are set out in more detail in paragraphs 69 - 71 of [resolution 2368 \(2017\)](#) .


Please address the de-listing requests to:

- The Chair of the Committee, His Excellency Mr. Dian Triansyah Djani, through the Permanent Mission of Indonesia to the United Nations, Email address: [ptri@indonesiamission-ny.org](mailto:ptri@indonesiamission-ny.org)
- With a copy to: The Secretary of the Committee, Mr. Kiho Cha, Email address: [SC-1267-Committee@un.org](mailto:SC-1267-Committee@un.org)

### 8.2.3 De-listing requests submitted through the Office of the Ombudsperson

In cases where the Ombudsperson recommends retaining a name on the ISIL (Da'esh) & Al-Qaida Sanctions List, the measures will remain in place. In cases where the Ombudsperson recommends delisting, the name will be removed from the ISIL (Da'esh) & Al-Qaida Sanctions List after a fixed time period unless (a) all fifteen members of the Committee are in favour of maintaining the listing; or (b)



the matter is referred to the Security Council for a decision. These procedures are set out in more detail in [resolution 2368 \(2017\)](#) .