COUNTER-PROLIFERATION FINANCING GUIDANCE NOTE

FIA
Financial Intelligence Agency

SEPTEMBER 2020

Table of Contents

Acronyms

AML/CFT/CFP	Anti-Money Laundering, Counter-Financing of Terrorism and Counter-Financing of Proliferation.
FIA	Financial Intelligence Agency
FATF	Financial Action Task Force
UNSCR	United Nations Security Council Resolutions
WMD	Weapons of Mass Destruction

1.0. Introduction

1.1. Combating proliferation financing is one of the key component of Botswana's Anti-Money Laundering, Counter-Financing of Terrorism and Counter-Financing of Proliferation (AML/CFT/CFP) regime.

1.2. Proliferation poses a significant threat to global security and the consequences are severe, therefore, the fight against proliferation of high-consequence materials that could be used in biological, chemical, radiological, and nuclear weapons and related delivery systems has received increasing attention in recent years. Most of these materials and delivery technologies have legitimate uses in society and continue to be researched with the aim of improving the human condition. However, the potential exists for the inappropriate and unauthorized use of these materials and technologies, which could result in great harm. If appropriate safeguards are not established, maintained and enforced for sensitive materials, technology, services and expertise, they can become accessible to individuals who develop weapons of mass destruction.

1.3. Given the potential for the calamities associated with proliferation financing, combating proliferation financing must be taken seriously by all stakeholders involved in implementing Botswana's AML/CFT/CFP regime, including specified parties. Combating Proliferation Financing is not only a new phenomenon but also a technical subject that requires providing guidance to specified parties.

2.0. Purpose

2.1. One of the functions of the Financial Intelligence Agency (FIA) is to guide specified parties on how to comply with their obligations under the Financial Intelligence Act. Therefore, the purpose of this guidance note is to guide specified parties supervised by the FIA to understand their obligations in the fight against Proliferation Financing.

3.0. Legal disclaimer

3.1. This document should not be relied upon as a source of law, reference should be made to the appropriate statutory provisions.

3.2. The Agency reserves the right to amend, modify or change the contents of this document without issuing any notice to that effect.

4.0. Definitions of Proliferation and Proliferation Financing

4.1. The Financial Intelligence Act defines **Proliferation** as:

"the manufacture, acquisition, possession, development, export, transhipment, brokering, transport, transfer, stockpiling or use of any arms of war or NBC weapons in contravention of the Arms and Ammunition Act, Nuclear Weapons (Prohibition) Act, Biological and Toxin Weapons (Prohibition) Act or Chemical Weapons (Prohibition) Act."

4.2. **Proliferation Financing** is defined under the Nuclear Weapons (Prohibition) Act, Biological and Toxin Weapons (Prohibition) Act or Chemical Weapons (Prohibition) Act as:

"the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, transhipment, brokering, transport, transfer, stockpiling or use of any nuclear weapon and its means of delivery and related materials, including both technologies and goods used for non-legitimate purposes."

5.0. International standards and obligations to counter proliferation financing

5.1. United Nations Security Council Resolution (UNSCR) 1540

5.1.1. United Nations Security Council Resolutions require countries to freeze without delay the funds or other assets of, and to ensure that no funds and other assets are made available, directly or indirectly, to or for the benefit of, any person or entity designated by, or under the authority of, the United Nations Security Council under Chapter VII of the Charter of the United Nations.

5.1.2. The UNSCR 1540 was adopted to prohibit the financing of Proliferation related activities by non-state actors. It recognises non-state proliferation as a threat to peace and creates three (3) main obligations:

a) Refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.
b) Adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.
c) Establish and enforce effective measures and domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery.

5.2. The Financial Action Task Force (FATF)

5.2.1. Recommendation 2 requires countries to put in place effective national cooperation and where appropriate coordination mechanisms to combat the financing of proliferation of weapons of mass destruction.

5.2.2. Recommendation 7 requires countries to implement targeted financial sanctions to comply with United Nations Security Council Resolutions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and it's financing.

5.2.3. The Interpretive Note to Recommendation 7 has further emphasized the need for financial institutions to implement 'preventive measures' to counter the flow of funds or assets to proliferators.

5.2.4. Immediate Outcome 11 states that persons and entities involved in the proliferation of weapons of mass destruction are to be prevented from raising, moving and using funds, consistent with the relevant UNSCR.

6.0. Botswana regulatory framework for combatting proliferation financing

6.1. Botswana's domestic laws that aim to combat proliferation financing include:

a) The Chemical Weapon (prohibition) Act, 2018

i. Establishes the Chemical, Biological, Nuclear and Radiological (CBNR) Weapons management Authority. The Authority is responsible, *inter alia*, for; Administrative and technical requirements governing use of chemicals, biological material, and nuclear materials for peaceful purposes; Public and environment protection, waste safety, security and emergency preparedness and response; Secure sites and sources of CBRN material, Security Infrastructure Laboratories and transportation security; and Collaborative border control strategies with neighbouring states to strengthen import/export control and trans-boundary movement of CBNR sources.

b) Biological and Toxin Weapons (Prohibition) Act, 2018

i. An Act to provide for the domestication of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 10th April, 1972 in order to ensure that Botswana conforms to and implements her obligations under the Convention relating to the regulation of the use of biological or toxin weapons.

c) Nuclear weapons (prohibition) Act, 2018

i. An Act to provide for the domestication of the Non-Proliferation of Nuclear Weapons Treaty of 01st July 1968, to prohibit the production, possession and use of nuclear weapons and nuclear materials.

d) COUNTER-TERRORISM (AMENDMENT) ACT, 2018

i. Section 12A establishes the National Counter-Terrorism Committee and gives it the function of implementing the United Nations Security Council Resolutions relating to the suppression of financing of terrorism and the prevention and disruption of the financing of the proliferation of arms of war or NBC weapons and successor resolutions.

e) Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations, 2020

i. The Regulations provide for, amongst others, communication of national listings as well as designations by United Nations; freezing of property held by designated person or entity; prohibition on dealing with property held by designated or nationally listed person and the prohibition of procurement and supply of weapons.

f) The Financial Intelligence Act, 2019

i. An Act that requires specified parties to implement programmes to combat commission of financial offences;[1] monitor and report on a business relationship in a high risk jurisdiction[2] and transactions for high risk businesses[3]. The obligations of specified parties and accountable institutions relating to combating proliferation financing under this Act are discussed in detail under clause 6.4.2.

7.0. Implementation of targeted financial sanctions

7.1. Robust controls are critical to ensure that goods leaving the country do so lawfully and are not sent to countries or entities which would misuse them, thus preventing them from becoming a threat to national and global security. The measures which include export controls; security of research and development data; and regulation of controlled materials are the responsibility of the Chemical, Biological, Nuclear and Radiological (CBNR) Weapons Management Authority.

7.2. Another control which involves specified parties, is the implementation of targeted financial sanctions. The procedure for the implementation of targeted financial sanctions is provided for in the Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations.

[1] Section 2 of the Financial Intelligence Act defines financial offence as money laundering, financing of an act of terrorism and financing of proliferation of weapons of mass destruction.

[2] A high risk jurisdiction includes a country that provides funding or support for terrorist activities or proliferation of weapons of arms of war or that has been designated as a country that supports terrorism or proliferation of arms of war.

[3] A high risk business includes, a business that appears on the sanctions list; that has a business relationship with other businesses that appear on the sanctions list and is subject to sanctions, embargos or similar measures issued by the UNSC. (see section 2 of the FI Act)

7.3. How are targeted financial sanctions communicated in Botswana?

7.3.1. The process for communicating designations made by the United Nations is outlined under Regulation 9 of the Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations as follows:

a. When a change to the United Nations list of designated persons takes effect,

b. The Minister responsible for international affairs immediately forwards the list to the Committee

c. The Committee[4] immediately upon receipt and in no later than 16 hours, circulates, through electronic mail, the list to —

  i. supervisory authorities;

  ii. investigating authorities;

  iii. specified parties; and

  iv. accountable institutions

d. The chairperson of the Committee shall without delay publish the United Nations List in the Gazette and a newspaper with national circulation and on such media as the Committee may consider appropriate.

7.3.2. National listing of a person, entity or structured group ordered by the Minister are also communicated by the Committee.

7.4. Role of specified parties in targeted financial sanctions

Obligations of specified parties relating to adhering to sanctions lists are provided for under the Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations and the Financial Intelligence Act.

[4] "Committee" means the National Counter-Terrorism Committee established under section 12A of the Act

7.4.1. Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations.

a. Specified parties are expected to screen their customers against the UN sanctions list and where there is a match, undertake obligations outlined under Regulation 10 (1) as follows:
   i. Identify and freeze in no later than 8 hours, and without prior notice, property or economic resources that owned or controlled[5] by a designated person, including property or economic resources that cannot be tied to a particular act of terrorism plot or threat;
   ii. Record the frozen property or economic resources against the names of the owners and beneficial owners for proper management.
   iii. Not make frozen property, economic resources or financial or other related services available directly or indirectly for the benefit of a designated person.
   iv. Without delay, inform the Committee of the full particulars[6] of any property or economic resources identified and frozen (including transactions and attempted transactions relating to the funds, property or economic resources).
   v. Where no such property or economic resources are identified, the specified party, accountable institution or person shall make a nil report to the Committee.
b. Regulation 7 (3) requires specified parties to identify and freeze property held by a nationally listed person or entity.
c. The Regulations also provide for certain prohibitions, including:
   i. Regulation 19 prohibits dealing with property held by designated persons.
   ii. Regulation 20 prohibits making property available to designated persons.

[5] Property of designated person includes that which is held on behalf of or at the direction of the designated person as well as property generated by that of a designated person.
[6] Particulars required include: the nature and description of the property or economic resources; the name of the owner or holder of the property or economic resources; the mode and date of acquisition of the property or economic resources; the location of the property or economic resources, and the transactions relating to the property or economic resources.

iii. Regulation 22 prohibits the procurement and supply of weapons to any designated person.

7.4.2. The Financial Intelligence Act

The Financial Intelligence Act places certain obligations on specified parties that seek to prevent, suppress and disrupt the development of Weapons of Mass Destruction. They include:

a) Conducting a risk assessment of the risk of commission of financial offences[7] in terms of *section 11* of the Act. Specified parties and accountable institutions should be sensitive to and understand the risks associated with financing the potential tools of proliferation, including nuclear and dual-use material, and military items. The following factors may be taken into consideration when identifying proliferation financing risks associated with the entity:
   i. Country or Geographic Risk – a strong indicator will be links to a country that is subject to sanctions against proliferation, an embargoed destination, or countries that have strong links with terrorist groups and activities.
   ii. Customer Risk – in particular, where a customer is involved in the supply, purchase or sale of dual-use, proliferation-sensitive or military goods. Also, customers who are on national lists concerning high risk entities and those connected to a higher-risk jurisdiction of proliferation concern.
   iii. Product and Service Risks – project financing of sensitive industries in higher risk jurisdictions; higher risks may result where delivery of services is subject to sanctions; trade finance services, transactions and insurance products involving higher risk jurisdictions; and the delivery of high volumes of dual-use, proliferation-sensitive or military goods, particularly to a higher risk country.

b) *Section 14* of the Act provides for conducting customer due diligence (CDD) to know your customers and beneficial owners.
   i. Customer acceptance procedures which include customer screening must be maintained and implemented.

[7] Section 2 includes proliferation financing as a financial offence.

ii. Customers should be screened against the lists communicated under the Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations.

iii. Customer screening may be done against other lists, including but not limited to, the FATF high risk countries and European Union Sanctions lists.

c) *Section 25* provides for monitoring and reporting amongst others, transactions for high risk businesses and business relationships formed in a high risk jurisdiction.

8.0. Conclusion

Specified parties are key stakeholders in the fight against illicit activities related to weapons of mass destruction. Specified parties have an obligation to develop risk based compliance programmes that provide for screening customers against sanctions lists in accordance with the Financial Intelligence Act. Where there is a match, a specified party must comply with the requirements of the Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations.

Annexure A: How proliferation networks operate

Similar to international criminal networks, proliferation support networks are using the international financial system to carry out transactions and business deals. Buying or stealing ready-made weapons of mass destruction can be easily detected, hence proliferators resort to other means such as:

a) Masking their acquisitions as legitimate trade – procure components, materials, and technology and then build a weapon.
b) Purchase dual-use items - goods that have both commercial and military or proliferation applications. This can include goods that are components of a weapon, or those that would be used in the manufacture of a weapon.
c) Buying goods that are slightly below the controlled threshold.
d) Undeclared joint research affiliations with foreign government institutions.
e) Exploit global commerce (i.e. operate in countries with weak export controls or free trade zones – where their procurements and shipments might escape scrutiny).
f) Conduct financial transactions in the banking system through false intermediaries, front companies and illegal trade brokers.
g) To avoid export controls and sanctions, proliferators lie about the end-use and end-user and hide behind front and shell companies.

Annexure B: red flag indicators and typologies of potential proliferation financing risks

a) Customer:

i. The customer or counter-party, or its address, is the same or similar to that of an individual or entity found on publicly available sanctions lists.
ii. The customer is involved in the supply, sale, delivery or purchase of dual-use, proliferation-sensitive or military goods, particularly to higher risk jurisdictions.
iii. The customer is a military or research body connected with a higher risk jurisdiction of proliferation concern.
iv. The customer's activities do not match the business profile.
v. The customer is vague about the end user(s) and provides incomplete information or is resistant when requested to provide additional information.
vi. The customer uses complicated structures to conceal involvement, for example, uses layered letters of credit, front companies, intermediaries and brokers.

b) Transactions/Orders:

i. The transaction(s) concern(s) dual-use, proliferation-sensitive or military goods, whether licensed or not.
ii. The transaction(s) involve(s) an individual or entity in any country of proliferation concern.
iii. The transaction reflect(s) a link between representatives of companies (e.g. same owners or management) exchanging goods, in order to evade scrutiny of the goods exchanged.
iv. The transaction(s) involve(s) the shipment of goods inconsistent with normal geographic trade patterns i.e. where the country involved does not normally export or import the types of goods concerned.
v. The order for goods is placed by firms or individuals from countries, other than the country of the stated end-user.

c) Jurisdiction:

i. Countries with weak financial safeguards and which are actively engaged with a sanctioned country.
ii. The presence of an industry that produces dual-use goods, proliferation-sensitive items or military goods.
iii. Deliberate insertion of extra links into the supply chain.
iv. Countries that are known to have weak import/export control laws or poor enforcement.

d) Others:

i. The final destination or end-user is unclear.
ii. Declared value of shipment under-valued in relation to shipping cost.
iii. Inconsistencies in information contained in trade documents and financial flow e.g. names, addresses, final destination.
iv. The use of fraudulent documents and identities e.g. false end-use certificates and forged export certificates.
v. The use of facilitators to ensure the transfer of goods avoids inspection.
vi. A freight forwarding firm being listed as the product's final destination.

Literature

i. FATF: Combating Proliferation Financing: a status report on policy development and consultation, 2010.

ii. FATF: Typologies Report on Proliferation Financing, June 2008.
iii. FATF: Guidance on Counter Proliferation Financing – The Implementation of Financial Provisions of United Nations Security Council Resolutions to Counter the Proliferation of Weapons of Mass Destruction, February 2018.
iv. The Central Bank of The Bahamas's Guidance Note on Proliferation and Proliferation Financing, August 2018.

Date of approval: ____________________

Approval signature: __________________
Abraham Sethibe (Dr)
Director General, FIA