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Targeted Financial Sanctions

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Introduction

Targeted Financial Sanctions ('TFS') require Designated Non-Financial Businesses or Professions ('DNFBP') and Financial Institutions ('FI') to monitor, restrict or prohibit customer interactions where the individual, entity or jurisdiction is listed by the United Nations Security Council ('UNSC') as a risk (the 'List'). Restrictions on dealing with entrants in the List aims to reduce, and potentially even eliminate, terrorism, proliferation financing and terrorist financing. The UNSC uses a suite of enforcement controls to curb unwanted behaviours, including travel bans, arms embargoes, or restrictions on goods, services or commodities.

The United Arab Emirates ('UAE') is subject to local and international obligations to comply with the TFS as part of a unified global approach to fight against financial crime with the aim of promoting global peace. Entities conducting business in the region must comply with extensive and comprehensive compulsory obligations. This article discusses the current TFS framework, future developments, recent enforcement actions and your next steps to compliance.

Background

The UNSC, under the UN Charter, permits the use of non-weaponry tactics to restore global peace and the UAE, as a member of the UN, is committed to implementing directed controls. As such, the UAE issued Cabinet Resolution No. 74 of 2020 as a binding obligation for all individuals and entities incorporated in the region to monitor and control interactions with clients and their associates. All UAE DNFBPs and FIs have various obligations to ensure compliance, the most prudent being reporting obligations to the Financial Intelligence Unit ('FIU'). The FIU, mandated by Federal Decree-Law No. (20) for 2018, Article 9 is part of the UNSC security council committee that uses reported intelligence to direct interactions with the List allowing for a unified global approach to risk management. Managing such interactions may include freezing assets or funds or ceasing services, as well as detailed monitoring and reporting. Entities who receive a direction are obligated to comply, even if compliance may lead to revenue and/or client loss. Failure to comply with a direction from the FIU can lead to enforcement action, including imprisonment, fines and severe reputational damage for Firms and their senior management.

The UNSC, FIU, Ministry of Justice ('MOJ'), Ministry of Economy ('MOE'), Executive Office, and jurisdictional Supervisory Authorities (the DIFC's Dubai Financial Services Authority ('DFSA') and the ADGM's Financial Service Regulatory Authority ('FSRA')) (collectively 'Supervisory Authorities') take an active role in ensuring that TFS countermeasures are diligently enforced.

In July 2023, the financial institution Mirabaud Middle East ('MME') was subject to a fine of over USD3M by the DFSA for failing to comply with customer due diligence measures. The DFSA found inconsistencies in applying TFS policy and failing to report suspicious activity. The same month, the FSRA issued a fine to the compliance consultancy DNFBP, Equiom, for USD90k for weaknesses in its TFS controls. Similarly, the FSRA found weaknesses in applying adequate customer due diligence, including obtaining true copies of identification documents and renewal of 'know your client'. Onshore, the SCA has been active in fining two entities in 2023 for failing to meet expectations around TFS and AML controls. Almraz Capital received a fine of AED100k for failing to implement policies and procedures adequate to the company's risk and to establish a suitable assessment for client risk. Noor Capital PCS was issued a fine of AED100k for failing to apply enhanced due diligence for high-risk entities, thereby increasing the chances of dealing with a sanctioned individual by failing to apply basic, prescribed checks.

Future plans

The global landscape is changing, and TFS and its countermeasures are evolving to be effective against sophisticated criminal activity, technological advancement, and sanction evasion tactics. To ensure effective measures, the UAE continuously reviews its rulebooks and guidance to equip organisations with the frameworks to manage TFS exposures. Framework amendments are often subject to public consultation from industry stakeholders and associated professionals prior to publication.

In June 2023, the DFSA released Consultation Paper ('CP') 151 'Proposed Changes to the DFSAs Anti-money Laundering, Counter-terrorist Financing and Sanctions Module' with suggested rulebook changes to enhance and clarify organisations TFS compliance. In CP151, the DFSA propose changes to the Anti-Money Laundering ('AML') rulebook to create a more unified framework by removing overlapping references to TFS obligations already prescribed by the binding Cabinet Decision No.74 of 2020 in order to clarify the organization's obligations. In addition, the CP suggests enhancing identification requirements for DNFBP's beneficial owners. The proposal suggests an obligation for DNFBP to identify shareholders of >10%, ensuring that TFS checks would be conducted on shareholders of influence. Regarding enhancements of policy requirements, the CP suggests that organisations tailor policies and procedures to the organisation's requirements. Considering recent thematic reviews, this is of particular concern for DNFBPs and FIs whose exposure has not been correctly reflected in their risk assessments and, subsequently their policy documents, leading to incomplete or ineffective internal policy on TFS measures.

In May 2023, the FSRA released CP 2 of 2023 'Proposed Enhancements to Client Classification, Client Assets and Conduct Requirements' to equip the increasingly diverse tenants' understanding of TFS requirements and to align with global best practice. In relation to TFS, the CP proposes a more apparent segregation of client assets with a requirement to distribute with a third-party vendor. Whilst this primarily protects client funds, the measure also allows for the effective freezing of the correct assets where countermeasures are directed. In addition, the FSRA proposes to limit its scope of regulation from generic 'providing custody' permissions (which currently includes financial assets as well as 'other assets' which could include art or real estate) to only 'financial assets. This allows for a more specialised regulator to oversee and advise on 'other assets'. The segregation of duties allows for a closer observation of sector typologies of illicit fund transfers and trades.

What do we need to do?

TFS obligations can often be nuanced depending on circumstance but preparation, policy, training, and effective management of exposures are crucial. The Supervisory Authorities provide extensive guidance to help DNFBPs and FIs build a core infrastructure of compliance. In addition, organisations are obliged to conduct assessments of their exposures to potential and engaged clients on the List and to report any interactions promptly to the FIU. The obligation is ongoing and must be applied throughout the lifecycle of the client relationship. Organisations must remain diligent about any changes to the List, and organisations based in the UAE must sign up to receive alerts on changes to ensure efficient management. The Supervisory Authority requires confirmation of any affiliations with the updated list entries by all organisations incorporated within the UAE within 48 hours.

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How Effecta can help?

At Effecta, we have experienced and qualified consultants you can trust to manage, oversee and advise on your compliance concerns. Our consultants have experience acting as Money Laundering Reporting Officers ('MLRO') and Compliance Officers ('CO') for multiple organisations both internationally and locally, so you receive quality support you can trust. We can assist with outsourced authorised roles, training, policies, procedures and risk assessments, as well as any specific ad hoc requests.

To contact Effecta, click here

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