

TFS Implementation, Ownership & Control, and Combating Sanctions Evasion

Date: February 2023

Executive Office Mandate

Targeted Financial Sanctions TFS The National Leader in the UAE to ensure the implementation of Targeted Financial Sanctions (TFS) imposed by the UAE and UN Security Council Resolutions.

UN
Sanctions
Implementation

Focal Authority in the UAE to coordinate the implementations of all UN imposed resolutions & sanctions

Import &
Export
Control of Dual-Use
& Controlled
items

The Authority responsible for import & export control of dual-use and controlled items

Executive Office's Role in Implementing Targeted Financial Sanctions (TFS)

- Act as a focal authority to ensure implementation of TFS in the UAE.
- Coordinate and exchange information between government agencies.
- Circulate updates to the Local Terrorist List and UN Consolidated List.
- Work closely with the SCNS with regard to the local listing.
- Receive and process applications to use frozen funds as per sanctions lists.
- Receive and process grievances related to Local Terrorist List and UN Lists.

Targeted Financial Sanctions (TFS) Legal Framework – Cabinet Decision No. 74 of 2020



What is Targeted Financial Sanctions (TFS)?

WHY?

Aim

Stop the flow of funds or other assets to terrorists, proliferators of WMD, their supporters and prevent them from access to funding and other services that are used to commit terrorist or proliferation acts.

WHO?

Application

- 1- Individuals or entities listed on the UAE Local Terrorist List issued by the UAE Cabinet (in line with UNSCR 1373).
- 2- Individuals or entities listed by the United Nations Security Council through the multiple UN Sanctions Committees ("UN Consolidated List")

HOW?

Measures

- 1- Freeze funds or other assets of designated persons, without delay and without prior notice.
- 2- Prevent access to funds or other assets or services.

Who does TFS apply to?

Cabinet Decision 74 of 2020 enforce the following:

UAE Terrorist List

UN Consolidated List

TFS measures apply to:

- a) Any Person (natural or legal) designated in these lists.
- b) Any entity, directly or indirectly **owned or controlled by** an Person designated under a.
- c) Any Person acting on behalf of or at the direction of any Person designated under a & b.

Who does TFS apply to?



Financial Obligations and Measures

Freeze Without Delay



Freezing of Funds



Freezing of Real Estate
Assets



Freezing of Gold

Prohibition



Services to create, operate of manager businesses



Services to transfer ownership of assets



Services to buy or sell real estate

Financial Obligations and Measures



TFS Non-Compliance

Administrative penalties and criminal prosecutions Federal Law 26 OF 2021

- Financial Sanctions
- A suspension, restriction, or prohibition of activity, business, or profession causes either revocation or withdrawal of the business license.
- Supervisory authority may determine a ban of certain individuals from employment within the relevant sectors for a period of time.
- Increased scrutiny of future actions from the UAE Government

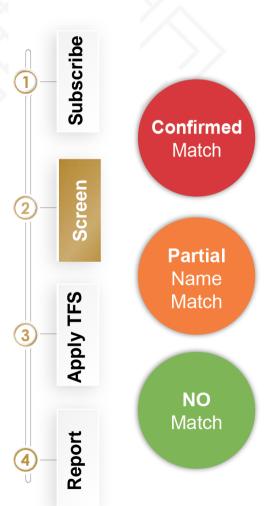
Screen Apply TFS Report

 Requirement to subscribe to the EOCN Notification System to receive automated email notifications on any updates to the Sanctions Lists.





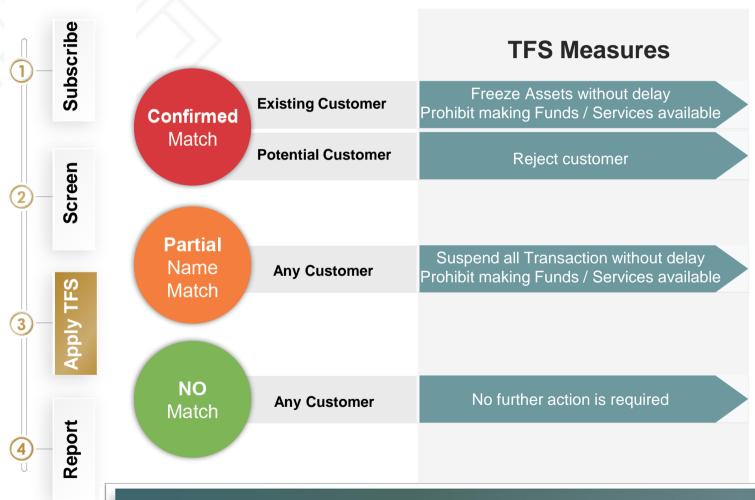
- Undertake regular and ongoing screening on the latest Local Terrorist List and UN Consolidated List.
- Screening should be conducted in the following circumstances:
 - Upon any updates to the Local Terrorist List or UN Consolidated List.
 - Prior to onboarding new customers.
 - Upon KYC reviews or changes to a customer's information.
 - Before processing any transaction.
- Screening should include existing customer databases, ultimate beneficial owners and parties to transactions.



Three Possible Screening results as follow:



Depending on the type of match, the following TFS measures should apply:



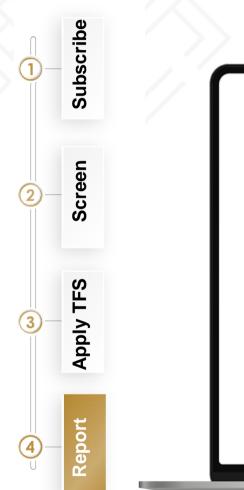
TFS measures remain in effect until delisting or instructions received from EOCN



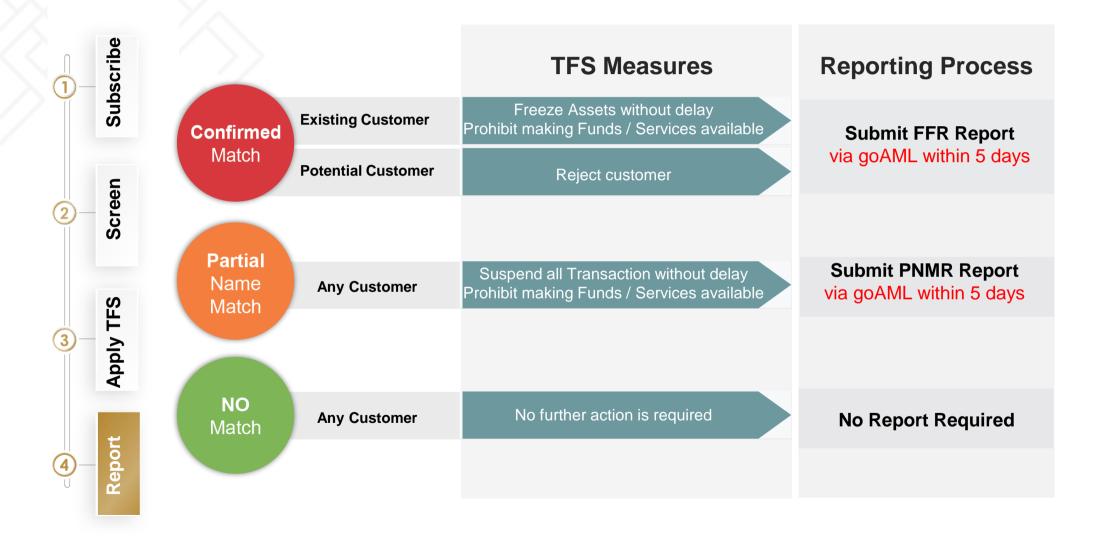
There are two TFS Reports that are required from the Private Sector

- 1. Fund Freeze Report (FFR)
- 2. Partial Name Match Report (PNMR)

These are submitted via goAML system. The reports are received directly by the EOCN.







Examples of TFS Implementation (Bank)

- During the screening process, a bank identifies a full name match between a customer in its database (Person A) and a designated person on the Sanctions Lists. Person A's nationality and DOB also match with the designated person; however, the registered address is different.
- Person A has active current & savings accounts, a credit card, and a loan facility with the bank. In this case, Person A is considered to be a confirmed match.
- The bank must freeze without delay the current and savings accounts, credit card, and loan facility of Person A and submit a FFR in goAML.
- The FFR must include attachments that clarify:
 - Amount of funds frozen in each account. Include supporting documents such as account statements.
 - Amount of funds frozen in the credit card (e.g., limit on the credit card and the remaining balance).
 - o Include supporting documents such as credit card statements.
 - Amount of funds frozen in the loan facility (e.g., total sum of the loan facility and the remaining balance).
 - ID documents of the confirmed match, such as ID card, travel documents, trade licenses, etc.



Examples of TFS Implementation (Exchange House)

- An exchange house identifies a confirmed match (Person A) to the Sanctions Lists when screening its transactions database. Person A is attempting to make a transfer to a nondesignated individual (Person B).
- The exchange house must freeze the transaction without delay and submit an FFR in goAML.
- The FFR must include attachments that clarify:
 - The transaction amount frozen. Include supporting documents such as transaction receipt.
 - ID documents of the confirmed match (Person A) and the recipient (Person B), such as ID card, travel documents, trade licenses, etc.



Examples of TFS Implementation (Insurance)

- An insurance company identifies a confirmed match (Person A) when screening its customer database. Person A is the beneficiary of a life insurance policy.
- The insurance company must freeze the policy, including future premiums on receipt and any interest due to the account, and seek approval from the EOCN before making any payments under the policy.
- The insurance company must also **submit an FFR in goAML** with details of the insurance agreement (including policyholder, beneficiary, premiums, etc.)



Examples of TFS Implementation (Brokerage)

- A brokerage company identifies a confirmed match (Person A) when screening its customer database. Person A owns a stock portfolio with the brokerage firm. Person A also receives dividends from the stocks owned.
- The brokerage company must freeze the stock portfolio without delay and submit an FFR in goAML.
- The FFR must include attachments that clarify:
 - The quantity of the stocks frozen and their value. Include supporting documents such as portfolio summary.
 - ID documents of the confirmed match, such as ID card, travel documents, trade licenses, etc.
 - The brokerage company should credit any dividends due to Person A's account; however, the account must remain frozen, and the brokerage company must ensure that Person A is unable to sell his stocks or avail the dividends received.



Examples of TFS Implementation (DNFBPs)

<u>Example 1: Real Estate Brokers and Developers</u>

A real estate broker identifies a confirmed match (Person A) when screening the parties to a property sale transaction. Person A is the prospective seller of the real estate. The real estate broker must block the transaction immediately, refrain from offering any services to Person A, and submit an FFR in goAML. The FFR must include attachments that clarify:

- The type, value, and location of the real estate being sold. Include supporting documents such as title deeds.
- o ID documents of the confirmed match, such as ID card, travel documents, trade licenses, etc.

Example 2: Dealer in Precious Metals & Stones (DPMS)

A DPMS identifies a confirmed match (Person A) when screening a prospective customer. Person A is attempting to sell high-value jewelry to the DPMS. The DPMS must immediately refrain from offering any services, including the sale or purchase of jewelry, to Person A and submit an FFR in goAML. The FFR must include attachments that clarify:

- Details of the attempted transaction, including the specifications and value of the jewelry attempted for sale.
- ID documents of the confirmed match, such as ID card, travel documents, trade licenses, etc.



Examples of TFS Implementation (DNFBPs)

Example 3: Company Service Providers (CSPs)

A CSP identifies a confirmed match (Entity A) when screening its client database. Entity A is engaging the CSP for services to act as a formation agent. The CSP must immediately refrain from offering any services to Person A and submit an FFR in goAML. The FFR must include attachments that clarify:

- Details of the attempted transaction and formation agreement.
- ID documents of the confirmed match, such as ID card, travel documents, trade licenses, etc.

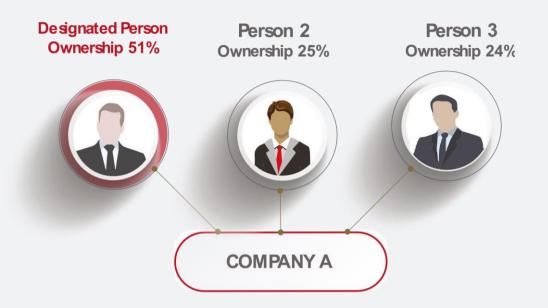
Ownership, Control, and Acting on behalf of a Designated Person

Majority Interest (Ownership)

In implementing TFS, the criterion to be taken into account when assessing whether a legal entity is majority owned by a designated individual or entity is the possession of more than 50% of the proprietary rights of the legal entity or having a controlling interest in it. If this criterion is satisfied, it is considered that the legal entity or arrangement is owned by another individual or entity and is subject to freezing measures.



Majority Interest (Ownership) - Example



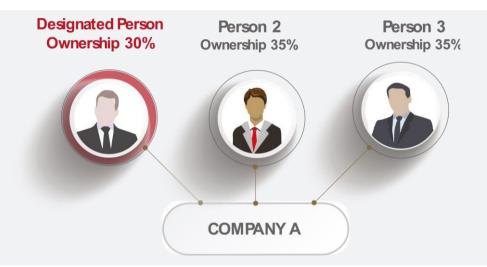
Action

- The funds or other assets of non-designated Company A must be frozen without delay since the Designated Person owns more than 50% of non-designated Company A.
- Other than the assets of Company A, the funds or other assets of the two non-designated owners (Person 2 and 3) must not be frozen since they are not designated and there is no legal evidence to suggest that they are acting on behalf of the Designated Person.

Minority Interest (Ownership)

- A designated person holding <u>50% or less</u> of the proprietary rights of a legal entity is considered to be holding a minority interest in the legal entity. In that case, the legal entity is not subject to freezing measures.
- However, FIs, DNFBPs, and VASPs must remain attentive to any changes in the ownership structure of the legal entity whereby the designated person's stake increases to greater than 50% or if they obtain a controlling interest.
- ▼ FIs, DNFBPs, and VASPs must also ensure that funds or other assets (e.g. profits, proceeds from sale of assets, etc.) due to the designated person are subject to freezing measures and are not made available under any circumstances.

Minority Interest (Ownership) - Example



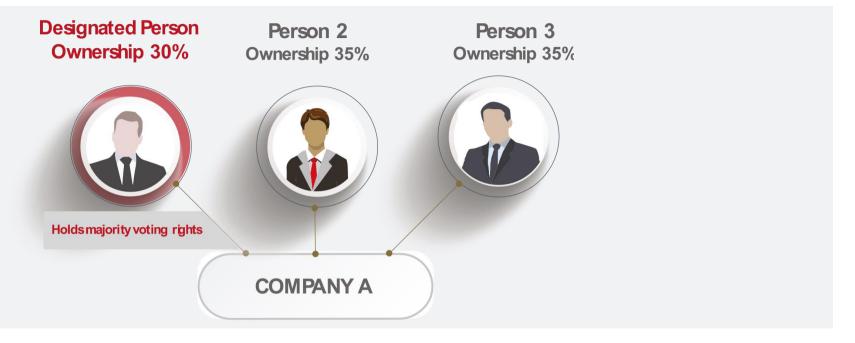
Action

- The funds or other assets of non-designated Company A must not be frozen since the Designated Person owns less than 50% of non-designated Company A and does not hold a majority interest.
- Any funds or other assets due to the Designated Person as a result of owning 30% of Company A must be subject to freezing measures.
- The funds or other assets of the two other owners must not be frozen since they are not designated and there is no legal evidence to suggest that they are acting on behalf of the Designated Person.
- However, extreme vigilance is required to monitor any changes in the ownership structure in which Person A's stake in Company A increases to above 50% or if he obtains a majority interest.

Control

- FIs, DNFBPs, and VASPs should apply freezing measures in cases in which a designated person holds a minority interest, if there is evidence that the designated person exerts control over the legal entity (despite owning a minority interest).
- The criteria to be taken into account when assessing whether a legal entity is mainly controlled by another person or entity, alone or pursuant to an agreement with another shareholder or other third party, could be any of the following:
 - a) Having the right to appoint or remove a majority of the members of the administrative or management body.
 - b) Controlling the majority voting rights in a legal entity pursuant to an agreement with shareholders.
 - c) Having a power of attorney or authorized signatory arrangement over a legal entity.
 - d) Having the right to exercise a dominant influence over a legal person pursuant to an article in the Memorandum or Articles of Association

Control - Example



Action

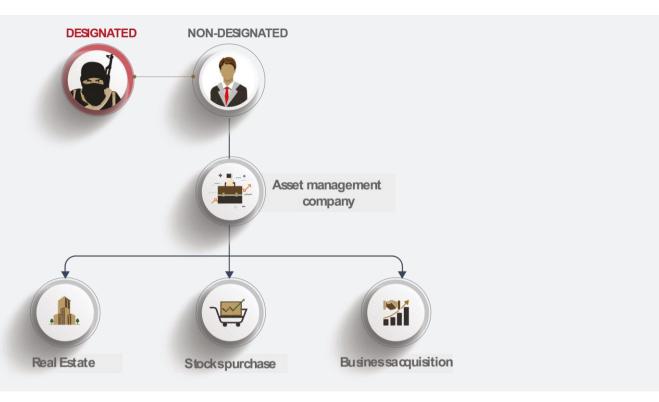
Despite the Designated Person holding a minority interest, the funds or other assets of Company A must be frozen without delay since the signed agreement between the Designated Person and the other owners proves that Person A exerts control over Company A by holding majority of the voting rights.



Acting on Behalf or at the Direction of

- Fls, DNFBPs, and VASPs are required to implement targeted financial sanctions on individuals or entities acting on behalf or at the direction of designated persons.
- The relationship to act on behalf or at the direction of designated persons must be evidenced by legal documentation, such as a power of attorney or authorized signatory.

Acting on Behalf or at the Direction of - Example



Action

Despite the Designated Person holding a minority interest, the funds or other assets of Company A must be frozen without delay since the signed agreement between the Designated Person and the other owners proves that Person A exerts control over Company A by holding majority of the voting rights.

Sanctions Evasion



What is Sanction Evasion?

Any **attempt to disguise or conceal** the involvement of sanctioned individuals, entities, or groups in a transaction or series of financial or non-financial transactions or services to avoid financial sanctions imposed by UN or local terrorist list.

How to uncover it?

- Raising awareness of sanction evasion techniques
- Filing STRs to the FIU via GoAML
- Understanding the risks associated with the sector
- Private public partnership and information sharing.

Terrorist Financing (TF) Red Flags

- Transactions involving certain high-risk jurisdictions
- No apparent business connection
- Inconsistent funds compared to purpose
- Negative media findings on involved parties
- Multiple accounts of NPO's to collect funds
- Irregularities during the CDD process

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Suspicious Transaction / Activity Report

Terrorist Financing (TF) Typologies

- Trading of natural resources linked to conflict zones or "sanctioned" countries and subsequent transfer of funds to high-risk jurisdictions for the benefit of sanctioned terrorist groups.
- Use of non-profit organizations or charities to collect and funnel funds to foreign beneficiaries to support sanctioned terrorist groups or persons.
- Use of front companies, third parties, or family members to conduct business on behalf of sanctioned persons in order to raise funds to support terrorist activities.
- Use of nominee directors and owners to mask the ultimate beneficial ownership of front companies that are established to raise funds to support TF activities of sanctioned persons or groups.

Proliferation Financing (PF) Red Flags

- Transaction involves person or entity in foreign country of proliferation concern.
- Transaction involves possible shell companies
- Identifying documents that seemed to be forged or counterfeited.
- Complex legal entities or arrangements that seem to be aiming to hide the beneficial owner
- Complex legal entities or arrangements that seem to be aiming to hide the final destination / end user

Suspicious Transaction / Activity Report





Proliferation Financing (PF) Typologies

- Use of extensive overseas networks of procurement agents and front companies to procure dual-use and controlled items.
- Mislabelling dual-use goods in export documentation by falsely declaring the items being shipped as general-purpose goods.
- Concealing the end user of a shipment by using freight forwarding companies and front companies established in foreign jurisdictions (often within close proximity to the proliferating state) as the receivers of the shipped goods.
- Use of deceptive shipping practices, such as disabling Automatic Identification Systems (AIS), physically altering vessel identification, and ship-to-ship transfers.



Fund Freezing Report VS Suspicious Activity Report

Fund Freezing Report and Partial Name Match Report

Confirmed match to a Designated Person

Partial name match to a Designated Person

Established legal relationship to a Designated Person or Party

Suspicious Activity Report

Identified red flags or reasons to report.

Does not include confirmed or partial name match to a Designated Person

Does not involve any established legal relationship to a Designated Person or Party

Submit FFR or PNMR







Recommendations

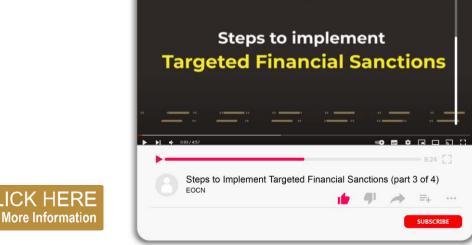
- Identify, understand, and assess TFS risks for customers, products and services, and delivery channels.
- Implement effective employee training programs to the different lines of defense.
- Identify ultimate beneficial information and verify the ownership and control criteria before implementing freezing measures.
- Integrate the red flags in the screening system to detect suspicious transactions related to TF, PF and sanctions evasion.
 - Conduct enhanced due diligence to cases involving high-risk jurisdictions

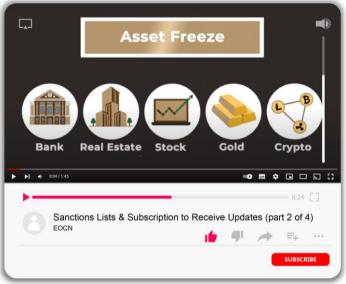
Verify all parties of deals and ensure there is clear economic purposes.

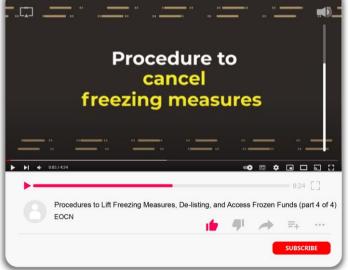
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