BORD TA' SORVELJANZA DWAR IS-SANZJONIJIET
SANCTIONS MONITORING BOARD
MALTA

Training session on

Targeted Financial Sanctions

June 2020

Q&A following the Training Sessions on Targeted Financial Sanctions

I. Sanctions Screening

1. How can an institution effectively detect and prevent proliferation financing (PF), especially where transactions relating to industrial items are concerned? Practical examples in a trade finance context would be appreciated.

   The best way to detect and prevent proliferation financing is to be aware of risk and to approach relationships and transactions and the related due diligence with this in mind. A starting point is to consider what industry sectors might be more vulnerable to proliferation risks, such as transport/logistics or manufacturing or engineering sectors and look at financial transactions involving or related to these sectors through the lens of potential proliferation and proliferation financing.

   The FATF report on proliferation financing typologies is a useful resource for understanding how proliferation financing occurs in practice: https://www.fatf-gafi.org/media/fatf/documents/reports/Typologies%20Report%20on%20Proliferation%20Financing.pdf

   With regard to trade finance (which is covered extensively in the FATF report), this might mean enhancing the scrutiny of underlying transactions, and requiring sight of all relevant documents, even in open account transactions.

2. Can the Sanctions Monitoring Board provide any links for sanctions screening?

   Important Links for manual screening of Sanctions include the following:

   EU Sanctions Map: https://www.sanctionsmap.eu/#/main

   EU Financial Sanctions Database: https://data.europa.eu/euodp/en/data/dataset/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions

UN Consolidated list of Persons: https://www.un.org/securitycouncil/content/un-sc-consolidated-list

OFAC sanctions list: https://sanctionssearch.ofac.treas.gov/

3. When conducting sanctions screening manually, what are the go-to sanctions lists that need to be checked? Is World Check, OFAC Sanctions, UN Sanctions, Adverse Media, and local Court Orders enough?

   The above lists give a very wide coverage. World Check would cover UN and EU sanctions which are directly applicable to Malta. One is also to make sure to check Maltese national sanctions (published under the SMB website) issued under the National Interest (Enabling powers) Act.

4. When a customer is a legal person/arrangement, what is meant by screening the 'totality of the network?" Does it also include subsidiaries of the customer?

   If a customer is a legal entity, the subject person or credit/financial institution is to be aware of the entire structure including subsidiaries and UBO.

5. There seems to be a limit in the info that can be gathered by a Company Service Provider (CSP) for a client company at onboarding stage. For example: the client company may state (and it may be true) that it may not know the identity of the potential clients at that stage. So while due diligence may be conducted accordingly to discern the ownership/control structure and understand the business and rationale of the client company, there seems to be nothing more that may be done by the CSP... other than establishing client company links with its own clients.

   Due diligence cannot be properly carried out without full details of the identity of the potential clients. A Company Service Provider needs to ensure acquisition of full details before onboarding a client or risk being in a situation which could be in violation of applicable sanctions.

6. For fund managers placing certain reliance on the CDD checks undertaken by fund administrators of funds under management with respect to underlying fund investors, is it sufficient for such fund managers to rely on same arrangement for sanctions screening of underlying investors?

   It is for the fund manager to ensure that the sanctions screening is being properly and regularly carried out since in case of sanctions violations, reliance on another party for screening would not be sufficient defense

7. How would other subject persons need to act in order to prevent TF/PF? Since it is often impossible to have visibility of the whole transaction, it would be difficult to identify such activities. How should transactional screening be conducted?

   There are no silver bullets, but a good starting point is recognition of the issues implicit in the question, and to look at the relationship or transaction through the lens of a detective and assess whether the transaction or series of linked transactions makes commercial sense and that there are no gaps in your understanding. A thorough understanding of risk is crucial. Enhanced CDD should be employed in situations where something about a transaction (e.g. involvement of a conflict zone or transshipment hub, or of dual-use goods) suggests that there is a higher risk of TF/PF abuse. Requiring information, including beneficial ownership information on all parties involved in a transaction, and requiring sight of underlying documents can help in detection of irregularities (e.g. if the information is not provided, contains anomalies or is demonstrably false). Transactional screening has merit as it can go beyond the normal internal databases maintained by firms. In essence, all names in the documentation for a transaction, including names of ships, should be input into a database and that database checked against lists of designated persons (which can be included in e.g. databases of third-party data service providers).

8. What is the role of banks within sanctions controls?

   Banks play a crucial role in sanctions control given that their role in the transmission of funds.

9. Where do obligations pertaining to VOs for AMLCFT/Sanctions emanate from?

   The National Interest (Enabling Powers) Act linked hereunder http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8835&l=1 provides for the direct applicability of all UN, EU and national sanctions to all persons in Malta including VOs.

10. How should accountants/auditors monitor for any dual-use goods, sanctions breaches or circumventions? Are they expected to screen each transaction of their ultimate customer? Further to this question in relation to accountants, considering that bookkeeping is not deemed as Relevant Activity pursuant to the PMLFTR, are they still expected to undertake CDD to address the obligation that emits from Article 17(6) of the NIA?

    The National Interest (Enabling Powers) Act which provides the direct applicability of all UN, EU and national sanctions applies to all persons in Malta. Accountants and auditors are subject persons in their own right and their activities are not limited solely to bookkeeping. They therefore need to ensure that their clients are screened against the said sanctions lists at all times.

11. Is it required for insurance undertakings conducting general insurance business to conduct sanctions screening since general insurance business is not considered as relevant financial business?

    The National Interest (Enabling Powers) Act is applicable to all person in Malta. Since providing insurance to a listed person or entity would be tantamount to making resources available, an insurance company needs to make sure that it properly screens its client databases against applicable sanctions lists.

12. Subject Persons are obliged to check if their clients or prospective clients (whether natural persons or legal persons) are the target of international or local sanctions. Does the relevant authority tasked with authorizing/registering legal bodies carry out such checks?' If 'no' why? aren't such authorities the real Gatekeepers?

    Every authority and subject person has a duty to make the relevant checks vis-a-vis clients and prospective clients and to have systems in place in accordance with article 17(6) of the National Interest (Enabling Powers) Act. In case of a breach of sanctions, it is not a defense to state that another authority had the duty to carry out checks and it is relevant to point out that sanctions may be imposed any time after the relevant authorization/registration and therefore checks need to be made at regular intervals.

II. Systems employed for Sanctions Screening

1. Subject persons invest heavily in sanction screening tools, are you suggesting that more checks should be done manually against updates that are received because sanction tools are usually updated immediately?

    Although sanctions tools give considerable assistance, there are situations when due diligence needs to be supplemented by additional checks especially when considering possibilities of terrorism financing or proliferation financing.

2. We are always assuming that companies have an IT automated screening programme. However, what about smaller subject persons screening manually?

    Subject persons need to have appropriate systems in place in accordance to their size, number of transactions carried out per day and client databases. It is up to the subject person to make an assessment of its needs. Kindly refer to the Guidance note on the applicability of article 17(6) (a), (b) and (c) of the National Interest (Enabling Powers) Act.

3. "Screening should be carried out daily". In cases where professionals do not have an ongoing relationship but provide services once every 3 months or once a year (example annual statutory audit) is screening prior to undertaking each engagement a practical alternative?

   A subject person is to undertake a self-assessment regarding the frequency of screening in accordance with a risk assessment in relation to the number of clients and transactions and in this respect, the Guidance note on the applicability of article 17(6)(a),(b) and (c) of the National Interest (Enabling Powers) Act refers. It is to be kept in mind that sanctions may be imposed at any time.

4. Are there sanctions screening IT platforms/systems which are officially recognized/endorsed/recommended by the SMB?

   The SMB does not have any official recommendations regarding sanctions screening or IT platforms. It is up to the subject person to make an assessment of its needs and to match this with an appropriate screening tool.

III. Ownership and Control

1. There are instances where it is impossible to identify all beneficial owners, there could be a structure where there is a minority interest of say 5%. In terms of AML legislation, subject persons are only expected to focus on the UBO who owns or controls, directly or indirectly 25% plus one. Therefore, are subject persons expected to list all beneficial owners in order to reconcile with 100% ownership?

   For the purposes of establishing ownership or control for the purpose of sanctions, one is guided by the Guidelines on the Implementation and Evaluation of Restrictive Measures (sanctions) in the Framework of the EU Common Foreign and Security Policy and the EU Best Practices for the Effective Implementation of Restrictive Measures. When evaluating sanctions, the 25% rule does not apply since the prohibition to make resources available directly or indirectly to a listed person or entity applies to any amount. In case of minority interests, since the requirement of ownership is not fulfilled, one needs to see the control structure of an entity since it is not impossible for a minority shareholder to have sufficient control rights.

2. It is understood that screening is conducted on all links within the structure, no matter how many tiers are present within the said structure?

   Subject persons are to ensure that individuals are not transacting with a person owned or controlled by a listed person or entity, therefore in order to exclude this possibility, all tiers within a structure need to be looked into.

3. Can you elaborate more on Ownership and Control Guidelines more specifically, the UBO screening requirement for companies, including minority shareholders under 10%?

   For the purposes of establishing ownership or control in view of sanctions, one is to be guided by the Guidelines on the Implementation and Evaluation of Restrictive Measures (sanctions) in the Framework of the EU Common Foreign and Security Policy and the EU Best Practices for the Effective Implementation of Restrictive Measures. When evaluating sanctions, the prohibition to make resources available directly or indirectly to a listed person or entity applies to any amount. In case of minority interests, since the requirement of ownership is not fulfilled, one needs to see the control structure of an entity since it is not impossible for a minority shareholder to have sufficient control rights.

4. To what level of ownership should a banking institution look at? A sanctioned entity would be so if 50% of the entity would be owned by an individual or aggregate of individuals. In PMLFTR implementing Procedures a UBO is stated at being a person holding 25%. How should banks look at these thresholds from a sanctions screening perspective? What should be the Bank's position on minority shareholders less than 25% from a sanctions screening perspective?

   For the purposes of establishing ownership or control for the purpose of sanctions, one is guided by the Guidelines on the Implementation and Evaluation of Restrictive Measures (sanctions) in the Framework of the EU Common Foreign and Security Policy and the EU Best Practices for the Effective Implementation of Restrictive Measures. As rightly pointed out ownership is established when there is more than 50% of the propriety rights. In case of minority interests, since the requirement of ownership is not fulfilled, one needs to see the control structure of an entity since it is not impossible for a minority shareholder to have sufficient control rights.

IV. Terrorism Financing (TF) and Proliferation Financing (PF)

1. One of the issues of terrorist financing is the difficulty in identifying which dual use goods can be used for terrorism. These obviously evolve over time as terrorists develop new techniques. Can you indicate where information may be sourced on an ongoing basis in order to understand and developing risks?

   Dual use items are normally associated with proliferation and proliferation financing (although there might be links between these activities and terrorist financing). With regard to dual use items themselves, there is an up to date list of items that the UN and EU have identified as dual use goods, which is amended to reflect new developments whenever necessary, available under Commission Delegated Regulation (EU) 2018/1922 of 10 October 2018.

This updates the EU dual-use list in Annex I to Regulation (EC) No 428/2009 and was published on 14 December 2018: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1922

For practical guidance on how goods may be procured for use in terrorism and/or proliferation, this RUSI guide is a useful source: https://rusi.org/sites/default/files/201704_rusi_cpf_guidance_paper.1_0.pdf

2. In practice, are terrorist activities only funded by large sums of money or is it a case of movement of small amounts?

Terrorist activities may be funded by small funds and the transfer of modest sums are often preferred in order to minimize the possibility of detection.

3. Considering PF, is trading in goods more usually observed or is it also common to observe provision of services?

Proliferation financing is the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, transshipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual-use goods used for non-legitimate purposes) in contravention of national laws, or where applicable international obligations. Proliferation financing involves both trading in goods and the provision of services and you often cannot have one without the other.

V. Secondary Sanctions

1. What is the position of the Sanctions Monitoring Board on Secondary Sanctions?

The starting point is that businesses in Malta must meet Maltese requirements. The main purpose of issue by a jurisdiction of secondary sanctions is to exert sanctions measures on an extraterritorial basis. It would follow that the degree to which one meets secondary sanctions will depend on applicable legislation in Malta and the degree to which one has or will have any involvement, whether significant or tangential, with the country or economy of the jurisdiction issuing such sanctions. With regard to legislation, the EU Blocking Statute (Council Regulation (EC) No 2271/96) applies to Malta in the same manner as other EU Regulations or Decisions on sanctions and its purpose is to protect EU operators from the extra-territorial application of third country laws. More information on the blocking statute can be found in: https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/blocking-statute_en

2. Would sanctions from bodies or countries other than EU/US affect Malta? For instance, OSCE and arms embargoes or dealing in US dollars or with US legal/natural persons and US/OFAC sanctions?

   Under the National Interest (Enabling Powers) Act, Malta is bound by all EU and UN sanctions and these are directly applicable under Maltese law. Malta would also be bound by the sanctions of other international organizations in which it is a member and if it opts to do so. National sanctions of other countries are not applicable under Maltese law and subject persons need to make their own assessment in dealing with such sanctions including taking into account the applicability of the EU blocking statute.

3. How does the Blocking statute affect Malta?

   The EU Blocking Statue (Council Regulation (EC) No 2271/96) applies to Malta in the same manner as other EU Regulations or Decisions on sanctions and its purpose is to protect EU operators from the extra-territorial application of third country laws. More information on the blocking statute may be found in https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/blocking-statute_en.

4. Can the SMB offer guidelines on management of other sanctions programmes apart from UN and EU, like OFAC, SECO, OFSI HMT?

   Under the National Interest (Enabling Powers) Act, Malta is bound by all EU and UN sanctions and these are directly applicable under Maltese law. National sanctions of other countries are not applicable under Maltese law and subject persons need to make their own assessment in dealing with such sanctions including taking into account the applicability of the EU blocking statute.

5. In practice how do OFAC, the EU & UN view the direct or indirect involvement to a sanctioned person?

   Both direct and indirect involvement by a sanctioned person or entity are sanctionable under UN/EU and OFAC sanctions.

VI. Libya Sanctions Regime

1. How are subject persons to treat local business and individuals when dealing with Libya?

   Libya sanctions regime is not different from other sanctions regimes and requires the same level of due diligence by subject persons. Extra vigilance is recommended only in view of the close proximity of Libya to Malta.

2. What is the position of the Sanctions Monitoring Board on Libya Sanctions in relation to funds management dating pre and post 2011?

Malta remains guided by Council Decision 2015/1333 and Council Regulation 2016/44 which stipulate that all funds, other financial assets and economic resources, owned or controlled, directly or indirectly, by the Libyan Investment Authority (LIA) or the Libyan Africa Investment Portfolio (LAIP) frozen as of 16 September 2011 are to remain frozen. Subsidiaries are also subject to the freezing provision in proportion to the shareholding of the LIA or the LAIP in the subsidiaries should the requirement of ownership or control be fulfilled.

VII. Generic

1. Where can one find a list of dual use goods?

One is to consult the Commission Delegated Regulation (EU) 2018/1922 of 10 October 2018 which updates the EU dual-use list in Annex I to Regulation (EC) No 428/2009 and was published on 14 December 2018 https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=OJ:L:2018:319:TOC.

2. What exactly is meant by informal means of using financial system?

This refers to systems of transferring cash through informal arrangements such as 'hawala' whereby the money is paid to a person in country A who then instructs an associate in country B to pay the final recipient.

3. Given that there are many iGaming companies operating from Malta, what typologies have you seen in online casinos?

There are currently still few published typologies involving online casinos. The following comes from the FATF's terrorist financing typologies report, and gives an example of one way in which the e-gambling sector has been used for TF purposes before:

Case study: Inciting terrorist violence via the Internet (using funds laundered through gambling sites)

Three British residents used illicit funds to pay for web sites promoting martyrdom through terrorist violence. The three men were sentenced in 2007 in the UK to jail terms ranging from six-and-a-half years to ten years. All three pleaded guilty to "inciting another person to commit an act of terrorism wholly or partly outside the United Kingdom which would, if committed in England and Wales, constitute murder." These are the first people to be convicted in the UK of inciting terrorist murder via the Internet. Two of the men registered dozens of Internet domains through Web hosting companies in the US and Europe. The sites facilitated communications among terrorists

through online forums, hosted tutorials on computer hacking and bomb-making, and hosted videos of beheadings and suicide bombings in Iraq. The sites were paid for with funds stolen from "hacked" credit card accounts, with the money laundered through online gambling sites.

Commentary: This case demonstrates the full scope of terrorist exploitation of the Internet. The three men involved took advantage of the web's global reach and multimedia capability for terrorist recruitment, training, and tactical coordination. They also used the web for terrorist financing through online financial fraud and money laundering.

4. For the purposes of CFT and liberation financing would gambling come under the 'umbrella' of sports and recreation and therefore fit into the lower risk field?

   No. Gambling involves financial transactions in a way that conventional sports and recreation do not.

5. A publication of from the University College of London was mentioned, could the publication be shared?

   This question relates to the Kings College proliferation financing typologies report, which can be found here: https://www.kcl.ac.uk/alpha/assets/pdfs/FoP-13-October-2017-Final.pdf

---