CENTRAL BANK OF
TRINIDAD & TOBAGO

Thematic Review Report

Commercial Banks' Compliance with Targeted Financial Sanctions Obligations

August 2021

TABLE OF CONTENTS

1. LIST OF ACRONYMS 3
2. EXECUTIVE SUMMARY 4
   - 2.1. PREFACE 4
   - 2.2. FINDINGS 4
   - 2.3. CONCLUSIONS 4
3. INTRODUCTION 5
4. LEGAL AND REGULATORY OBLIGATIONS 6
5. KEY FINDINGS 8
   - 5.1. COMPLIANCE PROGRAMME AND TF/PF POLICIES 9
   - 5.2. CUSTOMER DUE DILIGENCE 10
   - 5.3. SCREENING PROCESSES 10
   - 5.4. IDENTIFICATION AND REPORTING OF DESIGNATED PERSONS 12
   - 5.5. TRAINING 12
   - 5.6. INTERNAL AUDIT 13
6. CONCLUSIONS 13

1. LIST OF ACRONYMS

AML/CFT	Anti-Money Laundering /Combatting the Financing of Terrorism
ATA	The Anti-Terrorism Act and Regulations, Chap. 12:07
Central Bank	Central Bank of Trinidad and Tobago
DPRK Order	United Nations Resolution on the Democratic People's Republic of Korea Order, 2018
ESA	Economic Sanctions Act, Chap 81:05
FATF	Financial Action Task Force
FIUTT	Financial Intelligence Unit of Trinidad and Tobago
High Court	High Court of Trinidad and Tobago
ICRG	International Cooperation Review Group
Iran Order	United Nations Resolution on the Islamic Republic of Tran Order, 2018
Orders	Economic Sanctions Orders 184 and 185
PF	Proliferation Financing
TFS	Targeted Financial Sanctions
TF	Terrorist Financing
TTO	Trinidad and Tobago
UN	United Nations
UN List	United Nations Consolidated List
WMD	Weapons of Mass Destruction

2. EXECUTIVE SUMMARY

2.1. PREFACE

This report sets out the key findings from a thematic review conducted by the Central Bank of Trinidad and Tobago ("Central Bank") over the period April-June 2020. The review was a key deliverable for the Central Bank, following the removal of Trinidad and Tobago from the Financial Action Task Force's 'Grey List' in February 2020. The review focused on whether the commercial banks' documented policies, procedures and processes addressed the domestic targeted financial sanctions ("TFS") obligations and contained clearly defined processes for identifying and mitigating terrorist financing ("TF") and proliferation financing ("PF") risks. As this was a desk-based examination, the review did not consider the effectiveness of the banks' implementation of their TFS control framework in day to day operations.

2.2. FINDINGS

It was noted that the banks are aware of their TFS obligations however, a common finding is that the documented policies and procedures did not comprehensively reflect the domestic PF legislative requirements. Consequently, training material was silent in addressing PF requirements.

Generally, the policies and procedures of the foreign owned domestic banks did not adequately reflect local laws and requirements. Notwithstanding the adoption of an enterprise-wide approach which allows for consistency in managing TF/PF risk, it is expected that the domestic subsidiary will ensure that its documented policies and procedures reflect the local regulatory requirements and that staff are aware of those requirements.

The Central Bank also determined that only a few of the banks had detailed procedures that dealt specifically with the conduct of due diligence and screening of all parties and jurisdictions involved in trade-financing arrangements.

2.3. CONCLUSIONS

Overall, there were a few instances where the banks' policies and procedures demonstrated a well-considered approach, however, there is room for improved documentation at most banks, particularly in respect of PF obligations and the control measures to mitigate the PF risks in trade finance business.

The findings in this report have been shared with the respective banks and recommendations made to ensure that appropriate remedial actions are undertaken within specified timelines.

3. INTRODUCTION

In November 2017, the Financial Action Task Force ("FATF") identified Trinidad and Tobago ("TTO") as having strategic deficiencies in its Anti-Money Laundering/Combatting the Financing of Terrorism ("AML/CFT") regime and the country was placed on the FATF's 'Grey List' for enhanced monitoring by FATF's International Cooperation Review Group ("ICRG"). The country was removed from the FATF ICRG monitoring process in February 2020 following the conduct of an on-site assessment a month earlier. The ICRG's on-site assessment considered inter alia, the measures implemented to address Immediate Outcomes 10 and 11[1], and concluded that there were adequate supervisory mechanisms in place to ensure that financial institutions comply with targeted financial sanctions ("TFS") obligations.

Following the ICRG review, a key deliverable for the Central Bank of Trinidad and Tobago ("Central Bank"/ "Bank"), was the conduct of a Terrorist Financing/Proliferation Financing ("TF/PF") thematic examination of the eight (8) commercial banks. The commercial banking sector accounts for the largest portion of total financial sector assets[2] and offers a wide range of financial products and services such as wire transfers and trade financing, which are considered to be more vulnerable to TF and PF risks.

Over the period April to June 2020, the Central Bank conducted a desk-based thematic review of the eight (8) commercial banks' management of their TF/PF risks. The scope of the review focused on the control measures implemented to ensure compliance with TF/PF measures to report and freeze the assets of designated persons without delay, and to unfreeze assets when persons are removed from the designated lists. The desk based examinations assessed whether the banks' documented policies and procedures addressed the domestic TFS obligations and contained clearly defined processes for identifying and mitigating TF/PF risks.

The Central Bank provided written feedback on the Bank's findings and recommendations to each bank over the period October – December 2020.

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[1] Immediate Outcome 10: TF Preventive Measures & Financial Sanctions and Immediate Outcome 11: Proliferation Financing Financial Sanctions.

[2] TT$159Bn or 45% of total financial sector assets as at December 2020.

4. LEGAL AND REGULATORY OBLIGATIONS

The TFS obligations for the commercial banks are set out in the Anti-Terrorism Act, Chap. 12:07 ("ATA") and the Economic Sanctions Orders 184 and 185 ("Orders").

4.1. TF REQUIREMENTS

The ATA was enacted on September 13, 2005 with the most recent amendments to the ATA assented to in April 2019. The ATA inter alia, criminalizes terrorism and the financing of terrorism and also imposes prohibitions on financial transactions with listed persons; or persons or entities acting on behalf of, or at the direction of a listed person. Breaches of these prohibitions constitute criminal offences.

Financial institutions must without delay, be able to identify and to comply with reporting and freezing instructions issued by the FIUTT regarding individuals and entities designated as terrorist entities by the United Nations Security Council or by the High Court of Trinidad and Tobago.

Pursuant to Section 22AB of the ATA, financial institutions are to report immediately to the Financial Intelligence Unit of Trinidad and Tobago ("FIUTT") when any of the following occurs:

- A person or entity named on the United Nations ("UN") list or the FIUTT Consolidated List has funds in the financial institution;
- The financial institution has reasonable grounds to believe that the designated person or entity has funds in Trinidad and Tobago; and
- If the designated person or entity attempts to enter into a transaction or continue a business relationship, a suspicious transaction/activity report must be submitted immediately to the FIUTT. The financial institution must not enter into or continue such transaction with the designated person or entity. Funds already deposited with or held by the financial institution must remain frozen subject to any exception established in the Order of the High Court of Trinidad and Tobago ("High Court").

Additionally, in accordance with Section 33(3) of the ATA every financial institution shall report every three (3) months to the FIUTT, that it is/is not in possession or control of terrorist property.

4.2. PF REQUIREMENTS

On December 14, 2018 two (2) pieces of subsidiary legislation were made under Section 4(1) of the Economic Sanctions Act, Chap. 81:05 ("ESA"). These pertain to the weapons of mass destruction ("WMD") programmes which have been prohibited by the United Nations. The subsidiary legislation ("the Orders") comprises of:

- The Economic Sanctions (Implementation of United Nations Resolutions on the Democratic People's Republic of Korea) Order, 2018, ("the DPRK Order") (by Legal Notice No.184 of 2018); and
- The Economic Sanctions (Implementation of United Nations Resolutions on the Islamic Republic of Iran) Order, 2018 ("the Iran Order") (by Legal Notice No. 185 of 2018).

The Orders establish a judicial mechanism by which specific persons and entities involved in or related to the WMD programmes of Iran and DPRK ("listed entities") are identified; their property is frozen; their access to property is otherwise restricted; and they are denied access to the financial system. Any breaches of these requirements constitute criminal offences under the ESA.

Prohibitions include:

- entering into a financial transaction in respect of property whether directly or indirectly with listed entities;
- providing financial or related services in respect of property belonging to listed entities; and
- making available property or financial or related services, whether directly or indirectly to listed entities.

Financial institutions are therefore expected to implement systems and processes to:

- identify the assets and funds of persons designated for the financing of proliferation of WMD; and
- freeze such funds and report to the FIUTT, without delay.

5. KEY FINDINGS

As this was a desk-based review, the findings contained herein are based solely on the Central Bank's assessment of the commercial banks' documented policies, procedures and processes pertaining to compliance with the ATA and the Orders. Consequently, the review did not consider the effectiveness of the banks' implementation of their TFS control framework in day to day operations. An assessment of the effectiveness of the banks' TFS systems will be conducted at a future date.

Further, a detailed review of the corporate governance framework of the commercial banks was not conducted as this was a desk based review. However, the Central Bank expects the board of directors and senior management to provide oversight of the bank's TFS risk management framework. This includes being aware of the requirements of the domestic regulatory framework, understanding the bank's TF/PF risk exposure and ensuring that these risks are managed effectively.

Generally, the review demonstrated that there is awareness amongst the commercial banks of their TFS obligations and there were a few instances where the banks' policies and procedures demonstrated a well-considered approach. However, there is room for improved documentation at most banks. A common finding is that the documented policies and procedures did not comprehensively reflect the legislative requirements of the Orders. Consequently, training programmes were silent in addressing the PF requirements.

The legislative requirements of the Orders were not addressed adequately in the commercial banks' documented policies and procedures.

The detailed findings of the thematic TFS desk-based review are as follows.

5.1. COMPLIANCE PROGRAMME AND TF/PF POLICIES

The review of the documented Compliance Programmes and TF/PF-related policies indicated that banks which are branches or subsidiaries of foreign banks adopted the enterprise-wide policies and procedures of their Head Office or parent bank. Generally, this served to strengthen the banks' TFS control framework. However, in some instances, the domestic banks' policies and procedures did not adequately reference local laws and regulations.

The compliance programmes of five (5) foreign owned domestic banks did not reference the Orders in their list of the local legislation.

Whilst it is recognized that international banks generally adopt an enterprise-wide approach that allows for consistency in managing TF/PF risk, it is expected that the domestic subsidiary of such banks will ensure that their documented policies and procedures reflect the local regulatory requirements and that staff are aware of these requirements.

In addition, seven (7) of the commercial banks did not document the process for treating with persons who have been removed from the list of designated entities.

One bank's TFS policy and procedure document was largely an extract of the Central Bank's AML/CFT Guideline which pre-dated the Orders, and therefore did not include any measures to address the requirements of the Orders.

5.2. CUSTOMER DUE DILIGENCE

The Orders include a number of activity based financial prohibitions related to preventing the proliferation of weapons of mass destruction. In general, the banks' documented policies and procedures reflect that banks are identifying and verifying the identity of their customers in accordance with their obligations under the ATA.

The procedures of five (5) banks did not comprehensively outline the due diligence and screening requirements for persons / jurisdictions that are party to trade finance arrangements.

However, only three (3) of the commercial banks had detailed procedures that dealt specifically with the conduct of due diligence and screening of all parties and jurisdictions involved in trade-financing arrangements, which carry higher PF risk.

5.3. SCREENING PROCESSES

5.3.1. Designated Lists

All banks have policies and procedures to restrict or flag transactions with sanctioned countries and for screening against several of the international designated lists, including the United Nations Consolidated List ("UN List"). It is recognized that the UN List includes the designated persons listed in the Orders as well as persons on the FIUTT Consolidated List.

However, persons who have been designated under Section 22B(1A)(b) of the ATA are listed on the FIU Consolidated List but are not all included on the UN List. Therefore, banks must ensure that such persons are considered in their due diligence and screening controls. Furthermore, local regulatory requirements should be reflected in the policies and procedures of the domestic banks for completeness and for staff awareness.

Four (4) banks did not include the FIUTT Consolidated List in their documented screening lists.

5.3.2. Frequency of Screening against the Designated Lists

Based on the FATF Standards, the expectation of 'without delay' is a fundamental principle underlying TFS requirements, to ensure that designated persons are identified and prevented from accessing financial services and that their assets are frozen as soon as possible to prevent the movement of funds for terrorism or proliferation financing purposes.

In this regard, the minimum frequency for screening customers under Sections 22AB and 33(3) of the ATA is at on-boarding, when the designated lists are updated, and quarterly. The minimum screening frequency for the Orders is at on-boarding and when the designated lists are updated.

Four (4) of the banks' procedures stated a fixed frequency for screening but did not stipulate that screening of the customer database should also occur as soon as the lists were updated.

Some of the commercial banks' procedures indicated that screening against the lists occur on a daily basis and one bank's screening procedures indicated real-time screening. In two (2) instances however, the procedures were silent on the process employed to ensure that the most recent lists were being used for screening. In keeping with the principle of 'without delay', the expectation is that screening against the updated lists should occur as soon as practicable and no longer that 24 hours following receipt of notification of the updated lists.

5.3.3. Assessment of TFS Alerts

Four (4) of the banks screening procedures did not include a documented process for assessing TFS alerts to determine whether persons are potential matches.

5.4. IDENTIFICATION AND REPORTING OF DESIGNATED PERSONS

The principle of 'without delay' is also extended to the reporting of designated persons to the FIUTT with the expectation that matches or suspected matches are reported as soon as practicable from alert generation.

In two (2) banks, the timeline outlined in the documented process for reviewing TFS alerts and the determination of whether to report, was not in keeping with the principle of 'without delay'.

In respect of the commercial banks' compliance with the statutory quarterly reporting obligation, the FIUTT confirmed that all banks were compliant with Section 33 (3) of the ATA.

5.5. TRAINING

As noted, documented policies and procedures did not comprehensively reflect the legislative requirements of the Orders. Consequently, training programmes were also silent in addressing the PF requirements.

The training material of five (5) banks did not include content on the Orders and for four (4) banks, did not evidence specialized TF/PF content regarding the higher risk business activities such as wire transfers and trade financing.

For five (5) of the commercial banks, the material used for training staff did not include content on the Orders and one (1) bank's training material did not include content regarding the designation of domestic persons. Additionally, whilst all banks provided staff with general training on Anti-Money Laundering and Combatting Terrorist Financing annually, for four (4) banks, the training material did not evidence specialized TF/PF training targeting business activities that carry higher TF/PF risks such as wire transfers and trade finance arrangements.

5.6. INTERNAL AUDIT

Internal audit is the 3rd line of defense responsible for the independent assessment of the institution's risk management framework. Accordingly, the internal audit function should ensure that audit coverage includes any recent changes in laws, regulations or guidelines. Most of the commercial banks' internal audit reviews included compliance with TFS requirements. However, the internal audit reviews in three (3) banks did not evaluate PF compliance.

The internal audit review for three (3) of the eight (8) banks did not include an assessment of compliance with PF requirements.

6. CONCLUSIONS

The main conclusion drawn from the desk-based thematic TFS review, is that generally the commercial banks do not adequately consider the domestic TF/PF requirements in their policies and procedures. In particular, the foreign owned banks place greater reliance on their parents' TFS programmes. It was also noted that several banks have not addressed in a comprehensive manner, the PF risks associated with trade finance arrangements in their documented procedures and in training programmes.

The findings noted in this report have been shared with the respective banks and recommendations made to ensure that appropriate remedial actions are undertaken within specified timelines.

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