



*THE FINANCIAL SERVICES COMMISSION  
SUPPLEMENTAL GUIDELINES ON  
COUNTER PROLIFERATION FINANCING*

---

*These supplemental guidelines are issued to treat with amendments to the United Nations Security Council Resolutions Implementation Act (November 15, 2019) and the passage of the United Nations Security Council Resolutions Implementation (Reporting Entities) Regulations (November 21, 2019).*

---

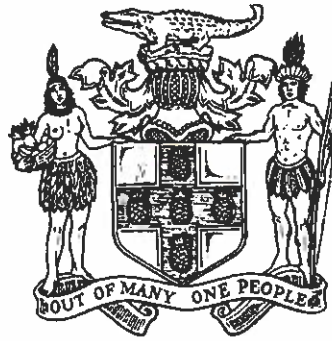
JULY 2020





## TABLE OF CONTENTS

Foreword .....	585–586
Interpretation .....	586–587
Scope and Applicability of the Guidelines .....	587
Legal Status of the Guidelines .....	587
Requirements under the UNSCRIA and related Amendments and Regulations .....	587–588
Functions of the Competent Authority .....	587–588
Prescribed Timeframe for making Regulations for the Application of Security Council Resolutions .....	588
Prohibition from Dealing with Assets of Proscribed Person or Entity .....	588
Requests for Delisting .....	588
Reporting Obligations .....	588–589
Directions from Designated Authority .....	589
Applicable UNSC Resolutions .....	589–590
Continuous Screening of Customers .....	590
Conclusion .....	590
Appendix I .....	590–591
Schedule of Offences and Penalties under the UNSCRIA and UNSCRI-RER .....	590–591



THE

# JAMAICA GAZETTE

## EXTRAORDINARY

585

Vol. CXLIII

FRIDAY, JULY 24, 2020

No. 161

The following Notification is, by command of His Excellency the Governor-General, published for general information.

SHOUNTAE BOOTHE, (MISS)  
Governor-General's Secretary and  
Clerk to the Privy Council (Assigned).

### GOVERNMENT NOTICE

#### MISCELLANEOUS

No. 175

*The Financial Services Commission Supplemental Counter Proliferation Financing ("CPF") Guidelines (2020)*

Pursuant to the provisions of the United Nations Security Council Resolutions Implementation Act and its attendant Regulations, the Minister of Foreign Affairs and Foreign Trade has approved these Guidelines issued by the Financial Services Commission to its regulated entities.

#### FOREWORD

- i. Consequent upon the passage of the United Nations Security Council Resolutions Implementation (Amendment) Act ("UNSCRIAA") on November 15, 2019, and the United Nations Security Council Resolutions Implementation (Reporting Entities) Regulations ("UNSCRI - RER") on November 21, 2019, the Financial Services Commission ("FSC") developed these supplemental guidelines to provide appropriate and updated guidance to its licensees and registrants.
- ii. The United Nations Security Council Resolutions Implementation Act ("UNSCRIA"), the UNSCRIAA and related Regulations were promulgated to comply with Financial Action Task Force ("FATF") Recommendation 7 which requires that countries implement proliferation financing-related targeted financial sanctions ("TFS") made under the United Nations Security Council Resolutions ("UNSCRs").

- iii. Regulated entities are required to immediately freeze the funds, assets and economic resources that are under their control at the date of adoption or at any time thereafter, that are owned wholly or jointly, or controlled, directly or indirectly by the designated persons/entities. Additionally, regulated entities are to ensure that no funds, other assets or economic resources are made available to such persons and entities, except in specific situations, and under conditions specified in the UNSCRs.
- iv. A significant amendment to the UNSCRIA relates to the narrowing of the definition of “financial institution” with respect to insurance companies. The definition now stipulates that within the meaning of the Insurance Act, the term ‘financial institution’ is limited to a person that carries on life insurance business, or performs services as an insurance intermediary in respect of life insurance business. However, the term does not include an insurance consultant or an adjuster.
- v. The UNSCRI - RER provides the framework and prescribed form for regulated entities to submit reports to the Designated Authority, which is the Chief Technical Director of the Financial Investigations Division.
- vi. These Guidelines are to be used in conjunction with the FSC’s Guidelines on the Prevention of Money Laundering and Countering the Financing of Terrorism and Proliferation (IER-GUID - 19/08-0001) published in the Jamaica Gazette on October 31, 2019.

#### INTERPRETATION

“asset” means—

- (a) Property of any kind—
  - i. whether tangible or intangible, movable or immovable, however acquired; and
  - ii. owned wholly or jointly, directly or indirectly, by a person or entity proscribed under section 3(2)(a) or by order of a Judge under section 3A of the UNSCRIA; or by a person or entity acting on behalf of, or at the direction of, a person or entity proscribed under section 3(2)(a) or by order of a Judge under section 3A of the UNSCRIA; or
- (b) A legal document or instrument in any form, including electronic or digital, evidencing title to, or interest in, property as described in paragraph (a), including (but not limited to) bank credits, traveller’s cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit.

“*competent authority*” means the authority from time to time authorised in writing by the Minister with portfolio responsibility for Foreign Affairs (“the Minister”) to—

- (a) Monitor compliance by any type of business in the regulated sector; and
- (b) issue guidelines to businesses in the regulated sector.

“*designated authority*” refers to the Chief Technical Director of the Financial Investigations Division.

“*designated non-financial institution*” means a person who is not primarily engaged in carrying on financial business and who is designated as a non-financial institution under the Proceeds of Crime Act (“POCA”) or an entity to which the provisions of section 15 of the Terrorism Prevention Act (“TPA”) apply.

“*financial institution*” means—

- (a) a person who carries on life insurance business or who performs services as an insurance intermediary in respect of life insurance business, within the meaning of the Insurance Act, but does not include an insurance consultant or an adjuster;
- (b) a person who is licensed under the Securities Act as a dealer or investment adviser;
- (c) a commercial bank as defined in the Banking Services Act;
- (d) a merchant bank as defined in the Banking Services Act;
- (e) a building society as defined in the Banking Services Act;
- (f) a cooperative society which carries on credit union business;
- (g) a person licensed under the Bank of Jamaica Act to operate an exchange bureau;
- (h) a money transfer and remittance agent or agency (as defined in section 2 of the Bank of Jamaica Act); or
- (i) any person or category of persons declared by the Minister, by order subject to affirmative resolution, to be a financial institution for the purposes of UNSCRIA.

“*implementing regulations*” means regulations made under section 3 of UNSCRIA.

“*person*” means an individual or a legal entity.

“*proliferation financing*” means the act of providing funds or financing services which are used in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials.

“*regulated entity*” means a financial institution or a designated non-financial institution (DNFI) which falls under the provisions of POCA, TPA and UNSCRIA.

“*relevant authority*” means—

- (a) any entity responsible, under any Law of Jamaica, for the regulation of financial institutions, DNFI, border control, defence or foreign relations;
- (b) the Jamaica Constabulary Force; or
- (c) any other entity to which a UN sanction enforcement law requires information or a document to be given.

“*reporting entity*” means an entity in relation to which section 5(2) of UNSCRIA applies.

“*Security Council*” means the Security Council constituted under Chapter V of the Charter.

#### SCOPE AND APPLICABILITY OF THE GUIDELINES

1. The Guidelines are directed to all financial institutions, which are regulated by the FSC and falling within the regulatory ambit of the—

- (a) insurance Act and Regulations; and
- (b) Securities Act and Regulations,

only to the extent that such persons fall within the definition of financial institution under the UNSCRIA, as amended.

#### LEGAL STATUS OF THE GUIDELINES

2. The FSC was designated Competent Authority under the UNSCRIA by the Minister on February 28, 2020 for relevant financial institutions registered under the Insurance and Securities Acts. Accordingly, the role of the FSC involves advising and supervising these financial institutions in their responsibilities under the UNSCRIA and its attendant amendments and regulations.

3. Pursuant to UNSCRI-RER, a Court will take notice of these Guidelines when considering whether a person has committed an offence under these Regulations.

4. The relevant provisions are:—

Regulation 3(1):

*In determining whether a person has complied with any of the requirements of these Regulations, a court shall take account of any relevant guidance that was at the time concerned, issued by the designated authority, competent authority or a body that regulates, or is representative of, any trade, profession, business or employment concerned with the approval of the Minister and published in the Gazette.*

Regulation 3(2):

*In proceedings against any person for an offence under these Regulations, it shall be a defence for that person to show that he took all reasonable steps and exercised due diligence to avoid committing the offence.*

5. Section 14A (b) of the UNSCRIA states that “*The relevant authority shall issue guidelines to such financial institutions and designated non-financial institutions on measures to prevent proliferation financing*”.

#### REQUIREMENTS UNDER THE UNSCRIA AND RELATED AMENDMENTS AND REGULATIONS

*Functions of the Competent Authority*

6. Under Regulation 9, the competent authority:—

- (a) Shall exercise its functions with a view to monitoring compliance by reporting entities with the requirements of UNSCRIA, its attendant amendments and regulations;
- (b) May issue guidelines to reporting entities regarding effective measures to prevent the commission of relevant offences;
- (c) Shall establish such measures as it thinks fit, including carrying out, or directing a third party to carry out, such inspections or such verification procedures as may be necessary;
- (d) May issue directions to a reporting entity and such directions may require the reporting entity to take measures to ensure that it is not in possession or control of assets owned or controlled by or on behalf of a proscribed person or entity;
- (e) May examine and take copies of information or documents in the possession or control of any reporting entity relating to the operations of that reporting entity;
- (f) May share information, pertaining to any examination conducted by it under this regulation, with another competent authority, or an authority in another jurisdiction exercising functions analogous to those of any of the aforementioned authorities:—
  - i. Other than information which is protected from the compromising or obstruction of any investigation in relation to an offence under these Regulations or any other enactment; and
  - ii. Subject to any terms, conditions or under-takings which it thinks fit in order to prevent disclosure of the kind referred to in sub-paragraph i and secure against the compromising or obstruction of any investigation in relation to an offence under these regulations or any other relevant enactment.
- (g) May require the reporting entity concerned, in accordance with such procedures as it may establish by notice in writing:—
  - i. To register with the competent authority such particulars as may be prescribed, if a registration requirement does not already exist under any other law; and

- ii. To make such reports to the competent authority in respect of such matters as may be specified in the notice.

7. A reporting entity that fails to comply with any requirement or direction issued to it under this regulation by the competent authority, commits an offence and is liable:—

- i. On summary conviction before a Judge of a Parish Court to a fine not exceeding \$3 million; or
- ii. On indictment before a Circuit Court to a fine.

*Prescribed Timeframe for making Regulations for the Application of Security Council Resolutions*

8. Under section 3(1) of UNSCRIA, the Minister may, subject to affirmative resolution, make regulations to give effect to decisions of the Security Council under Chapter VII of the Charter, within thirty (30) days after the date of adoption of such resolutions and which are required to be carried out by Jamaica under Article 20.

9. Section 3A of UNSCRIA permits the Director of Public Prosecutions (“DPP”) to make an application to a Judge of the Supreme Court for an order to declare any person proscribed by a decision of the Security Council to be so declared. This section facilitates giving a more timely effect to the Security Council Resolutions and the Order will remain in force until the passage of regulations under section 3(1).

10. Upon any such application by the DPP, the Judge may, by order, declare a person or entity to be a proscribed person or entity, as the case may require.

11. This order must be published on the websites of the Ministry of Foreign Affairs and Foreign Trade and the Designated Authority within twenty-four (24) hours after the order has been made. There is also a requirement to have the order published in a daily national newspaper.

12. As required under section 14A of UNSCRIA, the FSC shall notify, in the prescribed manner, all its regulated entities of all designations and de-listing of proscribed persons and entities. The FSC will therefore publish this order on its website and send written correspondence to licensees/registrants advising of new or amended listings.

*Protection of Third Parties*

13. Section 3(2)(fa) of UNSCRIA provides for the protection of *bona fide* third parties who act in good faith in dealing with assets in the manner so provided under section 8A of UNSCRIA.

*Prohibition from Dealing with Assets of Proscribed Person or Entity*

14. Section 8A of UNSCRIA prevents any person in Jamaica or any Jamaican outside of Jamaica, in relation to a person or entity that is proscribed by section 3(2) of UNSCRIA or by an order made under section 3A of UNSCRIA from knowingly—

- (a) Dealing directly or indirectly with any assets that are controlled by or on behalf of, or at the direction of, the person or entity that is proscribed, including funds derived or generated from assets owned or controlled directly or indirectly by that person or entity;
- (b) Entering into or facilitating, directly or indirectly, any transaction in respect of assets referred to in paragraph (a);
- (c) Providing any financial or other related services in respect of any assets referred to in paragraph (a) to, for the benefit of, or at the direction of, the person or entity; or
- (d) Making any property or any financial or related services available, directly or indirectly, for the benefit of the person or entity, or converting any such property or taking steps to convert or disguise that the property is owned or controlled by or on behalf of the person or entity.

15. A person who contravenes section 8A(1) of UNSCRIA commits an offence and is liable on conviction on indictment, to a fine or imprisonment for life.

*Requests for De-listing*

16. Section 3(5A) of UNSCRIA permits a proscribed person or entity to submit a request for de-listing directly to—

- (a) The appropriate authority designated to receive de-listing requests pursuant to the relevant committee established under Chapter VII of the Charter; or
- (b) The focal point established for de-listing under the UNSCR, 1730.

17. Section 3(5B) of UNSCRIA allows a person in Jamaica or a Jamaican outside of Jamaica to submit a request for de-listing through the Minister for transmission in the manner provided for in subsection (5A), as the case may require.

*Reporting Obligations*

*Reporting Entities*

18. The following entities are required to submit reports to the designated authority:—

- (a) Foreign companies in respect of their business in Jamaica relating to banking, securities, investment advice or trusts;
- (b) Financial institutions;
- (c) DNFI's; and
- (d) Any entity or category of entity designated by the Minister, by order subject to affirmative resolution.

*Reporting Period*

19. Each reporting entity is required to submit reports to the designated authority in a format as directed by the designated authority, at least once in every four calendar months, or in response to a request from the designated authority stating either:—

- (a) That it is not in possession or control of any assets connected to a proscribed person or entity; or
- (b) That it is in possession or control of such assets and provide the requisite information on the prescribed form.

*Information to be Reported*

20. Every reporting entity is required to report to the designated authority:—

- (a) Any transaction or attempted transaction that is believed or known to be related to a proscribed person or entity and any assets that are owned or controlled by or on behalf of such person or entity and are in the possession and control of the reporting entity;
- (b) Any breach of any provision under the UNSCR1A by a proscribed person or entity;
- (c) Any assets—
  - i. which are owned and controlled by or on behalf of a person or entity that is proscribed by regulations made under section 3(2) or by an order made under section 3A;
  - ii. in possession or control of the reporting entity; and
- (d) Any other action that has been taken in relation to a proscribed person or entity in compliance with any directives or requirements of the UNSCR1A.

*Statutory Protection for Reporting Entities*

21. There will be no criminal or civil liability incurred by any person for the making and submission of a report to the designated authority in good faith.

*Disclosure to Regulator*

22. Under section 5(3B) a regulated entity is required to disclose this report to its regulator as an authorized disclosure.

*Non-Disclosure of Report*

23. An entity that makes a report to the designated authority shall not disclose the existence of that report to any other person, except to its regulator.

*Penalties*

24. A person who contravenes any of the provisions of section 5 of UNSCR1A commits an offence and shall be liable on summary conviction in a Parish Court to:—

- (a) in the case of an individual, a fine not exceeding \$500,000 or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment; or
- (b) in the case of a body corporate, a fine not exceeding \$3 million.

25. In proceedings against a person for contravening section 5(3) of UNSCR1A, it is a defence for the person charged that he had a reasonable excuse for not making the required report.

*Directions from Designated Authority*

26. In making a report under section 5 of UNSCR1A, a reporting entity must comply with such directions as may be given by the designated authority.

27. The directions given by the designated authority may be related to matters such as:—

- (a) Previous or current reports;
- (b) The provision of information required in such reports;
- (c) The provision of additional information in relation to queries concerning specific matters arising from the reports, including:—
  - i. Due diligence procedures followed in relation to a specific transaction;
  - ii. Persons authorized to sign on the account in question;
- (d) Errors identified in the reports; and
- (e) Such other matters as may be specified in the directions.

28. A reporting entity that fails to comply with directions given by the designated authority under Regulation 8 of UNSCR1-RER commits an offence and is liable upon conviction before a Parish Court, in the case of:—

- i. an individual, to a fine not exceeding \$3 million or imprisonment for a term not exceeding 3 years, or both such fine and imprisonment;
- ii. a body corporate, a fine not exceeding \$5 million.

*Applicable UNSC Resolutions*

29. The UNSC Resolutions implementation (Asset Freeze—Democratic People's Republic of Korea) Regulations, 2013<sup>1</sup> ("DPRK Regulations") were issued pursuant to section 3 of the UNSCR1A and these Regulations outline Jamaica's mandates in



relation to the directives of the UNSC regarding the Democratic People's Republic of Korea (DPRK) in Resolutions 1718 (2006) and successor resolutions 1874 (2009) and 2087 (2013). These resolutions represent UN required sanctions comprising financial prohibitions to prevent the provision of financial services, financial resources or financial assistance to the DPRK.

30. These Regulations criminalize the following activities:—

- (a) The holding of, using or dealing with freezable assets, that is, assets owned or controlled by a designated entity. A designated entity is defined as:
  - i. an entity designated in Annex I or Annex II to UNSC Resolution 2087 (2013); or
  - ii. an entity designated by the UN Sanctions Committee or by the UNSC for the purposes of paragraph 5(a) of UN Resolution 2087 (2013) as a person in respect of which countries must freeze funds immediately, or other financial assets and economic resources which are in their territories, owned or controlled directly or indirectly by such designated entity, an entity acting on behalf of, or at the direction of an entity that has been designated, or an entity owned or controlled by such designated entity;
- (b) Allowing freezable assets to be used or dealt with;
- (c) Facilitating the use of or dealing with freezable assets;
- (d) Directly or indirectly making a freezable asset available to a designated entity otherwise than pursuant to a written notice allowing this to be done pursuant to Regulation 7 of the DPRK Regulations. (Regulations 5(1) and 6(1)).

31. Since 2013, the UNSC has issued several other Resolutions with respect to DPRK.

32. A comprehensive listing of all UNSC designated persons can be accessed at UNSC's website at [www.un.org/sc](http://www.un.org/sc). Alternately, persons may access this information via a link on the FSC's website at [www.fscjamaica.org](http://www.fscjamaica.org).

#### *Continuous Screening of Customers*

33. Regulated entities are required to screen customers against the UNSC's consolidated list of designated persons and entities in the following circumstances:

- (a) During the onboarding process;
- (b) At regular intervals (preferably every 2 weeks but no less than once per month);
- (c) Without delay on the receipt of notification from the designated or competent authority (or through appropriate software systems utilized by the regulated entity) of new or amended listings.

34. In the event that a regulated entity identifies a designated/proscribed person as a customer, then TFS are to be imposed immediately by the regulated entity. The regulated entity cannot have any dealings with the assets of the designated person (account, property, motor vehicles, funds *etc.*) as these are now "freezable assets", unless the transaction is for the sole purpose of preserving the value of such assets. A report on this designated person must be submitted immediately to the designated authority.

#### *Conclusion*

35. These supplemental guidelines on counter proliferation financing are to be used in conjunction with the FSC's AML/CFT/CFP Guidelines issued on October 31, 2019. These guidelines provide minimum standards to which regulated entities are expected to adhere. The information contained herein can be used by regulated entities to inform and develop their policies and procedures.

#### APPENDIX 1

##### *Schedule of Offences and Penalties under the UNSCRIA and UNSCRI-RER*

Offences	Individual Sanctions	Body Corporate Sanctions
Failure to report (section 5)	Up to 6 months in prison and/or fine of \$500,000 (Parish Court)	Fine up to \$3M (Parish Court)
Breaches of implementing regulations (section 6)	Up to 12 months in prison and/or fine of \$1M (Parish Court)	Fine up to \$3M (Parish Court)
	Fine or imprisonment up to 10 years (Circuit Court)	A fine (Circuit Court)
Dealing with assets of proscribed person or entity (section 8A)	Fine or life imprisonment	
Contravention of a UN sanction enforcement law (section 10)	Up to 10 years in prison and/or fine (Circuit Court)	A fine (Circuit Court)
Giving false or misleading information in connection with a UN sanction enforcement law (section 12)	Up to 10 years in prison and/or fine (Circuit Court)	

APPENDIX 1, *contd.*

Offences	Individual Sanctions	Body Corporate Sanctions
Failure to comply with notice issued by relevant authority (section 15)	Not specified	
Failure to comply with directions from the designated authority (Regulation 8)	Up to 3 years in prison and/or fine up to \$3M (Parish Court)	Fine up to \$5M (Parish Court)
Failure to comply with direction or requirement from the competent authority (Regulation 9)	N/A	Up to \$3M (Parish Court) A fine (Circuit Court)