

NAMLC

YEAR END NEWSLETTER DECEMBER 2024

**BERMUDA'S
2025**

**PROLIFERATION FINANCING (PF)
NATIONAL RISK ASSESSMENT (NRA)**

**Bermuda will conduct its first PF NRA,
scheduled to commence in January 2025,
with training to all relevant agencies.
FATF's revised Recommendation 1 requires
countries to identify, assess and
understand their PF risks.**



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Ministry of Finance**

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What is Proliferation of Weapons of Mass Destruction (WMD)?

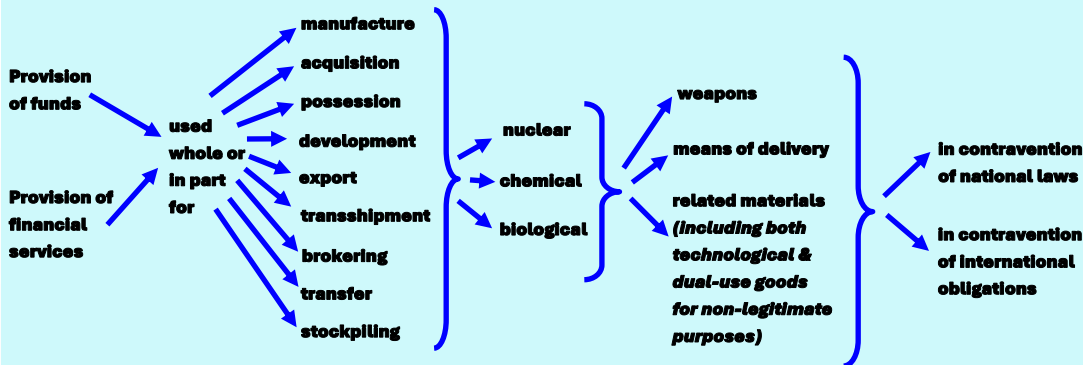
- ◆ Proliferation involves the transfer and export of technology, goods, software, services or expertise that could be used in nuclear, chemical or biological weapon-related programmes, including delivery systems, whether by state or non-state actors.
- ◆ The Treaty on the Non-Proliferation of Nuclear Weapons (to which the UK is a signatory), may be considered to be the basis of the international nuclear non-proliferation regime. The treaty entered into force in 1970 and was extended indefinitely in the year 1995. Its objective is to prevent the spread of nuclear weapons and weapons technology, to promote cooperation in the peaceful uses of nuclear energy and to further the goal of achieving nuclear disarmament and general and complete disarmament. Since then, there have been several other treaties and conventions which address the proliferation of WMD.
- ◆ The United Nations Security Council (UNSC), through Resolutions (UNSCRs), has also established binding obligations for all States regarding non-proliferation.

What is Proliferation Financing (PF)?

- ◆ There is no single internationally agreed definition of PF.
- ◆ The Financial Action Task Force (FATF) has the following working definition:

“Proliferation Financing’ refers to: 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 technological and dual-use goods for non-legitimate purposes) in contravention of national laws, or, where applicable, international obligations.”

- ◆ The diagram below is a helpful depiction how PF operates:



- ◆ PF actors generate funds through both legal and illicit means, and proliferators, like money launderers, use well-known laundering strategies such as shell or front companies, intermediaries, and misuse of the legal financial system. The goal of PF is to acquire or facilitate acquisition of sensitive WMD materials and technologies to support the development of WMD programmes.
- ◆ PF networks exploit countries with weak export and financial controls. While Money Laundering (ML) and Terrorist Financing (TF) are primarily concentrated among non-state actors, such as organized crime and terrorist groups, PF involves both state and non-state actors, their extensive networks across various countries and regions, and third-party countries and nationals.



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Targeted Financial Sanctions (TFS)

- ◆ The implementation of TFS related to proliferation and its financing is essential for a stronger Counter-Proliferation Financing (CPF) regime.
- ◆ According to the FATF Glossary,

“The term targeted financial sanctions means both asset freezing and prohibitions to prevent funds or other assets from being made available, directly or indirectly, for the benefit of designated persons and entities.”
- ◆ The FATF Glossary provides that the term designation refers to the identification of a person (natural or legal) that is subject to TFS pursuant to specified UNSCR designations.
- ◆ The application of TFS is part of the obligations imposed under the laws that make up Bermuda’s sanctions regime.
- ◆ The relevant UNSCRs have legal effect in Bermuda - a British Overseas Territory (OT) - through the relevant UK Sanctions and Anti-Money Laundering Act 2018 (SAMLA) and associated regulations. The SAMLA provides the main legal basis for the UK to impose, update and lift sanctions.
- ◆ The UK extends its sanctions legislation to the OTs via ‘Orders in Council’, however, Bermuda brings the UK Orders in Council into force via domestic legislation.
- ◆ Bermuda’s International Sanctions Act 2003 and International Sanctions Regulations 2013 implement the UK Orders in Council into Bermuda’s domestic legislation. This is achieved by adding the OT Orders to the list of applicable Orders in the Schedule to the Regulations.

The Role of TFS in CPF

- ◆ **Preventative Value**
 - Impedes production of WMD by cutting off access to key resources/finances
- ◆ **Investigative Value**
 - Authorities obtain documents to assist in investigations
- ◆ **Analytical Value**
 - Authorities are able to uncover broader proliferation networks (identify proliferators, facilitators, financiers, shipping and insurance providers, front companies, et. cetera)
- ◆ **Deterrent Value**
 - This is especially so regarding individuals considering but unsure about engaging in PF activity.



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FATF's Revised Standards on PF

TECHNICAL COMPLIANCE

- ◆ FATF Recommendations 1, 2 & 7 specifically address PF.

Recommendation 1

- ◆ In October 2020, the FATF revised Recommendation 1 (R.1) and its Interpretive Note (INR.1).
- ◆ FATF's revised R.1 requires countries to identify, assess, and understand the PF risks for the country.
- ◆ In the context of R.1, "PF risk" refers TFS obligations referred to in Recommendation 7 (R.7).
- ◆ Countries should take commensurate action aimed at ensuring that these risks are mitigated effectively, including designating an authority or mechanism to coordinate actions to assess risks, and allocate resources efficiently for this purpose.
- ◆ Where countries identify higher risks, they should ensure that they adequately address such risks. Where countries identify lower risks, they should ensure that the measures applied are commensurate with the level of PF risk, while still ensuring full implementation of the TFS as required in R.7.
- ◆ Countries should require financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) to identify, assess and take effective action to mitigate their PF risks.

Recommendation 2

- ◆ In terms of PF, countries should have national 'AML/CFT/CPF policies, informed by the risks identified, which should be regularly reviewed, and should designate an authority or have a coordination or other mechanism that is responsible for such policies', as well as ensuring that policymakers, the financial intelligence unit, law enforcement authorities, supervisors and other relevant authorities have effective mechanisms to enable domestic cooperation and coordination, such as the exchange of information.



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FATF's Revised Standards on PF cont'd

Recommendation 7

- ◆ FATF Recommendation 7 (R.7) addresses TFS related to Proliferation.
- ◆ R.7 provides that Countries should implement TFS to comply with UNSCRs relating to the prevention, suppression and disruption of proliferation of WMD and its financing.
- ◆ These R.7 obligations require countries to freeze without delay the funds or other assets of, and to ensure that no funds and other assets are made available, directly or indirectly to or for the benefit of:
 - (a) any person or entity designated by the UNSC,
 - (b) persons and entities acting on their behalf or at their direction,
 - (c) those persons or entities owned or controlled by them.
- ◆ The requirements of R.7 are only applicable to all current UNSCRs, future successor resolutions and future UNSCRs relating to PF of WMD.
- ◆ R.7 sets out obligations for countries to ensure that, in addition to TFS for PF being implemented without delay, countries have in place the legal authority and an identified competent authority for implementing and enforcing TFS.
- ◆ R.7 also sets out obligations for FIs and DNFBPs, including the need to freeze assets without delay and report to the competent authorities including attempted transactions.

Democratic People's Republic of Korea (DPRK) and Iran Regimes

- ◆ Historically, the DPRK and Iran were the only countries specifically named in UNSCRs relating to the proliferation of WMD. In 2006, the UNSC adopted sanctions resolutions on DPRK (UNSCR 1718) and Iran (UNSCR 1737) in response to their proliferation sensitive activities and programmes. Successor resolutions were subsequently passed in respect of both the DPRK and Iran.

Update on the Iran Sanctions Regime

- ◆ The Joint Comprehensive Plan of Action (JCPOA or Iran nuclear deal) was an agreement reached in 2015 to limit the Iranian nuclear programme in exchange for sanctions relief. It was endorsed by UNSCR 2231 (2015).
- ◆ The JCPOA agreement does not expire until October 2025. However, 18 October 2023 all remaining nuclear-related sanctions against Iran under UNSCR 2231, including restrictions on ballistic missile and sensitive technologies, expired.
- ◆ It should be noted however, that the requirements of FATF Recommendation 19 (R.19) which address Higher Risk jurisdictions in the context of ML and TF, are still applicable. Iran has been identified by the FATF as a high-risk jurisdiction.



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FATF's Revised Standards on PF cont'd

EFFECTIVENESS

Immediate Outcome 11

- ◆ Bermuda's level of effectiveness in respect CPF will be measured against FATF's Immediate Outcome 11 (IO 11) which provides that:

"Persons and entities involved in the proliferation of weapons of mass destruction are prevented from raising, moving and using funds, consistent with the relevant UNSCRs."

- ◆ There are six core issues to be considered in determining if IO 11 is being achieved. They relate to:
 - (i) the extent to which competent authorities within Bermuda cooperate and coordinate the development and implementation of policies and for operational purposes cooperate, and where appropriate, coordinate and combat financing of proliferation of WMD;
 - (ii) how well Bermuda can identify, assess, understand and mitigate the risk of potential breaches, non-implementation or evasion of obligations regarding TFS relating to financing of proliferation present in the country in both higher and lower risk scenarios;
 - (iii) how well Bermuda is implementing, without delay, TFS concerning the UNSCRs relating to the combating of financing of proliferation;
 - (iv) the extent to which the funds or other assets of designated persons and entities and those acting on their behalf or at their direction identified and such persons and entities prevented from operating or from executing financial transactions related to proliferation;
 - (v) the extent to which FIs, DNFBPs and Virtual Asset Service Providers (VASPs) comply with and understand their obligations regarding TFS relating to financing of proliferation. This includes the obligation to understand their risks of potential breaches, non-implementation or evasion of TFS obligations relating to financing of proliferation and take risk-based measures to mitigate the risks identified as outlined in R.1;
 - (vi) how well relevant competent authorities are monitoring and ensuring compliance by financial institutions, DNFBPs and VASPs with their obligations regarding TFS relating to financing of proliferation.



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Characteristics of an Effective System under IO 11

- ◆ In order to show “characteristics of an effective system” jurisdictions are required not only to ensure that “TFS are fully and properly implemented without delay” (i.e. comply with R.7), but they must also ensure that “there is adequate cooperation and coordination between relevant authorities to prevent sanctions from being evaded, and to develop and implement policies and activities to combat the financing of proliferation of WMD (i.e. comply with R.2)”.
- ◆ Effective CPF systems result in persons and entities designated by the UNSCRs on proliferation of WMD being identified, deprived of resources, and prevented from raising, moving, and using funds or other assets for the financing of proliferation. TFS are fully and properly implemented without delay and monitored for compliance.
- ◆ “Without delay” means, ideally, within a matter of hours of a designation by the UNSC or its relevant Sanctions Committee. It should be interpreted in the context of the need to prevent the flight or dissipation of funds or other assets which are linked to the financing of proliferation of WMD and the need for global, concerted action to interdict and disrupt their flow swiftly.
- ◆ In an effective system, there is adequate cooperation and coordination between the relevant authorities to prevent sanctions from being evaded, and to develop and implement policies and activities to combat the financing of proliferation of WMD.
- ◆ Risks of potential breaches, non-implementation or evasion of TFS obligations are identified, assessed and understood and risk-based measures to mitigate these risks are applied to strengthen implementation of TFS.

Ways to Improve Effectiveness

- ◆ Effectiveness can be improved through:
 - ⇒ The conduct of PF risk assessments involving a cross-section of competent authorities and private sector officials;
 - ⇒ Strengthening of legislative/technical compliance framework;
 - ⇒ Interagency cooperation to facilitate implementation of PF TFS;
 - ⇒ Training and outreach to both public and private sector officials;
 - ⇒ Developing guidance, policies and procedures to ensure effective implementation;
 - ⇒ Testing the system to ensure effective implementation;
 - ⇒ Mitigating and managing risks through implementation of appropriate measures.



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Key Aspects of a PF NRA

- ◆ A PF NRA requires:
 - ⇒ Determining the assessment’s objectives, scope and focus
 - ⇒ Identification of relevant actors who are critical to the analysis
 - ⇒ Compilation of known or suspected threats and vulnerabilities
 - ⇒ Understanding the likelihood and consequences of identified risks
 - ⇒ Determining priority areas based on the assessment conducted
 - ⇒ Collaboration between the public and private sectors
- ◆ The Risk Assessment should also be continuously updated.

Relevance of PF NRA to Bermuda

- ◆ Conducting a PF NRA will:
 - i. Help Bermuda to effectively implement the revised FATF Standards;
 - ii. Provide the private sector with information on their risks which would allow them to implement measures, having regard to the context, risk profile and materiality of different sectors and institutions within a sector;
 - iii. Assist Bermuda in effective coordination and resource allocation to combat PF.
- ◆ There is no “one-size-fits-all” approach when assessing or mitigating PF risks.



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Sources of PF Risk

- ◆ Two broad sources of PF Risk are:

i. Potential breach or non-implementation of TFS

- This risk may materialise when designated entities and individuals access financial services, and/or funds or other assets, as a result, for example, of delay in communication of designations at the national level, lack of clear obligations on private sector entities or failure on the part of private sector entities to adopt adequate policies and procedures to address their PF risks (e.g. weak customer onboarding procedures and ongoing monitoring processes, lack of staff training, ineffective risk management procedures, lack of a proper sanctions screening system or irregular or inflexible screening procedures, and a general lack of compliance culture)

ii. Evasion of TFS

- This risk may materialise due to concerted efforts of designated persons and entities to circumvent TFS (e.g. by using shell or front companies, joint ventures, dummy accounts, middlemen and other fraudulent or sham intermediaries).

Elements of PF Risk Mitigation

- ◆ A robust national system for implementing TFS sets a strong foundation for effective risk mitigation, and has the following elements in place:
 - National Risk Assessment
 - Institutional Risk Assessment
 - Effective legal framework
 - Communication of sanctions
 - Domestic cooperation, coordination and information sharing
 - Compliance monitoring and enforcement
 - Regular and in-depth training (conducted by both public and private sectors) in the areas of TFS obligations and risks.



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PF Case Studies

Case Study 1 - Chinpo Shipping

- ◆ This case study highlights how PF may be carried out through shipping companies and where illicit activities are concealed through a legitimate business. It showed the use by the DPRK of various techniques, including legal persons, indirect payment methods, and foreign intermediaries to circumvent sanctions and obtain required materials for its prohibited WMD programme. It also showed the consequences of a lack of proper customer due diligence (CDD).

Facts

- ◆ Ocean Maritime Management (OMM) was a DPRK government shipping company. To circumvent monitoring by authorities around the world, OMM worked through a number of companies and representatives in Southeast Asian countries. One such intermediary, Singapore-based Chinpo Shipping Company Ltd. ('Chinpo') acted both as OMM's shipping and payment agent.
- ◆ OMM was unable to open a bank account in Singapore. Chinpo agreed to execute financial transactions for OMM through Chinpo's account with the Singapore branch of the Bank of China. Chinpo conducted several financial transactions on behalf of OMM and also remitted significant funds to various overseas entities as instructed by OMM over a number of years.
- ◆ In 2013, a DPRK vessel which was transiting the Panama Canal was stopped by Panamanian authorities. False documentation suggested the shipment only contained bags of sugar. The vessel was found to have been carrying concealed arms and equipment to the DPRK in breach of the UNSCR sanctions.
- ◆ Chinpo had tried to hide its involvement with DPRK companies by removing the names of its vessels and other identifying details from remittance forms and email correspondence. Payments also took place in the absence of invoices or other details. There were inconsistencies between Chinpo's economic profile and the massive circulation of funds in its account, found to have belonged to DPRK entities.
- ◆ Although the Bank of China made some enquiries into the nature of the activities carried out by Chinpo, they failed to carry out CDD, to determine beneficial ownership (BO), to scrutinise high risk countries and businesses and to report suspicious transactions involving Chinpo and its director – who was also found to have numerous personal and business ties to the DPRK.
- ◆ The OMM was designated by the UNSC in 2014. Subsequent to this, patterns in renaming, reregistering and reflagging ships under foreign flags were observed. This allowed for the provision of insurance to vessels which were actually owned by the DPRK. Additionally, by reregistering under foreign flags, the vessels could readily access ports and routes closed to DPRK flagged ships and evade detection of financial transactions involving the ships.



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PF Case Studies cont'd

Case Study 2 - Use of network of legal persons to circumvent sanctions

- ◆ This case study addresses the use of front companies by a father-son team in a proliferation network. Front or shell companies present themselves as innocuous trading firms, hiding in plain sight. Proliferation networks work through the interconnected global financial system, seeking methods for appearing to engage in legitimate commercial activity for revenue generation or the procurement of specific goods for their WMD programs. They employ tactics to breach sanctions, including means by which designated entities circumvent designations and have financial resources made available to them.

Facts

- ◆ Country 1 was taking action against a global procurement network that sought to evade sanctions by illegally exporting controlled machinery with WMD development applications to Country 2, which was subject to UN WMD-related sanctions. The network centred around a father-son team along with other individuals who together, established a series of front companies in a number of jurisdictions. These companies were established to act on behalf of designated entities and ultimately, to export the controlled goods to the country subject to sanctions.
- ◆ The network spanned a number of decades. Individual A (the father) had since the 1990s, assisted Country 2 in procuring WMD-related goods through a network of companies connected to a sanctioned entity from Country 2 and its subordinates and was involved in shipping items to Country 2 that could be used to support the country's ballistic missile program. He was indicted by the Prosecutor's Office of a third country, Country 3 for forging shipping invoices and illegally shipping restricted materials to Country 2 in mid-2008 and was found to have used at least two front companies based in Country 3 to accomplish this scheme.
- ◆ As a result of these schemes, Individual A and his front companies were designated by the Finance Ministry of Country 1 in January 2009 for providing financial, technological, or other support to the Country 2 entity, which was designated by Country 1 in 2005 and the UN in 2006.
- ◆ After the Country 1 designations, Individual A, his son (Individual B), and a third person (Individual C) continued to conduct business together, but attempted to hide the now-designated Individual A and his companies' involvement in those transactions by conducting business under different company names. An example of this was reflected in the fact that by August of 2009, approximately eight months after the designations – the three individuals (A, B and C) began using a new company to purchase and export WMD-sensitive machinery on behalf of the designated individuals.
- ◆ Individuals A and B used bank accounts located in Country 3 banks to transfer funds to Country 1 bank accounts of their Country 1-based facilitators, who would in turn use the funds to procure the goods and ship them to Country 3. Due to the 2009 Country 1 designations of the network, these transactions were already part of an illegal sanctions evasion scheme, which would become the focus of the criminal charges to be filed.



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Financial Action Task Force (FATF)

- ◆ Revised FATF Standards (updated November 2023), which can be found at the following link:

[FATF Recommendations 2012.pdf.coredownload.inline.pdf](#)

- ◆ Revised FATF Methodology (last updated August 2024), which can be found at the following link:

[FATF-Assessment-Methodology-2022.pdf.coredownload.inline.pdf](#)

- ◆ FATF Guidance on Proliferation Financing Risk Assessment and Mitigation (June 2021), which can be found at the following link:

[Guidance-Proliferation-Financing-Risk-Assessment-Mitigation.pdf](#)

- ◆ FATF Guidance on Counter Proliferation Financing (2018), which can be found at the following link:

[Guidance-Countering-Proliferation-Financing.pdf.coredownload.pdf.pdf](#)

- ◆ FATF Guidance on The Implementation of Financial Provisions of United Nations Security Council Resolutions to Counter the Proliferation of Weapons of Mass Destruction (2013), which can be found at the following link:

[Guidance-UNSCRS-Prolif-WMD.pdf](#)

- ◆ FATF Typologies Proliferation Financing Report (2008), which can be found at the following link:

[Typologies Report on Proliferation Financing.pdf](#)

United Nations Panel of Expert Reports

- ◆ These reports can be found at the following link:

[Reports | Security Council](#)



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NAMLC's 2024 Highlights

Launch of ML/TF NRA

⇒ March 26, 2024

NAMLC Committee Meetings

- ⇒ February 15, 2024
- ⇒ April 18, 2024
- ⇒ July 9, 2024
- ⇒ October 16, 2024

2025 NAMLC Planning Sessions

- ⇒ October 18, 2024
- ⇒ November 22, 2024

Approval of National AML/ATF/CPF Policy

⇒ November 26, 2024

Publication of 2023 Digital Asset Business Risk Assessment

⇒ December 20, 2024

FATF & CFATF Plenary

Delegates of Bermuda attended:

- ⇒ CFATF Plenary- June 2-7, 2024 (Trinidad & Tobago)
- ⇒ FATF Plenary- October 21-25, 2024 (France)
- ⇒ CFATF Plenary- December 1-6, 2024 (Jamaica)

Forums & Training

Representatives from various agencies attended:

- ⇒ Navigating Compliance Standards: Strategies for Caribbean Nations in Response to FATF and EU Designations - April 23, 2024
- ⇒ Crown Dependencies & Overseas Territories AML Forum - May 14 -16, 2024
- ⇒ Sanctions Table-Top Exercise - July 16 -17, 2024
- ⇒ UK-OT Illicit Finance Forum - October 7 - 9, 2024



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HAPPY HOLIDAYS!

WE LOOK FORWARD TO CONTINUED COLLABORATION AMONG ALL STAKEHOLDERS IN 2025!

CONTACT US

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