

Combating Proliferation Financing

Proliferation Financing

There is at present no internationally agreed definition of proliferation financing (“PF”). As a general reference, PF can be regarded as the act of providing funds or financial 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 (including both technologies and dual use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations.

United Nations Security Council Resolutions (“UNSCR”)

2. To combat PF, the United Nations Security Council (“UNSC”) adopts a two-tiered approach through resolutions made under Chapter VII of the UN Charter imposing mandatory obligations on UN Member States, namely, (a) global approach under UNSCR 1540 (2004) and its successor resolutions; and (b) country-specific approach under UNSCR 1718 (2006) against the Democratic People’s Republic of Korea (“DPRK”) and UNSCR 2231 (2015) against the Islamic Republic of Iran (“Iran”) and their successor resolutions.

Laws relating to Proliferation Financing

3. The regime to combat PF is implemented in Hong Kong through legislation, such as the United Nations Sanctions Ordinance (“UNSO”) (Cap. 537), under which dedicated regulations relating to places or organisations sanctioned by the UNSC are made; as well as the Weapons of Mass Destruction (Control of Provision of Services) Ordinance (“WMDO”) (Cap. 526), which prohibits the provision of services that will or may assist the development, production, acquisition or stockpiling of weapons of mass destruction.

4. Specifically, targeted financial sanctions against individuals and entities designated by the UNSC or its Committees relating to DPRK and Iran are implemented through dedicated regulations made under UNSO.

5. The lists of individuals and entities subject to targeted financial sanctions (“designated persons”) are published on the website of the Commerce and Economic Development Bureau¹. It is an offence to make available, directly or indirectly, any funds, or other financial assets, or economic resources, to, or for the benefit of, a designated person or entity, as well as those acting on their behalf, at their direction, or owned or controlled by them; or to deal with any funds, other financial assets or economic resources belonging to, or owned or controlled by, such persons and entities, except under the authority of a licence granted by the Chief Executive for certain circumstances specified by the UNSC. “Funds” is defined to include gold coins and gold bullion and “economic resources” generally means assets of every kind. The maximum penalty for contravention is an unlimited amount of fine and seven years of imprisonment.

DPRK

The United Nations Sanctions (Democratic People’s Republic of Korea) Regulation (Cap. 537AE) specifies the prohibitions in relation to DPRK. Apart from targeted financial sanctions implemented by section 8, there are also other prohibitions related to Dealers in Precious Metals and Stones (DPMs). For example, section 2A sets out the prohibition against supply, sale or transfer of luxury goods to DPRK. “Luxury goods” include items listed in Schedule 1 to the Cap. 537AE, which cover precious metals and stones.

Iran

The United Nations Sanctions (Joint Comprehensive Plan of Action—Iran) Regulation (Cap. 537BV) implements the restrictions against Iran established by Annex B to UNSCR 2231. In particular, section 9 implements the targeted financial sanctions.

¹ https://www.cedb.gov.hk/citb/en/Policy_Responsibilities/united_nations_sanctions.html

Principles and Measures to Combat Proliferation Financing

6. Dealers in precious metals and stones (“DPMS”) should not establish business relationship or conducting transactions with any individuals or entity subject to targeted financial sanctions under the relevant regulations made under UNSO². An effective screening mechanism is recommended, which should include:

- (a) screening its customers and any beneficial owners of the customers against the current sanctions lists; and
- (b) screening its customers and any beneficial owners of the customers against all new and updated designations on the sanction lists.

7. When possible name matches are identified during screening, DPMS should conduct enhanced checks to determine whether possible matches are genuine hits. In case of any suspicious of PF or sanctions violations, DPMS should make a report to the Joint Financial Intelligence Unit.

8. DPMSs should also observe all relevant provisions of Cap.537AE and Cap.537BV when dealing with businesses related to DPRK or Iran, as well as the WMDO.

² The Chief Executive may grant licence for making available or dealing with any funds, or other financial assets, and economic resources to or belonging to a designated person or entity under specified circumstances in accordance with the provisions of the relevant regulations made under the UNSO. DPMSs seeking such a licence should write to the Commerce and Economic Development Bureau.