



AFP Practical Guide on freezing of terrorist assets

Metadata	
Caption	Freezing of terrorist assets
Document Identifier	OG00031
Description	Sets out AFP obligations and procedures to assist the Australian financial sector determine whether an account or asset holder is a prescribed person/entity on the DFAT proscribed list (Consolidated List).
Governance Function	Counter-Terrorism
Owned by	National Manager Counter Terrorism
Date First Approved	23/12/2002 11:00 AM
Contact Person	Coordinator CT Business Support Team
Date Published	18/02/2007 11:00 AM
Date Modified	21/11/2011
Date Last Reviewed	7/09/2009 12:00 AM
Authorised by	National Manager Counter Terrorism
Date of Next Review	7/09/2011 12:00 AM
Review Notification	'CT-BusinessSupport@afp.gov.au'
Instrument Type	Practical Guide
Replaces	
Stakeholders	Counter Terrorism, Economic and Special Operations (ESO), AOCC
Instrument Classification	IN-CONFIDENCE

1. Disclosure and compliance

This document is classified **AFP-IN-CONFIDENCE** and is intended for internal AFP use.

Disclosing any content must comply with Commonwealth law and the [AFP National Guideline on](#)

[disclosure of information](#).

Compliance

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on Professional Standards \(CO2\)](#) outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act 1979](#) (Cth).

2. Acronyms

AFP	Australian Federal Police
DFAT	Department of Foreign Affairs and Trade
AOCC	AFP Operations Coordination Centre
ASIO	Australian Security Intelligence Organisation
DIAC	Department of Immigration and Citizenship
AUSTRAC	Australian Transaction Reports and Analysis Centre
ATO	Australian Taxation Office
ASIC	Australian Securities and Investments Commission
PROMIS	Police Real-time Online Management Information System
SMR	Suspicious matter report
SUSTR	Suspicious transaction reports

3. Definitions

Proscribed person/entity – means under Section 14 of the *Charter of the United Nations Act 1945* (Cth):

- a person or entity listed by the Minister under [section 15](#) or
- a person or entity proscribed by regulation under [section 18](#).

4. Authority to create the guideline

This guideline was issued by National Manager Counter Terrorism using power under s. 37(1) of the [Australian Federal Police Act 1979](#) (Cth) as delegated by the Commissioner under s. 69C of the Act.

5. Introduction

This Practical Guide sets out AFP obligations and procedures to assist the Australian financial sector determine whether an account or asset holder is a proscribed person/entity on the DFAT

proscribed list (known as the Consolidated List).

6. Policy on freezing terrorist assets

Where financial institutions submit requests seeking to determine whether or not an asset is owned or controlled by a person or entity on the DFAT Consolidated List, the AFP will respond to these requests as a priority.

7. Legislative framework and offences for dealing in terrorist assets

The new regulatory regime governing procedures for freezing of terrorist assets became effective on 13 December 2002. This new regime included changes to the *Charter of the United Nations Act 1945* and the introduction of the Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002, which has since been repealed with the passing of the Charter of the United Nations (Dealing with Assets) Regulations 2008.

While the Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002 implemented Australia's obligations under United Nations Security Council Resolution 1373, relating to terrorism, the Charter of the United Nations (Dealing with Assets) Regulations 2008 has a broader scope, as it implements Australia's obligations to freeze assets and prevents assets being made available to all persons and entities designated by the United Nations Security Council as being subject to such measures.

Under the regime, DFAT is required to maintain a publicly available list comprising all persons, entities and assets designated under the Regulations. The AFP is required to provide assistance to the Australian financial sector on request, where financial institutions seek to determine whether or not an asset is owned or controlled by a person or entity on the Consolidated List.

Appointees involved in the investigation of related activities/offences should familiarise themselves with the framework and correct operational procedures.

It is an offence for banks (or anyone else) to deal in terrorist assets under the Charter of the United Nations (Dealings with Assets) Regulations 2008. The regulatory and operational framework under which the banks freeze first and ask questions later is set out in Part 4 of the *Charter of the United Nations Act 1945*.

The Australian financial sector comprises all:

- banks
- credit unions
- cash dealers
- stock brokers
- insurance agents
- investment managers and
- any other person or business that deals with cash or assets.

The regime establishes a permanent partnership between the AFP and the Australian financial sector.

8. Partnership between the AFP and financial sector

Financial institutions must ensure that their accounts and transactions do not involve people and organisations on the DFAT Consolidated List.

Where financial institutions require more information to determine if an asset relates to the same person or organisation as one on the Consolidated List, they may seek AFP assistance. Assessments of possible DFAT matches are processed by the AFP Operations Coordination Centre Client Liaison Team.

The AOCC business protocols:

- Reserve Bank of Australia List Referrals and
- DFAT Consolidated List Referrals.

govern referrals from the Australian financial sector to the AFP, and communication between the AFP and individual financial institutions about the outcomes.

The AFP is responsible for conducting additional checks as appropriate, for example:

- AFP indices
- s7
- Australian Customs and Border Protection Service (Customs)
- Department of Immigration and Citizenship (DIAC)
- Australian Transactions and Analysis Centre (AUSTRAC)
- Australian Taxation Office (ATO)
- Australian Securities and Investments Commission (ASIC).

The AFP must also inform financial institutions about the results as soon as practicable.

The response must state whether the AFP considers that it is:

- likely
- unlikely or
- unknown

that the asset is owned or controlled by a designated person or entity.

AFP advice is information only, not legal advice. Financial institutions bear the onus for decision making.

9. Requests for AFP assistance – legislative basis

Regulation 41 of the Charter of the United Nations (Dealing with Assets) Regulations 2008 governs the AFP's role in providing assistance and states:

1. 'A person who holds an asset that the person suspects is, or may be, a controlled asset may request the AFP to help the person determine whether or not the asset is owned or controlled by a designated person or entity.
2. The request must be accompanied by details of the asset, and as much information about the asset (including information about the owner or controller of the asset) as is known to the person making the request
3. The AFP must use its best endeavours to help a person who has made a request under subregulation (1).

4. As soon as practicable after receiving a request under subregulation (1), the AFP must respond in writing.
5. The response must state whether the AFP considers that:
 - a. it is likely that the asset is owned or controlled by a designated person or entity or
 - b. it is unlikely that the asset is owned or controlled by a designated person or entity or
 - c. it is unknown whether the asset is owned or controlled by a designated person or entity.'

10. Requests for AFP assistance – procedure

Financial institutions seeking information from the AFP under Regulation 41 utilise the following procedure:

1. A financial institution, through data matching, finds a match to a suspect terrorist group or affiliated entity on the DFAT Consolidated List.
2. Once identified, the financial institution will freeze the assets for 48 hours.
3. The financial institution immediately refers the matter to the AFP via email or fax to the AOCC in Canberra upon identifying a possible match. Contact details for the AFP are listed on the DFAT website and provide the following information in relation to where the referral form should be sent:

AFP Operations Coordination Centre

Email: AOCC-Liaison-Ops-Support

Fax: (02) 6126 7900

Phone: (02) 6126 7555

4. The financial institution should provide as much detail as possible about the asset (including information about the owner or controller of the asset) as is known to the asset holder, as well as asset holder contact details.

12. Suspicious transactions and suspicious matter reports

The Charter of the United Nations (Dealing with Assets) Regulations 2008 do not limit the obligation of a cash dealer/regulated entity to submit a suspicious transaction report (SUSTR) or suspicious matter report (SMR) established by:

- section 16 of the [Financial Transactions Reports Act 1988](#) (Cth) or
- section 41 of the [Anti-Money Laundering and Counter Terrorism Financing Act 2006](#) (Cth).

AUSTRAC has instructed cash dealers/regulated entities (including relevant financial institutions such as banks) to submit a SUSTR/SMR every time they seek AFP assistance for matters concerning possible terrorist financing.

In practice, this raises potential for the AFP to receive information about the same suspect assets via direct financial institution referrals and AUSTRAC. Appointees should take care to match referrals and SMRS.

14. References

- [Anti-Money Laundering and Counter Terrorism Financing Act 2006](#)(Cth)
- [AOCC Business Protocol – Reserve Bank of Australia list referrals](#)
- [AOCC Business Protocol - DFAT consolidated list referrals](#)
- [Charter of the United Nations Act 1945](#)(Cth)
- [Charter of the United Nations \(Dealing with Assets\) Regulations 2008](#)
- [Financial Transactions Reports Act 1988](#)(Cth)
- [United Nations Security Council Resolution 1373 \(2001\)](#).