



**DIRECTIVE ON IMPLEMENTATION OF
TARGETED FINANCIAL SANCTIONS
RELATING TO PROLIFERATION
FINANCING (TFS-PF) UNDER THE
STRATEGIC TRADE ACT 2010,
STRATEGIC TRADE (UNITED NATIONS
SECURITY COUNCIL RESOLUTIONS)
REGULATIONS 2010 AND STRATEGIC
TRADE (RESTRICTED END-USERS AND
PROHIBITED END-USERS) ORDER 2010**

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Part I. Overview

A. Introduction

1. In response to growing concerns over the proliferation of nuclear, biological and chemical weapons and their means of delivery which continue to pose a significant threat to international peace and security, the United Nations Security Council (UNSC) has intensified efforts to strengthen its global sanctions regime in order to prevent, suppress and disrupt proliferation of weapons of mass destruction and its financing.
2. As is the case with other UNSC sanctions programmes, targeted financial sanctions (TFS) on countries and specifically identified individuals and entities (i.e. designated persons) is the primary aspect of its overall sanctions regime to effectively disrupt the financial flows across the known proliferation networks.
3. TFS relating to proliferation financing (TFS-PF) are applicable to persons and/or entities designated by the UNSC or the relevant committees set up by the UNSC. Designation or listing criteria are:
 - a. persons or entities engaging in or providing support for, including through illicit means, proliferation-sensitive activities and programmes;
 - b. acting on behalf of or at the direction of designated persons or entities;
 - c. owned or controlled by designated persons or entities; and
 - d. persons or entities assisting designated persons or entities in evading sanctions, or violating UNSCR provisions.¹
4. In the context of Malaysia, the Strategic Trade Act 2010 (STA) and specifically, the Strategic Trade (United Nations Security Council Resolutions) Regulations 2010 and Strategic Trade (Restricted End-Users and Prohibited End-Users) Order 2010 provide the legal basis for domestic implementation of TFS-PF in relation to UNSCRs imposed on the designated countries and persons, particularly from the Democratic People's Republic of Korea (DPRK) and Islamic Republic of Iran (Iran).
5. This Directive is issued pursuant to section 6 of the STA to clarify the specific obligations which must be complied with and where relevant, guidance notes are also included to support better understanding of the requirements.

¹ Paragraph 10, FATF Guidance on Counter Proliferation Financing: The Implementation of Financial Provisions of United Nations Security Council Resolutions to Counter the Proliferation of Weapons of Mass Destruction, February 2018

6. The measures laid out in this Directive are legally binding on the persons listed in **Appendix I** (in this Directive referred to as “reporting institutions” (RIs)).
7. For avoidance of doubt, the words ‘are required to’, ‘shall’ and ‘must’ refer to legal obligations imposed by the relevant UNSCRs, the STA and its relevant subsidiary legislation which RIs must comply with.

Part II. Targeted Financial Sanctions: Screening and Freezing Compliance

Note:

Regulation 3 of the Strategic Trade (United Nations Security Council Resolutions) Regulations 2010 requires the following counter-proliferation financing measures to be taken in relation to the countries and persons designated under the Strategic Trade (Restricted End-Users and Prohibited End-Users) Order 2010 in accordance with the relevant UNSCRs:

- i. the freezing of the funds and other financial assets or economic resources of such countries or persons that are located in Malaysia;
- ii. the prohibition of investment in Malaysia by such countries or persons involving any restricted activities²;
- iii. the prevention of the provision of financial services, including insurance or re-insurance, or the transfer to, through, or from Malaysia, or to or by Malaysian nationals or entities organized under Malaysian law (including branches abroad), or persons or financial institutions in Malaysia, of any financial or other assets or resources if there is information that provides reasonable grounds to believe that such services, assets or resources could contribute to any restricted activity in any designated country;
- iv. the prohibition of such other activities as may be required under the relevant decision of the UNSC.

RIs are required to immediately freeze the funds, other financial assets or economic resources which are in Malaysia at the date of adoption of the relevant UNSCR or at any time after that, that are owned or controlled, directly or indirectly by the persons or entities mentioned in Regulation 3 above, and ensure that no funds or other assets and economic resources are made available to such persons or entities.

B. Maintenance of Sanctions List

8. For this purpose, RIs must keep themselves updated with the list of countries and persons designated under the relevant UNSCRs published on the UN website, as and when there are new decisions by the relevant UNSC Sanctions Committees.

² "Restricted activity" is defined under section 2 of the STA to mean:

- a) any activity that supports the development, production, handling, usage, maintenance, storage, inventory or proliferation of any weapon of mass destruction and its delivery systems; or
- b) participation in transactions with persons engaged in such activities;

Note:

The sanction lists are available in the respective UNSCR sanctions webpage (e.g. 1718 for DPRK and 2231 for Iran), under the heading of “Sanction List Materials” or “2231 List”:

a. DPRK:

United Nations Security Council Committee established pursuant to Resolution 1718 (2006)

<https://www.un.org/sc/suborg/en/sanctions/1718/materials>

b. Iran:

United Nations Security Council Resolution 2231 (2015)

<http://www.un.org/en/sc/2231/list.shtml>

9. RIs must ensure updates to their sanctions database based on the UNSCR lists are effected without delay upon the UNSC-published designation. As there is no pre-determined schedule for updating of the UNSCR lists by the relevant Sanctions Committees’, RIs are advised to subscribe to the Consolidated United Nations Security Council Sanctions List, for prompt alerts on the latest UNSC designations.

Note:

The UNSC provides a rich site summary (RSS) subscription service for the public to keep updated with the latest Consolidated United Nations Security Council Sanctions List. RIs may also opt for any other reliable subscription service available online in order to achieve the same objective.

10. RIs may also monitor and consolidate other countries’ unilateral sanctions lists in their sanctions database.
11. RIs may also consider electronic subscription services in ensuring that an updated sanctions list is maintained. However, the responsibility for ensuring that the list is up-to-date and sufficiently robust remains with the RI.
12. The delisting of any designated country or person under UNSCR lists, shall automatically take effect when the designated country or person is removed by the relevant UNSC Sanctions Committee.

C. Screening of Customers – Designated Countries and Persons

13. The obligation to conduct sanctions screening is applicable to existing and potential or new customers of RIs as part of the customer due diligence process. Where applicable, screening must also be conducted prior to making any payments on claims, withdrawal or surrender pay out.

14. RIs are required to screen its entire customer database (which should include dormant accounts) to check for any positive name matches with the designated countries or persons without delay upon the UNSC-published designation.
15. When conducting the customer screening process, RIs are advised to perform name searches based on a set of possible permutations for each designated person to prevent unintended omissions.

Note:

As proliferators are known to conceal their true identity (e.g. dual nationality) to evade sanctions and passport numbers change over time, RIs should not confine name searches to the given nationality and passport number. Other information that can be referred to in order to validate any possible name matches and can be relied by the RI may include information on the date of birth.

16. If there is a positive name match, RIs are required to take reasonable and appropriate measures to verify and confirm the identity of its customer against the designated person.

Note:

When there is reason to believe that the customer is a designated person but there is no credible information to confirm the match, RIs are advised to refer to their respective supervisory authorities and provide supporting documents on the relevant assessments conducted, for further confirmation by the relevant UNSC Sanctions Committees.

17. RIs are encouraged to undertake their own PF risk assessment, including the consideration of PF typologies, when reviewing transactions and customer information collected through their existing AML/CFT obligations and customer due diligence programmes. The information collected should allow RIs to identify transactions, accounts, or relationships with banks and entities of designated countries.

D. Screening of Customers – Related Parties

18. RIs must undertake further due diligence to identify related parties to the designated person.

Note:

In this context, “related parties” are defined as:

- a. *person acting on behalf of or at the direction or under the control of designated persons or entities;*
- b. *person engaged in or providing support for, including through illicit means, proliferation-sensitive activities and programmes;*

- c. *person assisting designated individuals or entities in evading sanctions, or violating resolution provisions; and*
- d. *person(s) with joint ownership or the beneficiaries of the assets (which includes property) of a designated person.*

19. In ascertaining whether an entity is owned or controlled by a designated person, the following rules may be applied:
- a. To establish ownership by a designated person
When a designated person possesses more than 50% of the proprietary rights of the entity or has a majority interest in it.
 - b. To establish control by a designated person
When a designated person has the right to exercise dominant influence over the entity (i.e. influence over the appointment of a member of the Board of Directors or senior management, right to use all or part of the assets of the entity and/or right to manage the business operation).
20. RIs must conduct further due diligence on parties related to frozen accounts including checking on control and conduct of the frozen accounts and other related parties accounts connected to the designated person.

Note:

Transactions and relationships of related parties may include beneficial owners, signatories, power of attorney relationships, guarantors, nominees, trustees, assignees, payors and others.

21. RIs are required to search, examine and analyse past transactions of the designated persons and identified related parties, and maintain records on the analysis of these transactions.

E. Freezing, Blocking and Rejecting Customers

22. Upon determination and confirmation of a customer's identity as a designated person, RIs are required to immediately freeze the customer's funds, other financial assets and economic resources or block the transaction (where applicable) to prevent the flight or dissipation of the funds, other financial assets and economic resources. The prior approval of the Strategic Trade Controller or relevant supervisory authority shall not be required for this purpose.
23. The freeze on the funds, other financial assets and economic resources or block on the transaction, as the case may be, shall remain in effect until the designated person is de-listed by the UNSC in accordance with the Strategic Trade (Delisting of Prohibited End-Users) Regulations 2014 [P.U.(A) 289/2014] or it is otherwise confirmed that this is a false positive case in

accordance with the Strategic Trade (Unfreezing of Property in relation to Prohibited End-Users Regulations 2014 [P.U.(A) 290/2014].

24. Where the screening match involves potential or new customers, RIs are required to reject the customer, if the transaction has not commenced.
25. RIs must assess the risk and context in determining whether to freeze and block funds, transactions or other financial assets and economic resources, and reject potential or new customers that are indirectly owned or controlled by the designated person. If assessed as high risk, this would warrant appropriate action by the RI on such funds, transactions or other financial assets and economic resources.

Note:

The freezing should not affect funds, other financial assets and economic resources of non-designated persons, i.e. the employer, person with separate legal entity from a designated person, unless they are directly or indirectly owned or controlled by that designated person.

Part III. Access to/ Maintenance of Frozen Funds (Variation/ Exemption)

F. Allowable Transactions

26. The frozen funds, accounts or other financial assets and economic resources may continue receiving deposits, dividends, interests, bonus or other benefits. However, such funds and benefits must remain frozen as long as the countries, individuals or entities continue to be designated by the UNSC.
27. All uses of, and dealings with, funds, other financial assets and economic resources, including movements or alterations such as portfolio management, whether by the designated country, person or any other person holding or controlling such funds, other financial assets and economic resources requires prior written authorisation of the Strategic Trade Controller under the STA in consultation with the relevant supervisory authorities.

Note:

Person holding or controlling the funds may include non-designated individuals or entities with joint ownership of the funds.

28. No withdrawal or payment out is allowed without the prior written authorisation of the Strategic Trade Controller under the STA in consultation with the relevant supervisory authorities.

G. Exemption for Basic and Extraordinary Expenditures

29. RIs will be given further instruction by the relevant supervisory authorities on any payments for basic and extraordinary expenditures that have been approved by the Strategic Trade Controller under the STA, in accordance with the relevant UNSCRs.

Note:

1. Basic Expenditures:

UNSCR 1718 on DPRK (2006) specifies that freezing measures do not apply to financial or other assets or resources that relevant countries have determined to be necessary for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges, or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated.

UNSCR 2231 on Iran (2015) permits basic expenditures, which includes, i.e. payment for foodstuffs, rent or mortgage, medicines and medical treatment,

taxes, insurance premiums, and public utility charges or exclusively for payment of reasonable professional fees such as those for legal services.

2. ***Extraordinary Expenditures:***

Both DPRK and Iran-related resolutions specify that the freezing measures do not apply to funds, other financial assets or economic resources that relevant countries have determined to be necessary for extraordinary expenses and that the UN Security Council or Sanctions Committee has approved as such. Paragraph 6(d)(ii) of Annex B to UNSCR 2231 (2015) for Iran and OP 9(b) of UNSCR 1718 (2006) for DPRK.

As far as Iran is concerned, extraordinary expenses include inter alia any expenses in connection with ancillary transactions of a subsidiary or a branch of the financial institution not covered by paragraph 6(d) of Annex B to UNSCR 2231 (2015) that are necessary to ensure an orderly wind down of the institution's obligations under prior contracts to third parties acting in good faith or for expenses necessary to ensure the protection of such third parties.

30. In this Directive, "relevant supervisory authority" refers to Bank Negara Malaysia and the Labuan Financial Services Authority, as the case may require.

H. Exemption for Payments Due under Existing Contracts

31. RIs should advise the customer or related party of the frozen funds, other financial assets and economic resources, blocked or rejected transaction to appeal to the Strategic Trade Controller under the STA to allow payments due under contracts entered into prior to designation.

Note:

The Strategic Trade Controller may, in accordance with the relevant UNSCRs allow exemptions, provided that such contract is not related to items, assistance or services prohibited under the UNSCR and that such payment is not directly or indirectly received by the designated country or person.

32. RIs are only allowed to proceed with the payments upon receiving the prior written authorisation and confirmation of the Strategic Trade Controller under the STA.

Part IV. Reporting Requirements

I. Reporting upon Determination of a Match

33. RIs are required to immediately report to the relevant supervisory authorities on any detection, freezing, blocking or rejection actions undertaken with regard to any identified funds, other financial assets and economic resources or transactions.
34. The form for reporting to the relevant supervisory authorities upon determination of a name match and actions taken by the RI is attached as **Appendix II**.

J. Periodic Reporting on Positive Matches

35. RIs who have reported positive name matches and hold or are in control of frozen or blocked funds, other financial assets and economic resources of any customers are required to report on any changes to those funds, other financial assets and economic resources by the 15th of January in the next calendar year.

Note:

Examples of changes to the frozen or blocked funds, other financial assets and economic resources include increases in amount frozen due to interest payments, dividend pay outs and such.

36. The form for periodic reporting to the relevant supervisory authorities is attached as **Appendix III**.

K. Reporting of Suspicious Transaction to FIED, Bank Negara Malaysia

37. RIs are required to submit a suspicious transaction report (STR) to the Financial Intelligence and Enforcement Department (FIED), Bank Negara Malaysia in accordance with the RI's obligations under the relevant governing law.

Part V. Other information

L. Dealing with False Positives

38. RIs are required to obtain additional information and identification documents (which previously may not have been obtained) from the customer or a credible third party (e.g. Companies Commission of Malaysia for legal persons, embassy or consular office) to ascertain whether the customer is the actual designated person in the case of similar or common names.
39. RIs may forward queries to the relevant supervisory authorities to determine whether the customer is a designated person in the case of similar or common names.
40. Any query submitted to the relevant supervisory authorities must include any additional information, copies of identification documents and relevant analysis conducted by the RIs.

M. Delisting from UN List

41. The screening obligations imposed on RIs also extends to the need for RIs to screen for possible delisting of affected customers from the UNSC's list of designated countries and persons. In the event a customer is delisted, RIs are required to alert the relevant supervisory authorities for further instruction on unfreezing action.

N. Contact Information

42. The contact points for the Strategic Trade Controller and relevant supervisory authorities in relation to TFS on PF are:

Controller:

Strategic Trade Secretariat,
Ministry of International Trade and Industry,
Level 4, MITI Tower, No.7, Jalan Sultan Haji Ahmad Shah,
50622 Kuala Lumpur
Tel: 03-8000 8000
E-mail: admin.sts@miti.gov.my
Website: <http://www.miti.gov.my/index.php/pages/view/sta2010>

Bank Negara Malaysia:

Director
Financial Intelligence and Enforcement Department

Bank Negara Malaysia
Jalan Dato' Onn, 50480 Kuala Lumpur
Email: fiu@bnm.gov.my

Labuan Financial Services Authority:
Director,
Level 17, Main Office Tower
Financial Park Complex
Jalan Merdeka
87000 Labuan, Malaysia.

LIST OF REPORTING INSTITUTIONS

Appendix I

No	Reporting Institutions	Relevant Supervisory Authority
Part I. Banking and Deposit Taking Institutions		
1.	Banks and investment banks licensed under the Financial Services Act 2013 [Act 758] (FSA).	Bank Negara Malaysia
2.	Islamic banks licensed under the Islamic Financial Services Act 2013 [Act 759] (IFSA).	
3.	Development financial institutions licensed under the Development Financial Institutions Act 2002 [Act 618] (DFIA).	
4.	Labuan banks, Labuan investment banks and Labuan licensed institutions licensed under section 92 of the Labuan Financial Services and Securities Act 2010 [Act 704] (LFSSA).	Labuan Financial Services Authority
5.	Labuan Islamic banks, Labuan Islamic investment banks and Labuan Islamic licensed institutions licensed under section 67 of the Labuan Islamic Financial Services and Securities Act 2010 [Act 705] (LIFSSA).	
Part II. Insurance and Takaful Operators and relevant Intermediaries		
6.	Insurers, reinsurers, insurance brokers and financial advisers licensed or approved under the FSA.	Bank Negara Malaysia
7.	Family takaful operators, family retakaful, takaful brokers and Islamic financial advisers licensed or approved under the IFSA.	
8.	Labuan insurers, Labuan reinsurers and Labuan insurance related intermediaries licensed under Part VII of the LFSSA.	Labuan Financial Services Authority
9.	Labuan Takaful Operators, Labuan Retakaful operators and related intermediaries licensed under Part VII of the LIFSSA.	
Part III. Money Services Businesses		
10.	Money Services Business operators licensed under the Money Services Business Act 2011 [Act 731] (MSBA).	Bank Negara Malaysia
Part IV. Payment System Operators		
11.	Issuers of charge cards and credit cards which are not affiliated with any licensed bank under the FSA, any licensed Islamic bank under the IFSA and prescribed institutions licensed under the DFIA.	Bank Negara Malaysia
12.	Issuers of electronic money, a designated payment instrument as prescribed in the Financial Services (Designated Payment Instruments) Order 2013 [P.U.(A) 202/2013].	
13.	Issuers of electronic money who are also licensed as money service business operators under the MSBA.	
Part V. Other Financial Sectors		
14.	Activities relating to building credit business, development finance business, factoring business or leasing business carried out by companies incorporated pursuant to the Companies Act 1965 and businesses as defined and registered under the Registration of Businesses Act 1956 [Act 197].	Bank Negara Malaysia

No	Reporting Institutions	Relevant Supervisory Authority
15.	Lembaga Tabung Haji established under the Tabung Haji Act 1995 [Act 535].	
16.	Digital currency exchanges that provide any or any combination of the following services: <ul style="list-style-type: none"> (i) exchanging digital currency for money. (ii) exchanging money for digital currency. or (iii) exchanging one digital currency for another digital currency, whether in the course of carrying on a digital currency exchange business or otherwise. 	
Part VI. Offshore Capital Market Intermediaries		
17.	Fund managers and fund administrators as defined under Part III of the LFSSA and Part IV of the LIFSSA.	Labuan Financial Services Authority
18.	Securities licensees and other market intermediaries as defined under Part IV of the LFSSA.	
19.	Islamic securities licensees and other intermediaries as defined under Part V of the LIFSSA.	
20.	Management companies as defined under Part VIII of the LFSSA.	
21.	Exchanges as defined under Part IX of the LFSSA.	
22.	Self-regulatory organizations as defined under Part X of the LFSSA.	
23.	Islamic self-regulatory organizations as defined under Part XI of the LIFSSA.	
Part VII. Designated Non-Financial Businesses and Professions & Other Non-Financial Sectors		
24.	Advocates and solicitors as defined in the Legal Profession Act 1976 [Act 166] and advocates admitted pursuant to the Advocate Ordinance Sabah 1953 [Sabah Cap. 2] and Advocate Ordinance Sarawak 1953 [Sarawak Cap. 110] (collectively referred to as “lawyers”).	Bank Negara Malaysia
25.	Companies incorporated under the Companies Act 2016 [Act 777] and businesses as defined and registered under the Registration of Businesses Act 1956 [Act 197] which are carrying on activities of dealing in precious metals or precious stones (referred to as dealers in precious metals or precious stones).	
26.	Common gaming houses as defined in the Common Gaming Houses Act 1953 [Act 289].	
27.	Licensees as defined in the Pool Betting Act 1967 [Act 384].	
28.	Totalizator agencies as defined in the Racing (Totalizator Board) Act 1961 [Act 494].	
29.	Racing clubs as defined in the Racing Club (Public Sweepstakes) Act 1965 [Act 404].	
30.	Moneylenders as defined in the Moneylenders Act 1951 [Act 400].	
31.	Accountants who hold valid practising certificates issued pursuant to rule 9 of the Malaysian Institute of Accountants (Membership and Council) Rules 2001 [P.U.(A) 343/2001] (referred to as “accountants”).	
32.	Notaries public as defined in the Notaries Public Act 1959 [Act 115].	

No	Reporting Institutions	Relevant Supervisory Authority
33.	Pawnbrokers as defined in the Pawnbrokers Act 1972 [Act 81].	
34.	Persons prescribed by the Minister or licensed by the Registrar of Companies to act as a company secretary of a company pursuant to section 139A of the Companies Act 2016 [Act 777] (referred to as “company secretaries”).	
35.	Registered estate agents as defined under the Valuers, Appraisers and Estate Agents Act 1981 [Act 242].	
36.	The Corporation as defined in the Public Trust Corporation Act 1995 [Act 532] and trust companies as defined in the Trust Companies Act 1949 [Act 100].	
37.	Labuan Trust Companies licensed under section 61 of the LFSSA.	Labuan Financial Services Authority
38.	Labuan Managed Trust Companies licensed under section 71 of the LFSSA.	
39.	Persons prescribed by the Minister or licensed by the Registrar of Companies to act as a company secretary pursuant to section 93 of the Labuan Companies Act 1990 [Act 441].	

MEASURES PURSUANT TO THE STRATEGIC TRADE (UNITED NATIONS SECURITY COUNCIL RESOLUTIONS) REGULATIONS 2010 [P.U. (A) 481/2010]

Appendix II

FORM 1: REPORTING UPON DETERMINATION

UNSCR Number (If Available) :
Date of UN Listing :

Match with Designated Person(s) (YES / NO) :
If YES, please fill-up the details in the form below

Customer No	UNSCR Permanent Ref No (e.g. KPi.001, IRI.001)	Customer Name	Address	NRIC / Passport No.	Institution Name (E.g. Islamic, Investment, Insurance) - if reporting done on group basis	Branch maintaining the account/facility	Account No.	Account Facility/ Financial Services Type	Date financial services given (DD/MM/YYYY)	Account / Facility Status (on date of freezing)	Date account frozen (DD/MM/YYYY)	Balance as at: _____		Related Parties	Remarks
												· Banking (CR) / · Insurance (Sum Insured)	· Banking (DR) / · Insurance (Premium Received)		
1.															
2.															
3.															
4.															
5.															

Reporting Institution Details

Reporting Institution Name :
Contact Person :
Designation :
Tel & Fax No. :
E-mail :
Reporting Date :

MEASURES PURSUANT TO THE STRATEGIC TRADE (UNITED NATIONS SECURITY COUNCIL RESOLUTIONS) REGULATIONS 2010 [P.U. (A) 481/2010]

Appendix III

FORM 2: PERIODIC REPORTING ON ANY CHANGES TO THE FROZEN OR BLOCKED FUNDS, OTHER FINANCIAL ASSETS AND ECONOMIC RESOURCES

(By 15 January of the following calendar year after first reporting on positive name match)

Cust omer No	UNSCR Permanent Ref No (e.g. KPi.001, IRi.001)	Customer Name	NRIC / Passport No.	Account No.	Account Facility/ Financial Services Type	Date account frozen (DD/MM /YYYY)	Current Account / Facility Status	Previous Account Balance (previous reporting)		Transaction Details (line by line transaction)					New Account Balance as at: (DD/MM/YYYY)		Remarks	
								· Banking (CR) / · Insurance (Sum Insured)	· Banking (DR) / · Insurance (Premium Received)	Trans action No	Date (DD/MM/ YYYY)	Type (CR/DR)	Remarks	Amount (MYR)	· Banking (CR) / · Insurance (Sum Insured)	· Banking (DR) / · Insurance (Premium Received)		
1.										1.								
										2.								
										3.								
2.										1.								
3.										1.								

Note: Please provide supporting documents, i.e. copies of invoices and receipts for each transaction.

Reporting Institution Details

Reporting Institution Name :
 Contact Person :
 Designation :
 Tel & Fax No. :
 E-mail :
 Reporting Date :