

FINANCIAL REPORTING AUTHORITY (FRA)

INDUSTRY GUIDANCE

TARGETED FINANCIAL SANCTIONS WITH RESPECT TO TERRORISM, TERRORIST FINANCING, PROLIFERATION, AND PROLIFERATION FINANCING WITHIN THE CAYMAN ISLANDS

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FOREWORD

The Cayman Islands has long been an active participant in international efforts to disrupt organized crime and to remove the profit from criminal activity. As a founding member of the Caribbean Financial Action Task Force (CFATF), Cayman has demonstrated its commitment to international best-practice embodied within the 40 Recommendations of the Financial Action Task Force (FATF)¹. As such Cayman is committed to implementing the United Nations Security Council Resolutions (UNSCRs), the European Union (EU) and the United Kingdom (UK) sanctions measures.

Amongst other measures, the UNSCRs may impose targeted financial sanctions against specific individuals and entities identified by the UN Security Council (or relevant UN Committees²) as contributing to a particular threat to, or breach of, international peace and security.

The Governor of the Cayman Islands is the competent authority for the implementation of targeted financial sanctions in the Cayman Islands; however, the Governor has delegated the function of receiving certain reports (as detailed on page 5) to the Financial Reporting Authority.

The purpose of this Guidance is to assist relevant institutions in complying with their obligations regarding targeted financial sanctions relating to the prevention and suppression of terrorism and terrorist financing, and the prevention, suppression and disruption of proliferation of weapons of mass destructions and its financing.

This Guidance does not represent legal advice. If you are unsure about your obligations in a given case, you should consider taking independent legal advice.

¹ Attorney General forward in the Cayman Islands Anti-Money Laundering and Counter Terrorist Financing Strategy 2017-2021

² Relevant UN Sanctions Committees : 1267 (Isil (Da'esh) and Al-Qaida); 1988 (Tailiban); 1718 – Democratic People Republic of Korea

National AML/CFT Governance

Anti-Money Laundering Steering Group (AMLSG)

- 1) The AMLSG is the governing body responsible for the general oversight of AML/CFT policy in the Cayman Islands. It is also responsible for the general administration of the Financial Reporting Authority (FRA) and overseeing its work, monitoring interaction and co-operation with overseas financial intelligence units and promoting effective collaboration between regulators and law enforcement agencies.

Anti-Money Laundering Unit (AMLU)

- 2) The AMLU is the secretariat for the AMLSG, and also chairs the Inter-Agency Coordination Committee (IACC). The Role of the Anti-Money Laundering Unit is to: Coordinate the AML/CFT National Risk Assessment (NRA) on behalf of the AMLSG and provide information on the results of the risk assessment to all relevant competent authorities and self-regulatory bodies (SRBs), financial Institutions and DNFbps; Co-ordinate and prepare for mutual evaluations conducted by the Caribbean Financial Action Task Force (CFATF) and follow-up actions; Oversee the implementation of new legislation or amendments to existing AML/CFT legislations; and act as the central agency for the collection, compilation of AML/CFT data and statistics.

Inter-Agency Co-ordination Committee (IACC)

- 3) The (IACC) is the body responsible, at the operational level, for the implementation of AMLSG policies; inter-agency cooperation and coordination with respect to anti-money laundering, counter terrorism financing and anti-proliferation financing; and coordinating the assessment of national ML/TF risks.

- 4) The IACC is expected to play a vital role in the implementation of targeted financial sanctions as it will be involved in the assessing and proposing of persons or entity for designation.

Financial Reporting Authority (FRA)

- 5) The FRA is the Cayman Islands' Financial Intelligence Unit (FIU) with responsibility for receiving, requesting, analysing and disseminating disclosures of financial information concerning the proceeds of criminal conduct, money laundering and the financing of terrorism.
- 6) Effective November 15, 2017, the Governor of the Cayman Islands, delegated the function of receiving reports to the FRA pursuant to:
 - i. Articles 7(2) – 7(4) of The Isil (Da'esh) and Al-Qaida (Sanctions) (Overseas Territories) Order 2016
 - ii. Articles 22(1) – 22(3) of The Afghanistan (United Nations Measures) (Overseas Territories) Order 2012;
 - iii. Articles 6(2) – 6(4) of The Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2012;
 - iv. Articles 8(2) – 8(4) of The Iran (Sanctions) (Overseas Territories) Order 2016
 - v. Paragraph 20 of Schedule 4A of the Terrorism Law (2017 Revision);

Sanctions Coordinator (SC)

- 7) The SC of the FRA is responsible for coordinating the implementation of targeted financial sanctions with respect to terrorism, terrorism financing, proliferation and proliferation financing. The SC will take a holistic approach to ensuring compliance with the sanctions regime to cover the whole lifecycle of compliance. For example: promote compliance by publishing financial sanctions and engaging with the private sector and enable compliance by providing guidance and alerts to help them discharge their own compliance responsibilities. The SC will also perform a central and proactive role in the making of recommendations for designation to the Governor.

Financial Crimes Unit (FCU)

- 8) The FCU is the unit within the Royal Cayman Islands Police Service with responsibility for investigating all financial crimes within the Cayman Islands. This includes ML investigations, with the exception of ML related to corruption as a predicate offence, which is dealt with by the Anti-Corruption Commission (ACC), and TF investigations. The FCU also conducts parallel investigations with other sections of the RCIPS.

Cayman Islands Monetary Authority (CIMA)

- 9) Under the Monetary Authority Law (MAL), one of CIMA's four principal functions is its regulatory function, which includes an obligation to monitor compliance with applicable sanctions obligations, including the requirements under the Anti-Money Laundering Regulations ("AMLRs"), the Guidance Notes and other regulatory measures, primarily through inspections. CIMA must therefore ensure that persons or entities under its regulatory laws are aware of applicable international targeted financial sanctions and any local designations or directions that are in force as well of their responsibilities for sanctions screening and reporting.
- 10) Regulation 5 (a) (v) of the AMLRs requires that persons carrying out relevant financial business must consider sanctions at the time of conducting risk assessments. Financial Service Providers (FSPs) must therefore ensure that, among other things, they maintain adequate:
 - Policies and procedures relation to sanctions compliance
 - Systems and controls for screening and reporting
 - Systems for on-going staff training
- 11) It also reviews regulated entities' reports and returns, paying special attention to persons, entities or countries listed on any autonomous list of designations and applicable international targeted financial sanctions. CIMA also has an obligation to make suspicious activity reports to the Financial Reporting Authority if there is any evidence or suspicion of any sanctions breaches by a regulated entity.

Department of Commerce and Investment (DCI)

- 12) DCI is central in providing the necessary framework conducive to a successful business environment through its Licensing, Regulatory and Enforcement functions. It was assigned AML/CFT supervisory responsibility by Cabinet over dealers in precious metals and stones, and real estate agents with effect from 3 March 2017.

The Registrar General (RG)

- 13) The RG is the competent authority for the AML/CFT supervision of the non-profit organizations (NPOs) and has the appropriate regulations and enforcement powers in place to safeguard NPOs from abuse. The new Non-Profit Law (NPO Law) and associated Regulation came into force on August 1, 2017 and impose a stringent set of disclosure requirements on those entities registered as NPOs.

A. SANCTIONS OVERVIEW

1. What are sanctions?

- 14) Sanctions are used as a foreign policy tool as part of a broader political and diplomatic strategy to achieve a desired outcome from a target country or regime. They are usually agreed and coordinated at an international level by the United Nations Security Council and the European Union. They may include travel, arms, financial and trade restrictions against the individuals and entities who are subject to the restrictions
- 15) The primary aim of all UN sanctions, as set out in Chapter VII of the UN Charter, is to implement decisions by its Security Council for the maintenance of international peace and security. There are three categories of sanctions namely (1) terrorism/terrorist financing (2) proliferation financing and (3) general sanctions against countries (internal conflicts).
- 16) The EU imposes sanctions to further its Common Foreign and Security Policy objectives.

2. What are financial sanctions³?

- 17) Financial sanctions are restrictions put in place by the UN, EU, or UK to achieve a specific foreign policy or national security objective. They can limit the provision of certain financial services and restrict access to financial markets, funds and economic resources.
- 18) Financial sanctions come in many forms as they are developed in response to a given situation. The most common types of financial sanctions used in recent years are:

³ OFSI – Financial Sanctions Guidance pages 5-7

- **Targeted asset freezes** - which are usually applied to named individuals, entities and bodies, restricting their access and ability to use funds and economic resources.
- **Restrictions on a wide variety of financial markets and services** - these can apply to named individuals, entities and bodies, to specified groups or to entire sectors. To date they have taken the form of investment bans; restrictions on access to capital markets; directions to cease banking relationships and activities; requirements to notify or seek authorization before certain payments are made or received; and restrictions on provision of financial, insurance, brokering, advisory services or other financial assistance.
- **Directions to cease all business** - of a specified type with a specific person, group, sector territory or country.

19) Where the financial sanction takes the form of an asset freeze, it is generally prohibited to:

- Deal with the funds or economic resources, belonging to or owned, held or controlled by a designated person
- Make funds or economic resources available, directly or indirectly, to, or for the benefit of, a designated person; or
- Engage in actions that, directly or indirectly, circumvent the financial sanctions prohibitions.

20) The funds and economic resources are to be frozen immediately by the person in possession or control of them.

3. Why are financial sanctions imposed⁴?

21) Financial sanctions are generally imposed on a regime, or an individual or entity within a regime ('the target') to:

⁴ OFSI – Financial Sanctions Guidance pages 5-7

- (a) **Coerce** the target into changing its behavior or aspects of it ('offending behaviour'), by increasing the cost on them to such an extent that they decide to cease the offending behaviour;
- (b) **Constrain** the target by trying to deny them access to key resources needed to continue their offending behavior, including the financing of terrorism or nuclear proliferation;
- (c) **Signal disapproval** of the target as a way of stigmatising and potentially isolating them, or as a way of sending broader political messages to international or domestic constituencies;
- (d) **Protect the value of assets** that have been misappropriated from a country, until they can be repatriated.

4. How are sanctions imposed⁵?

- 22) The United Nations (UN) imposes financial sanctions and requires member states to implement them through Resolutions passed by the UN Security Council. You can read more about the work of the UN in relation to financial sanctions on their website: <https://www.un.org/sc/suborg/en/sanctions/information>
- 23) The European Union (EU) implements all financial sanctions imposed by the UN. It does this through EU regulations which have direct legal effect in the UK and all other EU member states.
- 24) The EU can also impose its own financial sanctions, sometimes referred to as 'EU autonomous' sanctions. These are also implemented through regulations that have direct effect in all member states. You can read more about the work of the EU in relation to financial sanctions on their website: https://eeas.europa.eu/headquarters/headquarters-homepage/423/sanctions-policy_en
- 25) The United Kingdom (UK) makes statutory instruments (UK regulations) to impose penalties for any breach of EU regulations and to obtain, provide and use information relating to the operation of these regulations.

⁵ OFSI – Financial Sanctions Guidance pages 5-7

26) In certain circumstances, the UK can impose its own financial sanctions and restrictions under the following legislation (collectively the 'domestic regimes'):

- Terrorist Asset-Freezing etc. Act 2010 (TAFSA 2010)
- Counter Terrorism Act 2008 (CTA 2008)
- Anti-Terrorism, Crime and Security Act 2001 (ATCSA 2001)

27) In certain circumstances, the Cayman Islands can impose its own financial sanctions and restrictions under the *Terrorism Law (2017 Revision)* (TL) and the *Proliferation Financing (Prohibition) Law (2017 Revision)* (PFPL).

5. Sanctions in force in the Cayman Islands

28) The financial sanctions in force in the Cayman Islands are essentially the same as those imposed in the UK. There are currently 29 regimes (specific country or terrorist group) that are subject to financial sanctions in the UK which can be found on the HM Treasury Office of Financial Sanctions Implementation (OFSI)⁶ website <https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>,

29) Below is a list of financial sanctions by country, which can also be found on CIMA's website with direct links to OFSI. The FRA does not guarantee that this list is accurate, completed or up-to date; therefore, it should not be relied upon as the sole source of information. It is the responsibility of the relevant institution to keep itself informed and up to date with all applicable sanctions and changes thereto:

1. Financial sanctions, **Afghanistan**:
<https://www.gov.uk/government/publications/financial-sanctions-afghanistan>
2. Financial sanctions, **ISIL (Da'esh) and Al-Qaida organisations**:
<https://www.gov.uk/government/publications/current-list-of-designated-persons-al-qaida>
3. Financial sanctions, **Belarus**:
<https://www.gov.uk/government/publications/financial-sanctions-belarus>
4. Financial Sanctions, **Burundi**:

⁶ OFSI is the competent authority for the implementation of financial sanctions in the UK.

<https://www.gov.uk/government/publications/financial-sanctions-burundi>

5. Financial sanctions, **Central African Republic:**
<https://www.gov.uk/government/publications/financial-sanctions-central-african-republic>
6. Financial sanctions, **Democratic Republic of the Congo:**
<https://www.gov.uk/government/publications/financial-sanctions-democratic-republic-of-the-congo>
7. Financial sanctions, **Egypt:**
<https://www.gov.uk/government/publications/financial-sanctions-egypt>
8. Financial sanctions, **Eritrea:**
<https://www.gov.uk/government/publications/financial-sanctions-eritrea>
9. Financial sanctions, **Republic of Guinea**
<https://www.gov.uk/government/publications/financial-sanctions-republic-of-guinea>
10. Financial sanctions, **Republic of Guinea-Bissau:**
<https://www.gov.uk/government/publications/financial-sanctions-republic-of-guinea-bissau>
11. Financial sanctions, **Iran (nuclear proliferation):**
<https://www.gov.uk/government/publications/financial-sanctions-iran-nuclear-proliferation>
12. Financial sanctions, **Iraq:**
<https://www.gov.uk/government/publications/financial-sanctions-iraq>
13. Financial sanctions, **Lebanon and Syria:**
<https://www.gov.uk/government/publications/financial-sanctions-lebanon-and-syria>
14. Financial sanctions, **Libya:**
<https://www.gov.uk/government/publications/financial-sanctions-libya>
15. Financial sanctions, **Mali:**
<https://www.gov.uk/government/publications/financial-sanctions-mali>
16. Financial sanctions, **North Korea (Democratic People's Republic of Korea):**
<https://www.gov.uk/government/publications/financial-sanctions-north-korea-democratic-peoples-republic-of-korea>
17. Financial sanctions, **Somalia:**
<https://www.gov.uk/government/publications/financial-sanctions-somalia>
18. Financial sanctions, South Sudan:
<https://www.gov.uk/government/publications/financial-sanctions-south-sudan>
19. Financial sanctions, Sudan:
<https://www.gov.uk/government/publications/financial-sanctions-sudan>

20. Financial sanctions, Syria:
<https://www.gov.uk/government/publications/financial-sanctions-syria>
21. Current list of designated persons, terrorism and terrorist financing - **(UN Security Council Resolution 1373, the EU Council Regulation (EU) No 2580/2001 and UK's Terrorist Asset-Freezing etc. Act 2010 (TAFSA 2010))**:
<https://www.gov.uk/government/publications/current-list-of-designated-persons-terrorism-and-terrorist-financing>
22. Financial sanctions, **Tunisia**:
<https://www.gov.uk/government/publications/financial-sanctions-tunisia>
23. Financial sanctions, **Ukraine (Sovereignty and Territorial Integrity)**:
<https://www.gov.uk/government/publications/financial-sanctions-ukraine-sovereignty-and-territorial-integrity>
24. Financial sanctions, **Yemen**:
<https://www.gov.uk/government/publications/financial-sanctions-yemen>
25. Financial sanctions, **Zimbabwe**:
<https://www.gov.uk/government/publications/financial-sanctions-zimbabwe>

30) As a British Overseas Territory (BOT), the Cayman Islands is not a member of the UN in its own right, and is reliant upon the EU framework and UK for implementing designations under UNSCRs.

31) UNSCRs are implemented in the UK first by way of EU Council Regulations which are then extended to the Cayman Islands by way of Overseas Orders in Council (OOIC). It is only after adoption of the UN resolutions by the EU that the UK will make an OOIC, which is laid before the UK Parliament before it takes legal effect in the Cayman Islands.

32) Previously from a legislative point of view, the above process resulted in some delays in the implementation of UNSCRs in the Cayman Islands. Procedurally the issue has been addressed as the UK has enacted legislation (the Policing and Crime Act 2017) and The United Nations and European Union Financial Sanctions (Linking) Regulations 2017, to ensure that UN financial sanctions are implemented in the UK without delay for a temporary period of 30 days, even in the absence of implementation at the EU level. This legislation has bridged the gap between adoption of listings by the UN and their implementation by the EU. The legislation

contains a permissive extent clause, which enables the temporary measures to be extended to the Overseas Territories. The Policing and Crime Act 2017 (Financial Sanctions) (Overseas Territories) Order 2017 came into force on November 2, 2017.

- 33) Furthermore, the implementation of financial sanctions without delay has been addressed by an amendment to the definition of a designated person in the TL, which now includes a person listed under UNSCR 1267. As such a designation by the UN in this regard is recognized immediately.
- 34) It is UK Government policy to ensure that its Overseas Territories are legally and practically enabled to implement the sanctions agreed at the UN and in the EU, in order to ensure compliance with the UK's international obligations and policy commitments. Furthermore, in doing so, the UK ensures that sanctions measures have their maximum possible effect, thereby strengthening the sanctions regimes and supporting underlying UK policy objectives.⁷
- 35) The current OOICs that give effect to UNSCR 1267 and EU Regulations 881/2002 and 753/2011, are the Afghanistan (United Nations Measures) (Overseas Territories) Order 2012 and the Isil (Da'esh) and Al-Qaida (Sanctions) (Overseas Territories) Order 2016 respectively.
- 36) The current OOICs that give effect to UNSCRs 1718 and 2231 and EU Regulations 2017/1509 and 267/2012, are the Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2012 and the Iran (Sanctions) (Overseas Territories) Order 2016 respectively.
- 37) All OOICs are published in the Cayman Islands Gazette and apply to⁸:
 - a) any person in the Cayman Islands,
 - b) any person elsewhere who is—
 - i. a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or

⁷ FCO – International Organisation Department – Guidance on implementation of sanctions in Overseas Territories.

⁸ Article 3 of Isil (Da'esh) and Al-Qaida (Sanctions) (Overseas Territories) Order 2016 and in all other relevant OOIC

a British protected person and is ordinarily resident in the Territory,
or

ii. a body incorporated or constituted under the law of the Cayman
Islands, and

c) any person onboard a ship or aircraft that is registered in the Cayman
Islands

38) Any person in breach of an obligation under a relevant sanctions measure will be
guilty of an offence and liable to a maximum of seven years imprisonment, a fine or
both.

B. RESPONSIBILITIES OF RELEVANT INSTITUTIONS

1. Introduction

- 39) As a relevant institution you should have adequate policies and procedures to comply with the sanctions measures, which should be properly documented, reviewed and endorsed by senior management, including the Board.
- 40) You should determine your risk profile with reference to the following non-exhaustive list of risk factors: (a) customer, product and activities, (b) distribution channels, (c) complexity and volume of transactions, (d) processing and systems, (e) operating environment, (f) screening processes of intermediaries, and (g) geographic risk.
- 41) You should also determine reasonable and proportionate due diligence and screening measures to understand your customers (including ownership and control information) and the activities undertaken by each customer. Due diligence and screening should be commensurate with the nature of the transaction or activity concerned and the likelihood that it may otherwise give rise to an infringement of sanctions. Due diligence should be conducted wherever possible at the commencement of any business relationship and thereafter on an ongoing basis. The frequency of screening will depend on factors such as the type of customer, business relationship, product or transaction.
- 42) You should also have systems and controls in place to prevent any participation in prohibited activities with designated or listed persons and restricted goods and services etc. It is also important for all relevant staff to be trained, and assessed, on how to comply with the established sanctions compliance procedures.

2. Checking the Consolidated List

- 43) The Consolidated list which is maintained by the OFSI, (with direct links also from the FRA website) includes all designated persons subject to financial sanctions

under EU and UK legislation, as well as those subject to UN sanctions, which are implemented through EU regulations.

- 44) The Consolidated list provides information to help you decide whether you are dealing with someone who is subject to sanctions. It lists full name; any known aliases; honorary, professional or religious titles; date of birth, place of birth; nationality; passport details; national identification numbers; address; any additional information that may be useful; title of the financial sanctions regime under which the designated person is listed; the date when the designated person was added to the list by HM Treasury; when the information regarding the designated person/entity was last updated by HM Treasury and a unique ID reference number relating to the designated person/entity.
- 45) When searching the consolidated list you may find that the name of an individual or entity you are dealing with matches entries on the consolidated list. This is known as a name match. However, it does not necessarily mean that the individual or entity you are dealing with is the same one on the list. If you are satisfied that this is the case, you do not need to take further action⁹.
- 46) If the individual or entity you are dealing with matches all the information on the consolidated list, this is likely to be a target match¹⁰.
- 47) Where you have reviewed all of the information on the consolidated list against all of the information that you have about the person or entity and you are still unsure as to whether you have a target match, you should contact the FRA for assistance.

2.1 What must you do?

- 48) Before engaging in a business relationship or providing a financial service you should screen the names of your customers, including the beneficial owners, against the consolidated list to ensure you are not dealing with a designated

⁹ OFSI – Financial Sanctions Guidance page 10

¹⁰ OFSI – Financial Sanctions Guidance page 10

person. You should also check the Consolidated List against your existing customers on an ongoing basis in the event of updates.

49) Upon receipt of a Financial Sanctions Notice (See Annex 1), advising of an addition of a person/entity to the consolidated list, and If you know or have reasonable cause to suspect that you are in possession or control or are otherwise dealing with the funds or economic resources of a designated person, you:

- Must immediately freeze the funds, or economic resources of the designated person;
- Must not enter into financial transactions or provide financial assistance or services in relation to: (i) designated person or any third party; or (ii) proliferation and nuclear or other sanctioned activities; unless there is an exemption in the legislation that you can rely on or you have a licence from the Governor;
- Report them to FRA (see section 6.1)
- Complete and submit the TF/PF Asset Freeze Report (AFR) form (**See annex 2**) to the FRA as soon as practicable.

50) Reasonable cause to suspect refers to an objective test that asks whether there were factual circumstances from which an honest and reasonable person should have inferred knowledge or formed the suspicion¹¹.

51) Where you have already reported details of accounts, other funds or economic resources held frozen for designated persons, you are not required to report these details again.

52) If there are details of other involvement with a listed individual or entity, directly or indirectly, or of any attempted (or suspected attempted) transactions involving those individuals or entities, this should also be reported FRA.

¹¹ OFSI – Financial Sanctions Guidance page 13

53) Failure to comply with financial sanctions legislation or to seek to circumvent its provisions is a criminal offence which may result in criminal prosecution (See Penalties below).

2.2 Record Keeping

54) You should maintain records of any potential matches to names on sanctions lists - whether the match turns out to be a true match or a false positive (see false positives below).

55) You should, as a minimum, keep the following information about any match –

- The information or other grounds which triggered the match (e.g. a “hit” provided by screening software);
- any further checks or enquiries undertaken;
- the sanctions regime;
- the person(s) involved, including any members of compliance or senior management who authorised treatment of the match as a false positive;
- the nature of the relationship with the person or entity involved, including attempted or refused transactions;
- subsequent action taken (e.g. freezing of funds);
- if you consulted with, or filed a report with the FRA

3. Establishing ownership and control¹²

3.1 Ownership

56) If a person is a designated person they will be recorded on the consolidated list. However, an asset freeze and some financial services restrictions will also apply to entities that are owned or controlled, directly or indirectly, by a designated person. Those entities may not be designated in their own right, so their name may not

¹² OFSI – Financial Sanctions Guidance pages 15-16

appear on the consolidated list. However, those entities are similarly the subject of the financial sanctions.

- 57) In line with EU guidance, the key criterion to assessing whether a legal person or entity is owned by another legal person or entity is the possession of more than 50% of the proprietary rights of an entity or having a majority interest in it. If this criterion is met, and the owner is also a designated person, then financial sanctions will also apply to the entity that is owned by the designated person.
- 58) 'Owned' will be interpreted to include both direct and indirect ownership. If the ultimate beneficial ownership of an entity rests with a designated person (for example, they own a corporate body which owns another corporate body), this will be viewed that all entities that are part of the ownership chain are subject to financial sanctions.

3.2 Minority interests

- 59) If a designated person has a minority interest in another legal person or entity this does not necessarily mean that financial sanctions also apply to them as the ownership criterion has not been met.
- 60) However, you should remain vigilant to any changes in the stake held by the designated person in case it increases to greater than 50% (or they obtain a majority interest) at which point financial sanctions will also apply to that legal person or entity.
- 61) You should also consider whether a designated person is in 'control' of another legal person or entity. Financial sanctions apply in this situation even where a designated person may only possess a minority interest.

3.3 Control

- 62) In line with EU guidance, that the satisfaction of at least one of the following criteria is sufficient to establish whether a legal person or entity is controlled by another

legal person or entity, alone or pursuant to an agreement with another shareholder or other third party.

- Having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity
- Having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person or entity who have held office during the present and previous financial year
- Controlling alone, pursuant to an agreement with other shareholders in or members of a legal person or entity, a majority of shareholders' or members' voting rights in that legal person or entity
- Having the right to exercise a dominant influence over a legal person or entity, pursuant to an agreement entered into with that legal person or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person or entity permits its being subject to such agreement or provision
- Having the power to exercise the right to exercise a dominant influence referred to in the point above, without being the holder of that right (including by means of a front company)

63) The EU's Best Practices guide can be found here:

<http://data.consilium.europa.eu/doc/document/ST-10254-2015-INIT/en/pdf>

64) It's possible that a designated person may have control or use of another person's bank accounts or economic resources and may be using them to circumvent financial sanctions.

65) Examples could include a designated person registering assets in the name of associates or family members, or using non-designated persons' bank accounts to hold funds and facilitate transfers.

66) Such actions may constitute a breach of the prohibitions or circumvention of financial sanctions and may result in a criminal prosecution.

4. Exemptions and Licensing¹³

67) The following sections provide a general overview of the standard exemptions and licensing grounds found in financial sanctions legislation. The grounds may vary from regime to regime so it is important that you check the relevant, up-to-date legislation.

68) A licence is a written authorization from the Governor permitting an otherwise prohibited act.

69) An exemption to a prohibition applies automatically in certain defined circumstances and does not require you to obtain a licence from Governor.

4.1 Crediting frozen accounts

70) Asset freezing legislation generally permits you to make the following payments into a frozen account without the need for a licence from the Governor, provided those funds are frozen after being paid in:

- any interest or earnings on the account
- any payments due to a designated person under contracts, agreement or obligations that were concluded or arose before the date the person became sanctioned

71) The legislation also generally permits you to credit a frozen account with payments from a third party without the need for a licence, provided that the incoming funds are also frozen and that you inform the Governor of the transaction without delay.

¹³ OFSI – Financial Sanctions Guidance pages 23-25

4.2 Licensing

4.2.1 Overview

- 72) Specific exemptions and licensing powers are generally contained in financial sanctions legislations and can allow otherwise prohibited transactions to take place in some circumstances.
- 73) The overall objective of the licensing system in terrorist asset freezing cases is to strike an appropriate balance between minimizing the risk of diversion of funds to terrorism and meeting the human rights of designated persons and other third parties. To this end, the Governor may grant licences to allow exceptions to the freeze. If a licence is being granted under an OOIC, the Governor must obtain the consent of the UK Secretary of State; whereas a licence issued pursuant to the Terrorism Law requires the Governor to consult with the UK Secretary of State.
- 74) In considering whether to issue a licence, the Governor will assess whether the relevant licensing grounds have been met. The available grounds can be found in the legislation underpinning each particular financial sanctions regime.
- 75) In order to licence as proportionately as possible whilst mitigating the risk of terrorist financing, the Governor may also attach conditions to a licence. Licence conditions apply safeguards to ensure that funds or economic resources can be made available to designated persons in a way that protects against terrorist financing risks. In this way, appropriate conditions facilitate the granting of a licence that it might otherwise not be possible to grant.
- 76) The conditions that would apply to licences reflect two broad policy objectives:
- to ensure that designated persons do not have access to large amounts of cash, which can be more easily diverted to terrorist activity;
 - to ensure that there is a reasonable audit trail to address terrorist finance risks and that the Governor can monitor compliance with the terms of the licence and identify if any breaches of the legislation has have occurred.

- 77) The licence will contain strict reporting conditions, requiring you to provide the Governor with proof of purchase etc. A failure to comply with these reporting requirements may result in the revocation, suspension or termination of a licence or further restrictions being included in it. It may also result in a criminal prosecution.
- 78) A licence will not be issued retrospectively and will be considered on a case by case basis. You should not assume that a licence will be granted or engage in any activities prohibited by financial sanctions until you have received an appropriate licence.
- 79) You must not continue to carry out any action(s) which are not authorised by a licence. For example, if a licence has expired or you have reached a cap on permitted spending, further activity will not be lawful. Any such actions will be considered a breach of financial sanctions and may result in a criminal prosecution.
- 80) If you are dealing with funds that should be frozen, or make economic resources available to a designated person without an appropriate licence, you will commit a criminal offence.
- 81) It is also an offence for you to knowingly or recklessly provide false or misleading information in any licence application. Any such licence granted is void from the time it was granted. Doing so may result in a criminal prosecution.

4.2.2 Licensing grounds

OOIC

- 82) Some common licensing grounds found in the OOICs are for basic needs, legal fees and disbursements, fees or service charges for routine holding or maintenance of frozen funds or economic resources, satisfaction of prior contractual obligations of the designated person, and extraordinary expenses.

TL

83) The TL contains a broad licensing ground such that the prohibitions in the TL do not apply to anything done under a licence granted by the Governor.

4.2.3 Applying for a licence

84) You must provide evidence to support an application and demonstrate that all criteria of the relevant licensing grounds (where applicable) have been met. A completed application is one where all the information is received that would enable a decision to be made about whether there is a legal basis to grant a licence. Incomplete applications will be sent back, or you will be asked for additional information until the Governor is satisfied that your application can be considered complete.

85) It is anticipated that a licence application will be considered within 4 weeks of receipt. However, failure to submit all of the necessary information requested will result in delays to your application being processed.

86) You should not assume that a licence will be granted or engage in any activities prohibited by financial sanctions until you have received an appropriate licence.

87) If a request is urgent, please say so when submitting your application and explain why.

Under OOIC

88) Applicants¹⁴ should use the Licence Application Form (**See Annex 3**) to apply for a licence from the Governor and submit completed application to the Governor's Office.

89) Applicants are required to provide:

- the licensing ground(s) being relied upon in the application including supporting Arguments
- full information on the parties involved in the proposed transaction, e.g. the:

¹⁴ May include a person, category of persons, body corporate, partnership or unincorporated body other than a partnership.

- designated person(s)
- any financial institution(s) involved (e.g. remitter, correspondent, beneficiary)
- ultimate beneficiary of the transaction
- the complete payment route including account details
- the amount (or estimated amount) of the proposed transaction

90) Applicants are encouraged to always refer to the up-to-date version of the legislation that imposes the relevant sanction regime. Links to these can be found on the relevant financial sanctions regime pages:

<https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidatedlists-and-releases>

Under TL

91) A request for a general licence should be submitted to the Governor's office setting out the full details of the proposed transaction.

4.2.4 Notification and approvals

92) On the grant, variation or revocation of a licence, the Governor will give written notice to the person, category of persons or entity. In cases involving a general licence or licence granted to a category of persons, the Governor shall take such steps as deemed appropriate to publish the grant, variation or revocation of the licence.

4.2.5 Amending a licence

93) Requests for an amendment, variation or extension of a licence should be submitted to the Governor's office as soon as it is apparent that a change is required. Full supporting information and arguments should be provided.

94) It is anticipated that an amendment request will be considered within 2 weeks of receipt.

4.2.6 Refusal of a licence

- 95) If the Governor refuses to issue a licence, the proposed transaction or activities will not be lawful. The Governor will write to the applicant giving reasons for refusing the application.
- 96) The Governor may also refuse an application if the applicant does not require a licence for the proposed transaction or activities (See Crediting frozen accounts above).
- 97) If an application for a licence is refused, the applicant has the following options:
- ask the Governor to review his decision
 - re-apply with new or supplementary evidence or new supporting arguments
 - seek to judicially review the decision
- 98) Under the TL (schedule 4A section 28), an applicant can apply to the Grand Court for a review of the decision.

4.2.7 Complying with a licence

- 99) Any conduct outside the terms of the licence, such as use of a different payment route or payments in excess of a specific payment cap, is a breach of financial sanctions, and is a criminal offence.

4.2.8 Reporting under a licence

- 100) A licence issued by the Governor contains a requirement for specified information to be reported to the Governor within a prescribed time frame. A failure to comply with reporting requirements may result in the revocation, suspension or termination of a licence or further restrictions being added to the licence. Failing to report is a criminal offence.

5. Delisting designated persons and unfreezing assets

- 101) A transparent and effective de-listing procedure is essential to the credibility and legitimacy of restrictive measures. De-listing could be appropriate in various cases, including evidence of mistaken listing, a relevant subsequent change in facts, emergence of further evidence, death of a listed person or the liquidation of a listed entity. Essentially de-listing is appropriate wherever the criteria for listing are no longer met.¹⁵
- 102) A designated person/entity, or a third party with an interest in the designation, who no longer meets the criteria for designation pursuant to UNSCRs 1267/1989, 1988, 1373,1718 and 2231 can submit a written delisting request with the relevant supporting information to the Governor. The financial sanctions will remain in place while the challenge or request is being considered.

5.1 UN listings and Cayman Listings under 1373

- 103) For a UN listing, a Caymanian citizen, person resident in the Cayman Islands or an entity incorporated or otherwise established in the Cayman Islands can petition the Governor to submit a delisting request to the UN. Following an assessment of the petition, where in agreement with the delisting, the Governor will submit the delisting petition to the FCO, who after a policy and legal assessment will decide whether to take the delisting forward to the relevant UN Sanctions Committee or the Security Council.
- 104) Alternatively a petition for delisting can also be made directly to the UN Office of the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee for UN listings under the ISIL (Da'esh) and Al-Qaida organisations regime (1267/1989). For more information about the Office of the Ombudsperson please see the UN's website: <https://www.un.org/sc/suborg/en/node/189>
- 105) A petition request can also be sent directly to the UN focal point for delisting for all other UN listings. More information about the focal point is on the UN's website: <http://www.un.org/sc/committees/dfp.shtml>

¹⁵ Council of the European Union – Restrictive measures (Sanctions) – page 8

106) In relation to a UNSCR 1373 designation, a designated person can submit a petition for delisting to the Governor. Following an assessment of the petition, where in agreement with the delisting, the Governor will consult with the UK Secretary of State in deciding whether to revoke the designation. Where the Governor declines the delisting petition, the designated person may appeal any such decision to the Grand Court.

5.2 EU listings¹⁶

To challenge an EU listing, you should contact the EU directly:

Address: Council of the European Union
General Secretariat
DG C 1C
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË

Email: sanctions@consilium.europa.eu

5.3 UK listings¹⁷

107) For UK listings under the domestic regimes there are avenues of appeal and judicial review within the specific legislation under which the designation is made. Legal correspondence should be sent to:

Address: The Treasury Solicitor
Government Legal Department
One Kemble Street
London
WC2B 4TS
DX 123242 Kingsway

¹⁶ OFSI – Financial Sanctions Guidance page 35

¹⁷ OFSI – Financial Sanctions Guidance page 36

5.4 Actions you must take upon De-listing

108) In the event that the UNSCRs 1267/1989, 1988, 1718 Sanctions Committees and the Security Council pursuant to UNSCR 2231, decide to delist any person/entity or a person/entity has been delisted pursuant to UNSCR 1373, the obligation to freeze no longer exists. The funds or assets that have been frozen must therefore be unfrozen.

109) You must immediately on receipt of the Financial Sanction Notice (**See Annex 4**) advising of the removal of a person and/or entity from the Consolidated List –

- Check whether you have frozen assets of any person or entity removed from the Consolidated List and verify that the person or entity is no longer subject to an asset freeze.
- Remove the person or entity from your institution's list of persons/entities subject to financial sanction;
- De-freeze the assets of the person or entity and where necessary re-activate all relevant accounts;
- Send advice to person or entity that the assets are no longer subject to an asset freeze;
- Advise the FRA of the actions taken as soon as practicable

110) Where the funds or other assets of a person or entity inadvertently affected by a freezing mechanism, upon verification that the person or entity is not a designated person, you must take all necessary measures to carry out the instructions from points 2 to 4 above (see False Positive below).

5.4.1 False positives

111) False positives are potential matches to listed persons or entities, either due to the common nature of the name or due to ambiguous identifying data, which on examination prove not to be matches.

112) Distinguishing between designated and non-designated persons or entities may be difficult even with additional identifiers. In some cases the funds of a person/entity that was not the intended target of the restrictive measures will be

frozen due to identifiers that match with those of a designated person/entity. As a precautionary measure, you should refrain from entering into a business relationship with any person or entity that the available identifiers match, unless it is clear that it is not the same as the designated person or entity.

- 113) If a person/entity whose funds or economic resources are frozen claims that they are not the intended target of the restrictive measures, they should first contact the relevant institution that froze the assets, requesting an explanation, including why the relevant institution believes the person is a target match on the consolidated list. The burden of proof concerning determination of a question of a 'false positive' rests with the person/entity, who should submit documentary evidence to the relevant institution of their identity and a detailed statement as to why they are not the listed person/entity. If the relevant institution or the person/entity, after using all the available sources cannot resolve the issue as to whether a customer is in fact the designated person/entity, then either should inform the FRA.
- 114) Where the FRA concludes, after examination of all relevant facts and circumstances, that the person/entity concerned **is not** the designated person/entity, they will inform the relevant institution and/or the person/entity of the finding. The relevant institution should therefore take steps to unfreeze the funds or economic resources immediately and also inform the FRA of the action taken as soon as practicable.
- 115) Where the FRA concludes, after examination of all relevant facts and circumstances, that the person/entity concerned **is** the designated person/entity, they will inform the relevant institution and/or the person/entity of the finding. The asset freeze will therefore remain in place.
- 116) In cases where the FRA **is not** able to establish the correctness of the claim of mistaken identity, and the claim is not manifestly unfounded, they will inform OFSI and request provision of an authoritative finding regarding the person's identity. Upon receipt, the FRA will communicate the authoritative finding to the relevant institution and/or person/entity.

C. COMPLIANCE AND ENFORCEMENT

6. Introduction

117) CIMA, DCI, and RG are responsible for monitoring compliance with financial sanctions for their respective supervised entities and for assessing suspected breaches. They have the power to refer cases to law enforcement agencies for investigation and potential prosecution.

6.1 Your reporting obligations to the FRA

118) You are required to inform the FRA at financialreporting_authority@gov.ky as soon as practicable if you know or suspect that a customer is a designated person, or has committed an offence as identified in the relevant legislation. You are required to report this information, or other matter on which the knowledge or suspicion is based, if it came to you in the course of carrying on your business. When reporting to the FRA you must state:¹⁸

- the information or other matter on which the knowledge or suspicion is based.
- any information you hold about the customer by which the customer can be identified.
- If the customer is a designated person, the nature and amount or quantity of any funds or economic resources held by you for the customer, since the customer first became a designated person. Reports of frozen funds and economic resources should be submitted to the FRA on the TF/PF Asset Freeze Report Form (AFR) (**See Annex 2**).

119) You must also inform the FRA at financialreporting_authority@gov.ky as soon as practicable if you credit a frozen account with payments due under prior contracts,

¹⁸ Article 22 The Afghanistan (United Nations Measures) (Overseas Territories) Order 2012 and all other OOIC and the Schedule 4A section 20 of the TL

payments due under a judicial, administrative or arbitral lien or judgment, or funds transferred to that account.

- 120) You are also required to advise the Governor of any actions taken in relation to a de-listed person/entity (name of person/entity and asset unfrozen etc.).
- 121) Both OOIC and the Cayman domestic regimes make clear that your reporting requirements do not apply to information to which legal professional privilege is attached; however, the FRA expects legal professionals to carefully ascertain whether legal privilege applies, and which information it applies to.
- 122) Failure to comply with your reporting obligations, as set out in the relevant legislation, constitutes an offence, which may result in a criminal prosecution.
- 123) Your obligation to report is in addition to any other non-financial sanctions reporting obligations you may have. These could include reporting required by your regulators (CIMA, DCI or Registry), or submitting Suspicious Activity Reports (SARs) to the FRA under the Proceeds of Crime Law.
- 124) If you are unsure of your reporting obligations, you should seek independent legal advice.

6.2 Powers to require information from you

- 125) Under the OOICs¹⁹, an authorized officer has powers to require you to provide information or produce any document or goods in your possession or control which he may require for the purpose of:
- secure compliance, or detect evasion
 - obtain evidence of the commission of an offence
 - establish the extent of funds and economic resources belonging to, owned, held or controlled by or on behalf of a designated person

¹⁹ Schedule 3 of ISIL (Da'esh) and Al-Qaida (Sanctions) (Overseas Territories) Order 2016 and included in all other OOICs

- 126) The power to require information, or produce for inspection a document or goods, includes a power to specify the form in which the information or document should be given, and the period within which the information, document or goods should be provided or produced for inspection.
- 127) Where such a request is made, you must comply with it within such time and in such manner as may be specified in the request.
- 128) Under Schedule 4A section 21(5) of the TL, the Governor has similar requesting powers.
- 129) Failure to comply with a request for information, including providing false information, destroying documents or, otherwise intentionally obstructing the Governor when exercising these powers, is an offence and may result in a criminal prosecution²⁰.

6.3 Offences

130) Offences will depend on the particular legislation, but can include:

- making funds or economic resources available to a designated person (except where an exemption applies or under licence)
- dealing with funds or economic resources that must be frozen (except where an exemption applies or under licence)
- failing to comply with reporting obligations
- activities that circumvent an asset freeze
- breaches of licensing conditions

6.4 Penalties

131) Breaches of financial sanctions are considered to be a serious criminal offence. Offences under the OOICs relating to UN/EU financial sanctions now carry a maximum of seven years' imprisonment on indictment and, on summary conviction, to a maximum of six months' imprisonment or a maximum fine £5,000 or its equivalent in the Cayman Islands.

²⁰ Schedule 4A section 23 of the TL

- 132) Similarly a person who commits an offence under Schedule 4A of the TL is liable on summary conviction, to a fine of CI\$4,000, or to imprisonment for a term of twelve months, or to both, or on conviction on indictment, to a fine or to imprisonment for a term of seven years, or to both; or.
- 133) Under the PFPL the FRA has the power to impose civil penalties of such amount as it considers appropriate (not exceeding CI\$40,000) on a person who fails to comply with freezing and reporting obligations of any frozen funds or economic resources. A person who fails to comply with a freezing obligation is also liable on summary conviction to a fine of \$50,000, or on conviction on indictment, to a fine of CI\$70,000, or imprisonment for a term of three years, or to both. A person who fails to comply with a reporting obligation is liable on summary conviction to a fine of \$10,000.

GENERAL GLOSSARY

Terms

Definitions

Competent Authorities

Competent authorities refer to all public authorities (This includes financial supervisors established as independent non-governmental authorities with statutory powers) with designated responsibilities for combating money laundering and/or terrorist financing. In particular, this includes the FIU; the authorities that have the function of *investigating and/or prosecuting* money laundering, associated predicate offences and terrorist financing, and seizing/freezing and confiscating criminal assets; authorities receiving reports on cross-border transportation of currency & BNIs; and authorities that have AML/CFT supervisory or monitoring responsibilities aimed at ensuring compliance by financial institutions and DNFBPs with AML/CFT requirements. SRBs are not to be regarded as competent authorities.

Designated non-financial businesses and professions means:

a) Casinos – (References to *Casinos* throughout the FATF Standards include internet- and ship-based casinos)

b) Real estate agents.

c) Dealers in precious metals.

d) Dealers in precious stones.

Designated non-financial businesses and professions

e) Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to 'internal' professionals that are employees of other types of businesses,

nor to professionals working for government agencies, who may already be subject to AML/CFT measures.

f) Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the following services to third parties:

- acting as a formation agent of legal persons;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a

partnership, or a similar position in relation to other legal persons;

- providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

The term designated person or entity refers to:

(i) individual, groups, undertakings and entities designated by the Committee of the Security Council established pursuant to resolution 1267 (1999) (the 1267 Committee), as being individuals associated with Al-Qaida, or entities and other groups and undertakings associated with Al-Qaida;

(ii) individuals, groups, undertakings and entities designated by the Committee of the Security Council established pursuant to resolution 1988 (2011) (the 1988 Committee), as being associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan, or entities and other groups and undertakings associated with the Taliban;

(iii) any natural or legal person or entity designated by jurisdictions or a supra-national jurisdiction pursuant to Security Council resolution 1373 (2001);

(iv) any individual, natural or legal person or entity designated for the application of targeted financial sanctions pursuant to Security Council

resolution 1718 (2006) and any future successor resolutions by the Security Council in annexes to the relevant resolutions, or by the Security Council Committee established pursuant to resolution 1718 (2006) (the 1718 Sanctions Committee) pursuant to Security Council resolution 1718 (2006); and

**Designated
person or entity**

(v) any natural or legal person or entity designated for the application of targeted financial sanctions pursuant to Security Council resolution 2231 (2015) and any future successor resolutions by the Security Council.

The term *designation* refers to the identification of a person (*natural or legal*), individual or entity that is subject to targeted financial sanctions pursuant to:

- United Nations Security Council resolution 1267 (1999) and its successor resolutions;
- Security Council resolution 1373 (2001), including the determination that the relevant sanctions will be applied to the person or entity and the public communication of that determination;
- Security Council resolution 1718 (2006) and any future successor resolutions;
- Security Council resolution 2231 (2015) and any future successor resolutions; and
- any future Security Council resolutions which impose targeted financial sanctions in the context of the financing of proliferation of weapons of mass destruction.

Designation

As far as Security Council resolution 2231 (2015) and any future successor resolutions are concerned, references to “designations” apply equally to “listing”.

For the purposes of Recommendations 6 and 7 on the implementation of targeted financial sanctions, the term freeze means to prohibit the transfer, conversion, disposition or movement of any funds or other assets that are owned or controlled by designated persons or entities on the basis of, and for the duration of the validity of, an action initiated by the United Nations Security Council or in accordance with applicable Security Council resolutions by a competent authority or a court.

Freeze

The frozen property, equipment, instrumentalities, funds or other assets remain the property of the natural or legal person(s) that held an interest in them at the time of the freezing and may continue to be administered by third parties, or through other arrangements established by such natural or legal person(s) prior to the initiation of an action under a freezing mechanism, or in accordance with other national provisions. As part of the implementation of a freeze, countries may decide to take control of the property, equipment, instrumentalities, or funds or other assets as a means to protect against flight.

Dealing with economic resources

Generally means using economic resources to obtain funds, goods, or services in any way, including (but not limited to) by selling, hiring or mortgaging them.

Dealing with funds

Generally means moving, transferring, altering, using, accessing or otherwise dealing with funds in any way which would result in any change to their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management.

Economic resources

Generally means assets of every kind – tangible or intangible, movable or immovable – which are not funds but may be used to obtain funds, goods or services.

generally means financial assets and benefits of every kind, including but not limited to:

Funds

- cash, cheques, claims on money, drafts, money orders and other payment instruments
- deposits with financial institutions or other entities, balances on accounts, debts and debt obligations
- publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts
- interest, dividends or other income on or value accruing from or generated by assets
- credit, right of set-off, guarantees, performance bonds or other financial commitments

- letters of credit, bills of lading, bills of sale and
- documents showing evidence of an interest in funds or financial

Legal persons

Legal persons refer to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities.

Means –

Relevant institution

- (a) the Cayman Islands Monetary Authority
- (b) a body or a person who is part of the regulated sector; or
- (c) a person conducting relevant business, as defined in the Proceeds of Crime Law (2017 Revision), who is not subject to monitoring by the Cayman Islands Monetary Authority for compliance with money laundering regulations.

Terrorist

The term *terrorist* refers to any natural person who: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully; (ii) participates as an accomplice in terrorist acts ; (iii) organises or directs others to commit terrorist acts ; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

A *terrorist act* includes:

Terrorist act

- (a) an act which constitutes an offence within the scope of, and as defined in one of the following treaties: (i) Convention for the Suppression of Unlawful Seizure of Aircraft (1970); (ii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); (iii) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973); (iv) International Convention against the Taking of Hostages (1979); (v) Convention on the Physical Protection of Nuclear Material (1980); (vi) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988); (vii) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005); (viii) Protocol for the Suppression of Unlawful Acts

against the Safety of Fixed Platforms located on the Continental Shelf (2005); (ix) International Convention for the Suppression of Terrorist Bombings (1997); and (x) International Convention for the Suppression of the Financing of Terrorism (1999).

(b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act.

Terrorist financing

Terrorist financing is the financing of terrorist acts, and of terrorists and terrorist organisations.

Terrorist organisation

The term *terrorist organisation* refers to any group of terrorists that: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

Without delay

The phrase without delay means, ideally, within a matter of hours of a designation by the United Nations Security Council or its relevant Sanctions Committee (e.g. the 1267 Committee, the 1988 Committee, the 1718 Sanctions Committee). For the purposes of S/RES/1373(2001), the phrase without delay means upon having reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, one who finances terrorism or a terrorist organisation. In both cases, the phrase without delay should be interpreted in the context of the need to prevent the flight or dissipation of funds or other assets which are linked to terrorists, terrorist organisations, those who finance terrorism, and to the financing of proliferation of weapons of mass destruction, and the need for global, concerted action to interdict and disrupt their flow swiftly.

ABBREVIATIONS

| | |
|----------------|--|
| AG | Attorney General |
| AML/CFT | Anti-Money Laundering / Countering the Financing of Terrorism (also used for <i>Combating the financing of terrorism</i>) |
| AMLSG | Anti- Money Laundering Steering Group |
| BOT | British Overseas Territory |
| CFATF | Caribbean Financial Action Task Force |
| DCI | Department for Commerce and Investment |
| DNFBPs | Designated Non-Financial Business Professions |
| FATF | Financial Action Task Force |
| EU | European Union |
| FCO | Foreign & Commonwealth Office |
| FCU | Financial Crimes Unit |
| FRA | Financial Reporting Authority |
| IACC | Inter-Agency Coordination Committee |
| OFSI | Office of Financial Sanctions Implementation |
| OOIC | Overseas Orders in Council |
| PFPL | Proliferation Financing (Prohibition) Law (2017 Revision) |
| SC | Sanctions Coordinator |
| TL | Terrorism Law (2017 Revision) |
| UK | United Kingdom |
| UNSCRs | United Nations Security Council Resolutions |

Annex 1

FINANCIAL REPORTING AUTHORITY

(CAYFIN)



Delivery Address:

133 Elgin Ave, 4th Floor
Government Administrative Building
Grand Cayman
CAYMAN ISLANDS
Direct Tel No. (345) 244-5702
Tel No. (345) 945-6267
Fax No. (345) 945-6268
Email: financialreportingauthority@gov.ky

Mailing Address:

P.O. Box 1054
Grand Cayman KY1-1102
CAYMAN ISLANDS

Financial Sanctions Notice

North Korea (Democratic People's Republic of Korea)

Introduction

1. The United Nations Security Council's sanctions list has been updated

Notice summary (Full details are provided in the Annex to this Notice)

2. By virtue of the United Nations and European Union Financial Sanctions (Linking) Regulations 2017, the following 4 entries have been added to the consolidated list and are now subject to an asset freeze.

- A
- B
- C

- D

Legislative Details

3. On 11 September, the United Nations Security Council adopted Resolution 2375 (2017) concerning The Democratic People's Republic of Korea, approving the addition of 4 entries to its list of individuals and entities subject to an asset freeze.
4. Unless these entries are listed under EU Regulation 2017/1509 by 12 October, the asset freeze will cease to apply from 11.59 pm on 12 October 2017 until the date upon which they are listed by the EU.

What you must do

5. You must:
 - i. check whether you maintain any accounts or hold any funds or economic resources for the persons set out in the Annex to this Notice;
 - ii. freeze such accounts, and other funds or economic resources;
 - iii. refrain from dealing with the funds or economic resources or making them available to such persons unless licensed by the Governor;
 - iv. report any findings to the FRA at financialreportingauthority@gov.ky, together with any additional information that would facilitate compliance with the OOIC;
 - v. Provide any information concerning the frozen assets of designated persons to the FRA at financialreportingauthority@gov.ky by completing and submitting a TF/PF Asset Freeze Report Form. Information reported to FRA may be passed on to other regulatory authorities or law enforcement
6. Failure to comply with financial sanctions legislation or to seek to circumvent its provisions is a criminal offence.

Further Information

7. The UN's press release describing these changes can be found here: <https://www.un.org/press/en/2017/sc12983.doc.htm>
8. Further details on the UN measures in respect of the Democratic People's Republic of Korea can be found on the relevant UN Sanctions Committee webpage: <https://www.un.org/sc/suborg/en>.

9. Copies of recent Notices, UNSC Resolutions and UK legislation can be obtained from the Democratic People's Republic of Korea financial sanctions page on the GOV.UK website:

<https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>

10. For more information please see the OFSI guide to financial sanctions:

<https://www.gov.uk/government/publications/financial-sanctions-faqs>

11. Information on the UK's controls on strategic goods and countries subject to an arms embargo can be found here:

<https://www.gov.uk/guidance/export-military-or-dual-use-goods-services-or-technology-special-rules>

Enquiries

12. Non-media enquiries, reports and licence applications should be addressed to:

The Sanctions Coordinator
Financial Reporting Authority
P.O. BOX 1052
Grand Cayman KY1-1102
Cayman Islands
financialreportingauthority@gov.ky

13. Media enquiries about how financial sanctions are implemented in the Cayman Islands should be addressed to the Sanctions Coordinator on 345-244-2394

14. Media enquiries about the sanctions measures themselves should be addressed to the Sanctions Coordinator on 345-244-2394.

ANNEX TO NOTICE

FINANCIAL SANCTIONS: NORTH KOREA (DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA)

ADDITIONS

Individual

1. A

Entities

1. **B**
2. **B**
3. **C**

Financial Reporting Authority

Portfolio of Legal Affairs

12/09/17

Annex 2

FINANCIAL REPORTING AUTHORITY

(CAYFIN)

Delivery Address:

133 Elgin Ave, 4th Floor
 Government Administrative Building
 Grand Cayman
 Cayman Islands
 Tel No. (345) 945-6267
 Fax No. (345) 945-6268
 E-mail: financialreportingauthority@gov.ky



Mailing Address:

P.O. Box 1054
 Grand Cayman KY1-1102
 Cayman Islands

TF/PF ASSET FREEZE REPORT FORM

| | | |
|---|---|--|
| <p>Which Sanctions Regime:</p> | <p><i>Made in accordance with section 20 (4) of Schedule 4A of the Terrorism Law (2017 Revision) "TL"; Article 7(3) (C) of The Isil (Da'esh) and Al-Qaida (Sanctions) (Overseas Territories) Order 2016; Articles 22(2) (C) of The Afghanistan (United Nations Measures) (Overseas Territories) Order 2012; Articles 6(3) (C) of The Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2012; Articles 8(3) (C) of The Iran (Sanctions) (Overseas Territories) Order 2016; and section 2C of the Proliferation Finance (Prohibition) Law (2017 Revision) "PFPL"</i></p> | <p>Ref. no.</p> <p><i>For official use ONLY</i></p> |
| <p>PART I INSTRUCTIONS</p> | | |
| <p><i>(i) A Report on Terrorist/Proliferation Funds shall be made to the Financial Reporting Authority of a designated or listed person/entity that has funds in a Relevant Institution</i></p> <p><i>(ii) Failure to report such funds is an offence, the penalty for which under the relevant Overseas Orders in Council is a fine and imprisonment for (2) years upon conviction on indictment, or on summary conviction, to a maximum of (6) months imprisonment or a maximum fine of £5,000 or its equivalent in the Cayman Islands; under the TL on summary conviction to a fine or to imprisonment for (1) year; under PFPL on summary conviction to a fine of CI\$10,000, or civil penalties of such amount not exceeding CI\$40,000.</i></p> | | |
| <p><i>Please type or complete in block letters. Always complete entire form</i></p> | | |
| <p>PART II PRELIMINARY INFORMATION</p> | | |
| <p>REPORTING ENTITY INFORMATION</p> | | |

| | | | |
|--|----------------------------|------------------------|---------------------------|
| Name of Reporting Entity | | | |
| PART III SUSPECT IDENTIFICATION | | | |
| INDIVIDUAL(S) | | | |
| Surname: Mr./Mrs./Ms. | First Name | Middle Name | |
| Address (Street number, name, Town/City, and Country) | | | |
| ID: (ID#, DP#, PP#, other) | Date of Birth (DD/MM/YYYY) | Place of Birth: | |
| Occupation | Nationality | Telephone Number (s) | |
| COMPANY/BUSINESS | | | |
| Legal Name | | | |
| Company Registration No. / Trade and Business License No. | | Nature of Business | |
| Date of Incorporation/Registration: | | | |
| Registered Office or Principal Place of Business (Street number, name, Town/City, and Country) | | | |
| Tel. No: | Email | Website: | |
| Branch/Outlet | | | |
| PART IV INFORMATION ON FUNDS | | | |
| LOCATION OF FUNDS | ACCOUNT NO.(S) | TYPE OF ACCOUNT | \$ AMOUNT INVOLVED |
| | | | |
| | | | |
| PART V INFORMATION ON FUNDS | | | |
| Narrative (continue on additional pages if necessary): | | | |
| | | | |
| | | | |
| PART VI SUBMITTED BY | | | |
| Print Name' Position: | | | |
| Signature' D a t e :/...../..... | | | |
| DD MM YYYY | | | |

Annex 3

LICENCE APPLICATION FORM

This form should be used by individuals or entities seeking a licence from the Governor of the Cayman Islands to allow an activity or transaction to take place that would otherwise be prohibited under asset freezing measures in the Overseas Territories Orders in Council (Overseas Territories Orders). The Government Gazette website lists all of the United Nations (UN) and European Union (EU) sanctions regime-related Overseas Territories Orders in force in Cayman Islands. This form should NOT be used for export control licence applications or other non-asset-freeze matters.

The completed form should be submitted to the Governor's Office.

Licence applications can be legally or commercially complex, and in certain circumstances require clearance or prior notification internationally (e.g. at EU or UN level). Accordingly you should apply at least four weeks before a licence is needed and preferably even further in advance if practicable. You may wish to consider taking independent legal advice before applying for a licence.

The Governor can only issue a licence where there are grounds to do so. These grounds will be set out in the relevant legislation. In each application consideration should be given to the grounds on which the licence is sought and reference should be made to the relevant licensing ground as set out in the relevant legislation. Applications which do not do so may be returned with a request that a suitable licensing ground be added.

Please read the notes on page 5 before completing the form.

PART 1 – UNDER WHICH REGIME IS THE LICENCE SOUGHT?

| | |
|---|--|
| Name of regime in respect of which a licence is sought (Egypt, Eritrea, etc.) | |
| URGENCY Please provide any details that may help us determine the urgency of the case (e.g. deadlines, impact on your business if a licence cannot be granted by a given date). | |

PART 2 – DETAILS OF THE LICENCE APPLICANT

| | |
|--|----------|
| Date of application | |
| Name of applicant (Individual / Company Name etc.) | |
| Are you/is your company a “designated person” (that is, subject to an asset freeze), or owned or controlled by a designated person? If so, please provide details | YES / NO |
| Nature of business | |
| Address | |
| Contact Name | |
| Telephone number | |
| Email address | |

PART 3- ABOUT THE LICENCE SOUGHT

| | | |
|--|--|--|
| <p>Licence required to release frozen funds or economic resources, or make them available, directly or indirectly, to or for the benefit of a designated person, to meet:-</p> <p>PLEASE TICK WHICHEVER APPLIES</p> <p>Note: Those grounds marked * are licensing grounds only relating to the release of frozen funds. Funds or economic resources cannot be made available to listed persons under those licensing grounds.</p> | Basic expenses of the designated person or his or her dependent family members | |
| | Reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services | |
| | Fees or service charges for the maintenance of frozen funds or economic resources | |
| | Extraordinary expenses | |
| | *Obligations due under a contract or agreement entered into, or an obligation which arose prior to the designation of the person or entity in question | |
| | *Obligations arising in connection with certain judicial, administrative or arbitral liens, decisions or judgments | |
| | Other (please specify, including relevant legislation reference) | |
| Specify the legal basis for licensing – see note 3 (i.e. the relevant Overseas Territory Order, article and paragraph). | | |
| Please give the licence number(s) of any | | |

| | |
|---|--|
| licence(s) already received by the applicant. | |
|---|--|

PART 4 – OVERVIEW

| | |
|---|--|
| Briefly outline the transaction, and your role in it. What is the prohibited act that the licence is for? | |
|---|--|

PART 5 - DETAILS OF THE TRANSACTION(S) CONCERNED

| | |
|--|--|
| Date of contract. | |
| Date of the intended transaction(s). | |
| Description of funds, goods or services to be supplied or obtained. | |
| Are the goods or services for humanitarian purposes (e.g. delivering or facilitating the delivery of assistance, including medical supplies, food, the provision of electricity, or other humanitarian purposes)? | YES / NO (If 'Yes' please explain the humanitarian purpose fully) |
| Value of the goods or services to be supplied or obtained. | |
| Names of the parties to the contract. | Seller / supplier |
| | Buyer / customer |
| | Agent / broker / other intermediary |
| As far as you are aware, is the end user different to the contract customer? | YES / NO If "Yes", please provide details of the end user (if known) |
| As far as you are aware, is the end user an owned or controlled by a designated person? | YES / NO If "Yes", please provide details of the ownership or control |
| Do you know or have reasonable suspicion that the funds, goods or services will be used by a designated person, or by a person acting on their behalf or at their direction, or by entities owned or controlled by them? | YES / NO If "Yes" who is the individual or entity? |
| Dates of any transactions / shipments / payments already made. | |
| Dates of any future transactions / shipments/ payments. | |

PART 6 – BANKING DETAILS

| | | |
|--|-----------------------------|--|
| Method of payment (e.g. cash, cheque, bank transfer, confirmed or unconfirmed letter of credit, or other method). | | |
| The banks (including correspondent, intermediary and confirming banks, if applicable) through which payment will be made. Please provide a/c numbers if they are available. | Correspondent bank | |
| | Intermediary bank | |
| | Confirming or advisory bank | |
| Are payment instructions/funds available for this transaction? | YES / NO | |

PART 7 – Further details

| | |
|--|--|
| Please provide any additional background information or explanation it would be helpful for the Governor to have. | |
|--|--|

You may wish to submit copies of documents that support your application or help us to understand it. Please indicate below if additional documentation has been provided and list attachments.

| | |
|----------|--|
| YES / NO | |
|----------|--|

PART 8 – Confirmation of information

I confirm that the above information is true to the best of my knowledge and belief. I will inform the Governor of Cayman Islands if there are any changes to this information.

Signed..... Dated.....

NOTES

1. **Please read these notes before completing the form.**
2. This form is designed to be used for all financial sanctions regimes.
3. Licences can only be issued where there is a legal basis to do so; the legal basis will usually be set out in the relevant Overseas Territory Order that established the sanctions regime in question.
4. The form has been developed with commercial arrangements in mind (i.e. sales of goods or services etc.). It should be adapted and used (for example) for gifts or humanitarian transactions where funds, goods or services are donated. Whatever the nature of the arrangements please provide a full explanation of what is happening and how much and who is involved.
5. The form is in EIGHT parts:
 - a. Part 1 asks for the name of the regime under which the licence is sought – this will be the regime under which sanctions otherwise apply. You should refer to any special factors affecting the urgency of your application here.
 - b. Part 2 asks for the details of the person on whose behalf the licence is sought and of a person to contact (who should be familiar with the transaction involved).
 - c. Part 3 is about the licence sought – the type of licence sought. REMEMBER that the Governor can only issue a licence if there is a legal basis to do so. The grounds for issuing a licence are found in the Overseas Territory Order imposing sanctions.
 - d. Parts 4 and 5 are about the transaction involved. Please make it clear if a transaction is a one-off or if it will be repeated. If regular or repeat payments are involved, please explain how often those payments will be made.
 - e. Part 6 is about the banking details of the transaction.
 - f. Part 7 provides the applicant with an opportunity to add any additional background. You should also attach and list any additional documents you are sending that will make it easier for the Governor to understand the application. Where a licence is sought (for example) on the basis that a contract was entered into before sanctions were imposed it is essential to provide a copy of that contract.
 - g. Part 8 provides for a confirmation of the truth of the information submitted.

Annex 4

FINANCIAL REPORTING AUTHORITY

(CAYFIN)



Delivery Address:

133 Elgin Ave, 4th Floor
Government Administrative Building
Grand Cayman
CAYMAN ISLANDS
Direct Tel No. (345) 244-2394
Tel No. (345) 945-6267
Fax No. (345) 945-6268
E-mail: financialreportingauthority@gov.ky

Mailing Address:

P.O. Box 1054
Grand Cayman KY1-1102
CAYMAN ISLANDS

Financial Sanctions Notice

19/07/2017

(Democratic People's Republic of Korea)

Introduction

1. Council Regulation (EC) 329/2007("the Regulation") imposing financial sanctions against the Democratic People's Republic of Korea has been amended.

Notice summary (Full details are provided in the Annex to this Notice)

2. The following entries have been removed from the consolidated list and are no longer subject to an asset freeze:

- A
- B
- C

3. The following entries have been amended on the consolidated list are still subject to an asset freeze:

- E
- F

4. As Council Decision (CFSP) 2017/1339, the following entry is also amended:

G

What you must do

5. You must:
- vi. check whether you maintain any accounts or hold any funds or economic resources for the persons set out in the Annex to this Notice;
 - vii. freeze such accounts, and other funds or economic resources;
 - viii. refrain from dealing with the funds or economic resources or making them available to such persons unless licensed by the Governor;
 - ix. report any findings to the FRA at financialreportingauthority@gov.ky, together with any additional information that would facilitate compliance with the OOIC;
 - x. Where a relevant institution has already reported details of accounts, other funds or economic resources held frozen for designated persons, they are not required to report these details again.
 - xi. Failure to comply with financial sanctions legislation or to seek to circumvent its provisions is a criminal offence.

Legislative Details

6. On 18 July 2017 Commission Implementing Regulation (EU) No 2017/1330 (“the Amending Regulation”) was published in the Official Journal of the European Union (O. J. L 185, 18.7.2017, p.31) by the Council of the European Commission.

7. The Amending Regulation amended Annex IV and V to the Regulation with effect from 19 July 2017.

Further Information

8. A copy of the Amending Regulation can be obtained from the website of the Official Journal of the European Union:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1330&from=EN>

9. Copies of recent Notices, certain EU Regulations and UK legislation can be obtained from the North Korea (Democratic People's Republic of Korea) financial sanctions page on the GOV.UK website:

10 <https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>

11. Further details on the UN measures in respect of North Korea (Democratic People's Republic of Korea) can be found on the relevant UN Sanctions Committee webpage: <http://www.un.org/sc/committees>.

12. Please note there are also import and export restrictions on North Korea (Democratic People's Republic of Korea). Further guidance on export and trade sanctions is available from the GOV.UK website:

<https://www.gov.uk/sanctions-embargoes-and-restrictions>.

13. It should be noted that the Annex to this Notice and the Consolidated List may include certain background information provided by the UN Sanctions Committee that is not included in Annex IV and V to the Regulation.

14. For more information please see the OFSI guide to financial sanctions:

<https://www.gov.uk/government/publications/financial-sanctions-faqs>

Enquiries

15. Non-media enquiries, reports and licence applications should be addressed to:

The Sanctions Coordinator
Financial Reporting Authority
P.O. BOX 1052
Grand Cayman KY1-1102
Cayman Islands
Email: financialreportingauthority@gov.ky

Annex

FINANCIAL SANCTIONS: DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA
COMMISSION IMPLEMENTING REGULATION (EU) No 2017/1330
AMENDING ANNEX IV AND V TO COUNCIL REGULATION (EC) No 329/2007

DELISTINGS

Deleted information appears in square brackets. Additional information is in italics.

Individuals

1. A
2. B

Entity

3. C

AMENDMENTS

Deleted information appears in square brackets. Additional information appears in italics and underlined.

Individual

D

Entities

E

F

Financial Reporting Authority

Portfolio of Legal Affairs

12/09/2017

PROCEDURE FOR REMOVING PERSONS FROM THE CONSOLIDATED LIST AND UN-FREEZING ASSETS:

On receipt of the Financial Sanction Notices where an entry has been removed from the consolidated list and is no longer subject to any assets freeze:

“You must immediately on receipt of the Financial Sanction Notice advising of removal of person and/or entity from the Consolidated List –

- Check whether you have frozen assets of any person or entity removed from the Consolidated List and verify that the person or entity is no longer subject to an asset freeze.
- Remove the person or entity from your institution’s list of persons/entities subject to financial sanction;
- Un-freeze the assets of the person or entity and where necessary re-activate all relevant accounts;
- Send advice to person or entity that the assets are no longer subject to an asset freeze;
- Advise the FRA at financialreportingauthority@gov.ky of the actions taken.

Where the funds or other assets of person or entity inadvertently affected by a freezing mechanism, upon verification that the person or entity is not a designated person, take all necessary measures to carry out the instructions (ii) to (IV) above.

Financial Reporting Authority
P.O. BOX 1052
Grand Cayman KY1-1102
Cayman Islands
Email: financialreportingauthority@gov.ky

Tel No. (345) 945-6267
Fax No. (345) 945-6268
Tel. No. 1-345-945-6267