

FINANCIAL SANCTIONS IN THE TURKS AND CAICOS ISLANDS



Guidance

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INTRODUCTION

This document provides guidance on your obligations in relation to financial sanctions, designations and proscription. The approach to licensing and enforcement is also captured.

The Governor is the competent authority in the Turks and Caicos Islands (TCI) for the implementation of financial sanctions. However, Governor may delegate or authorise the delegation of any of his or her functions. Where a delegation has been made notice of the delegation will be placed in the Gazette, as well as posted on the websites of the Financial Services Commission (FSC) and Attorney General's Chambers (AGC).

The TCI supports the pursuit of international peace and security by the United Nations Security Council through its various committees and bodies in keeping with Chapter VII of the United Nations Charter. The imposition of sanction measures is done through United Nations Security Council Resolutions (UNSCRs). The United Kingdom (UK) implements all sanctions adopted by the UN Security Council in addition to measures outside of the UNSCRs.

The UK Sanctions and Anti-Money Laundering Act 2018 (Sanctions Act) provides for the power to make sanctions regulations for purposes including compliance with a UN obligation or any other international obligations, to further the prevention of terrorism in the United Kingdom or elsewhere and to protect the interests of national security. Various sanctions regulations have been made which have been extended to the TCI (with modifications) through implementing Orders in Council (Sanctions Orders)¹. Designations may be made for the purposes of the regulations. The Governor has the power to make designations under the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020 (natural and legal persons) and to proscribe terrorist organisations under the Prevention of Terrorism Ordinance, as amended.

As at the date of publication of this guidance there is no case law in the TCI on the implementation of financial sanctions. However, you may refer to United Kingdom case law as persuasive authority.

This guidance does not represent legal advice and should be read in conjunction with the Sanctions Orders, the Prevention of Terrorism Ordinance and other legislation. You are strongly urged to consult an attorney if you are uncertain about your obligations contained herein.

¹ The Sanctions Orders referred to herein are those in force as at the date of publication of this guidance, therefore there is no guarantee that they are up-to-date. Financial institutions must keep itself informed as any changes to the Sanctions Orders

1 The Anti-Money Laundering Committee

The Anti-Money Laundering Committee the governing body responsible for the development and implementation of AML/CFT measures in the Turks and Caicos Islands.

Section 115 of the Proceeds of Crime Ordinance provides the authority to establish a body known as The Anti-Money Laundering Committee (AMLC) under the Chairmanship of the Attorney General of the Turks and Caicos Islands.

Members of the AMLC are:

- The Attorney General, as Chair;
- The Collector of Customs,
- The Managing Director of the Financial Services Commission;
- The Commissioner of Police;
- Director of the Financial Intelligence Agency;
- The Director of Public Prosecutions;
- Director of Integrity Commission;
- Director of Immigration
- Managing Director of the Gaming Control Commission and
- such other persons as the Committee shall agree, to assist it in the performance of its functions.

Section 116 of the Proceeds of Crime Ordinance provides for the functions of the AMLC which include:

- (a) to take responsibility for the general oversight of the anti-money laundering, terrorist financing and proliferation financing (“AML/CFT/PF”) policies, strategies and plans of the Government and to keep any such policies, strategies and plans under regular review, either directly or through a committee appointed under the AMLC
- (b) to promote effective collaboration among competent authorities in a manner that ensures the compatibility of the requirements for combating AML/CFT/PF including with the law protecting personal data, privacy and related matters in the Islands;

- (c) advise the Governor in relation to establishing policies, strategies and plans that guide routine operations and practices of competent authorities in the Islands on the detection and prevention of ML/TF & PF and on the development of a national plan of action to include recommendations on effective mechanisms to enable the competent authorities in the Islands to coordinate and cooperate with each other concerning the development and implementation of policies and activities to combat money laundering, terrorist financing and proliferation financing (“ML/TF & PF”)
- (d) to advise the Governor as to the participation of the Islands in the international effort against ML/TF & PF;
- (e) to advise the Governor in the development of policies to combat ML/TF & PF
- (f) to issue a code and guidance under this Ordinance;
- (g) to advise for the authorisation of payment of funds to be made out of the Fund;
- (h) to take action to coordinate the assessment ML/TF & PF risks;
- (i) to prepare and maintain national risk assessments on ML/TF & PF risks and develop policies to implement the findings of such assessments with the aim of implementing measures to mitigate the risks;
- (j) to advise financial businesses, directly or indirectly, of concerns about weaknesses in the AML/CFT/CPF systems, including systems to prevent the financing of proliferation, of other countries and natural or legal persons (including financial institutions) who are the subject of FATF, UN or EU sanctions and countermeasures;
- (k) where the AMLC considers it necessary to do so, issue written notices in the Gazette and on the Government website, designating jurisdictions as having measures for combating ML/TF & PF which are equivalent to that of the Islands;
- (l) to assist competent authorities to develop and implement policies and procedures that allow for coordinated, effective and structured management of parallel financial investigations between the different investigative agencies; and
 - (m) such other functions as are necessary for the purposes of this Ordinance.”

The Attorney General's Chambers

The Attorney General's Chambers is a Government of the Turks and Caicos entity, headed by the Attorney General. Section 41 of the Constitution states that the Attorney General "shall be the Legal Adviser to the Government and the House of Assembly." The Attorney General also advances and protects the interests of the Turks and Caicos Islands in the international arena and in international disputes. National coordination of the Turks and Caicos Islands' efforts for the prevention of money laundering, terrorist financing and the financing of proliferation is led by the Attorney General.

The Attorney General is responsible for the processing and handling of requests for assistance in accordance with Mutual Legal Assistance matters and applicable Conventions. External Requests and External Orders in accordance with Schedule 4 to Proceeds of Crime Ordinance are also processed by the Attorney General's Chambers.

The Attorney General is the Civil Recovery Authority under Part III of Proceeds of Crime Ordinance. Civil recovery allows recovery of the proceeds of unlawful conduct without the need for a conviction, through proceedings in the Supreme Court proved to a civil standard. Civil recovery proceedings are concerned with the property itself rather than (as in confiscation) the person responsible for the unlawful conduct. For property to be recoverable the unlawful conduct does not have to be proved but the property must be linked to the unlawful conduct.

The Turks and Caicos Islands Financial Services Commission

The Turks and Caicos Islands Financial Services Commission has a specific mandate under section 4(1)(d) of the Financial Services Commission Ordinance Cap 16.01, to monitor compliance by licensees with all laws, codes and guidance relating to money laundering or the financing of terrorism. This mandate is further reinforced in section 161(1) of the Proceeds of Crime Ordinance Cap 3.15 which states that the Financial Services Commission is the supervisory authority for regulated financial business.

Additionally, in accordance with section 161(2) of the Proceeds of Crime Ordinance Cap 3.15, the Governor, through regulation 23 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations 2010, has prescribed that the Financial Services Commission may be the supervisory authority for DNFBPs. Section 163(1) of the Proceeds of Crime Ordinance Cap 3.15, further provides that the function of the supervisory authority is to monitor compliance by financial businesses with AML/CFT obligations and take appropriate enforcement action for breaches of AML/CFT obligations.

The Financial Services Commission is the designated Supervisor of the Non-Profit sector which is done under the Non-Profit Regulations 2014.

The Director of Public Prosecutions

The Director of Public Prosecutions (DPP) is charged under section 100(2) of the Constitution with the power to institute and undertake criminal proceedings against any person before any court in respect of any offence against any law in force in the Islands. Criminal confiscation (post-conviction) provided for under Part II of the Proceeds of Crime Ordinance is conducted by the Director of Public Prosecutions. These proceedings seek to recover the financial benefit that a person has gained because of having committed a criminal offence. Confiscation orders are available following a criminal conviction.

Royal Turks and Caicos Islands Police Force

The core duties of the Royal Turks and Caicos Islands Police Force (RTCIPF) includes internal security by preventing and detecting crime, protection of life and property and maintaining the peace. The RTCIPF investigates and develops ML/TF cases to lead to the prosecution of criminals before the court and to recover the proceeds of crime. A senior officer of the RTCIPF may apply for Production Orders under Proceeds of Crime Ordinance in relation to criminal conduct, criminal recovery investigations and money laundering investigations.

Customs Department

Collection of import and export duties on behalf of the Turks and Caicos Islands Government is performed by the Collector of Customs. Preventing and interdicting illegal drugs and other prohibited and restricted goods is one of the core functions of the Customs Department, in addition to facilitating legitimate trade and international travel.

The Financial Intelligence Agency

Established by the Financial Intelligence Agency Ordinance Cap 3.20, the Financial Intelligence Agency plays a central role in the Turks and Caicos Islands anti- money laundering regime and serves as the unit to receive Suspicious Activity Reports made by Financial Businesses and DNFBPs.

Upon receipt of Suspicious Activity Reports/Suspicious Transaction Reports the Financial Intelligence Agency conducts enquiries to develop the information. This information is also assessed for its relevance and usefulness to other Financial Intelligence Units or law enforcement agencies (LEAs). From these efforts, various products may be developed following the Agency's analysis and its findings. Some of these products include intelligence reports, spontaneous disseminations and financial profiles.

Gaming Control Commission

The Turks and Caicos Islands' Gaming Control Commission is established under the Gaming Control Ordinance 2018. One of the core functions of the Board is to perform the function of DNFBP Supervisor for the gaming sector. The Gaming Control Commission monitors compliance by licensees under the Gaming Control Ordinance, the Anti-Money Laundering

Regulations codes or guidance relating to money laundering or the financing of terrorism as may be prescribed.

Integrity Commission

Corruption is a predicate to money laundering under the Proceeds of Crime Ordinance.

The Integrity Commission was established by the Integrity Commission Ordinance in 2012. Some of the functions of the Integrity Commission include receiving and investigating complaints or reports of any alleged acts of corruption by any public official. As law enforcement officers, the Integrity Commission is mandated to investigate and develop the case and refer their cases to the ODPP for prosecution. The Integrity Commission has power to arrest, obtain Search Warrants, to apply for Production orders when carrying out its investigations.

Department of Immigration

The role of protecting the borders of the Turks and Caicos Islands is one of the core functions of the Department of Immigration. This Department actively ensure that only persons with legal rights to visit, reside and work are in the Islands by investigating all complaints or reports that are immigration related. As law enforcement officers, Immigration officers have the power to arrest. Once they have investigated matters within their remit, their cases are referred to the ODPP for prosecution.

2 Sanctions

2.1 What are Sanctions



The Sanctions Orders provide that the Governor of the TCI is the competent authority for the implementation of sanctions in the TCI. Sanctions generally target specific individuals or entities, or sectors, industries or interests. These measures include:

- Targeted asset freeze - prohibiting the making of any assets available to named persons or entities, directly or indirectly
- financial/economic and trade sanctions - aimed at a more general prohibition against doing business with or making funds or economic resources available to, directly or indirectly, designated persons, business, or entities.
- arms embargoes - imposing restrictions regarding the use of military and other specified restricted goods, technology and associated services
- restrictions on admission/travel bans -prohibiting specified persons from entering into the country

This guidance is primarily concerned with financial sanctions and asset freeze.

2.2 What are Financial Sanctions²

Financial sanctions are restrictions put in place by the United Nations (UN), or United Kingdom (UK) to achieve a specific foreign policy or national security objective. They can limit the provision of certain financial services and restrict access to capital. markets, funds and economic resources by designated persons or entities, directly or indirectly.

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:

- **Targeted asset freezes:** these apply to named individuals, entities and bodies, restricting access to funds and economic resources.
- **Restrictions on a wide variety of financial markets and services:** these can apply to named individuals, entities and bodies, specified groups, or entire sectors. To date these 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 authorisation prior to

² OFSI - Financial Sanctions Guidance pages 5-7

certain payments being made or received; and restrictions on the provision of financial, insurance, brokering or advisory services or other financial assistance

- **Directions to cease all business:** these will specify the type of business and can apply to a specific person, group, sector or country.

2.3 Why Impose Financial Sanctions³

Financial sanctions are one of several available coercive options that does not involved the use of force that may be used against a regime, an individual or an entity within a regime (the target). The aims sought when imposing sanctions are to:

- **coerce** a regime, or individuals within a regime, to change their behaviour (or aspects of it) by increasing the cost on them to such an extent that they decide to cease the offending behavior;
- **constrain** a target by denying them access to key resources needed to continue their offending behaviour, including the financing of terrorism or nuclear proliferation;
- **signal disapproval**, stigmatising and potentially isolating a regime or individual, or as a way of sending broader political messages (nationally or internationally); and/or
- **protect the value of assets** that have been misappropriated from a country until these assets can be repatriated.

2.4 Who is involved in making sanctions that apply in the TCI

Sanctions in the TCI flow from those imposed by mainly by the UN and the UK. Following the adoption of the UNSCRs by the UN, to ensure that its Overseas Territories (OTs) can implement the sanctions agreed in the UN, the UK makes an implementing Order in Council, under the United Nations Act 1946, which is extended to the OTs in the form of a Sanctions Order. Sanctions Orders are subsidiary legislation and are published in the TCI Gazette.

2.4.1 'Without delay' implementation of UN listings

The Sanctions and Anti-Money Laundering Act allows for UN designations of persons or entities subject to financial sanctions have effect via sanctions regulations which through sanctions orders become effective in the TCI. The Foreign, Commonwealth and Development Office (FCDO) publicizes UN listings and sends a notice to the Attorney General. The UK Office of Financial Sanctions Implementation (OFSI) adds those subject to financial sanctions to the Consolidated List. Within hours of the listing, notices will be issued, which will be placed on the

³ OFSI - Financial Sanctions Guidance page 5

FSC and AGC's websites and also emailed to FIs, DNFBPs and public sector stakeholders. This allows for sanctions to be implemented without delay.

2.4.2 UN Sanctions Regimes⁴

Since 1966, the Security Council has established 30 sanctions regimes, in respect of Southern Rhodesia, South Africa, the former Yugoslavia (2), Haiti, Iraq (2), Angola, Rwanda, Sierra Leone, Somalia and Eritrea, Eritrea and Ethiopia, Liberia (3), DRC, Côte d'Ivoire, Sudan, Lebanon, DPRK, Iran, Libya (2), Guinea-Bissau, Central African Republic, Yemen, South Sudan and Mali, as well as against ISIL (Da'esh) and Al-Qaida and the Taliban.

The Council has resorted to mandatory sanctions as an enforcement tool when peace has been threatened and diplomatic efforts have failed. Security Council sanctions have taken a number of different forms, in pursuit of a variety of goals. The UN currently has several ongoing sanctions regimes which focus on supporting political settlement of conflicts, nuclear non-proliferation, and counter-terrorism.

You can read more about the UN's work on financial sanctions on their website:

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

As a UK OT, the TCI implements all sanctions adopted by the UN Security Council through Sanctions Orders which are applicable to the TCI to reflect the UNSCRs.

Sanctions Orders have been implemented in respect of all the current UN Sanctions Regimes. These are:

1. The Afghanistan (Sanctions) (Overseas Territories) Order 2020
2. The Central African Republic (Sanctions) (Overseas Territories) Order 2020
3. The Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2020
4. The Democratic Republic of the Congo (Sanctions) (Overseas Territories) Order 2020
5. The Iran (Sanctions) (Nuclear) (Overseas Territories) Order 2020
6. The Iraq (Sanctions) (Overseas Territories) Order 2020
7. The ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (Overseas Territories) Order 2020
8. The Lebanon (Sanctions) (Assassination of Rafiq Hariri and others) (Overseas Territories) Order 2020
9. The Lebanon (Sanctions) (Overseas Territories) Order 2020
10. The Libya (Sanctions) (Overseas Territories) Order 2021

⁴ United Nations Security Council sanctions webpage <https://un.org/sc/suborg/en/sanctions/information>

11. The Mali (Sanctions) (Overseas Territories) Order 2020
12. The Republic of Guinea-Bissau (Sanctions) (Overseas Territories) Order 2020
13. The Somalia (Sanctions) (Overseas Territories) Order 2020
14. The South Sudan (Sanctions) (Overseas Territories) Order 2020
15. The Sudan (Sanctions) (Overseas Territories) Order 2020
16. The Syria (United Nations Sanctions) (Cultural Property) (Overseas Territories) Order 2020
17. The Yemen (Sanctions) (Overseas Territories) Order 2020

2.4.3 Domestic Financial Sanctions and Restrictions

The UK can impose its own financial sanctions and restrictions under its own domestic legislation (collectively the ‘domestic regimes’). The UK’s Sanctions and Money Laundering Act 2018 (“SAML A”) allows the UK to adopt its own sanctions regulations to maintain compliance with UNSCRs.

The UK also has a process through the FCDO, by which it issues sanctions outside of the UNSCRs. Consequently, there are several Sanctions Orders outside of the current UN sanctions regimes. These Orders were enacted to give effect to the measures adopted by the UK against specified regimes. These include:

1. The Chemical Weapons (Sanctions) (Overseas Territories) Order 2020
2. The Counter-Terrorism (International Sanctions) (Overseas Territories) Order 2020
3. The Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020
4. The Cyber (Sanctions) (Overseas Territories) (No. 2) Order 2020
5. The Bosnia and Herzegovina (Sanctions) (Overseas Territories) Order 2020
6. The Burma (Sanctions) (Overseas Territories) Order 2020
7. The Burundi (Sanctions) (Overseas Territories) Order 2020
8. The Global Anti-Corruption Sanctions (Overseas Territories) Order 2021
9. The Guinea (Sanctions) (Overseas Territories) Order 2020
10. The Iran (Sanctions) (Human Rights) (Overseas Territories) Order 2020
11. The Misappropriation (Sanctions) (Overseas Territories) Order 2020
12. The Myanmar (Sanctions) (Overseas Territories) Order 2021
13. The Nicaragua (Sanctions) (Overseas Territories) (No. 2) Order 2020
14. The Republic of Belarus (Sanctions) (Overseas Territories) Order 2020
15. The Russia (Sanctions) (Overseas Territories) Order 2020
16. The Syria (Sanctions) (Overseas Territories) Order 2020
17. The Unauthorised Drilling Activities in the Eastern Mediterranean (Sanctions) (Overseas Territories) Order 2020
18. The Venezuela (Sanctions) (Overseas Territories) Order 2020
19. The Zimbabwe (Sanctions) (Overseas Territories) Order 2020

The UK lists are maintained by HM Treasury and may be found at–

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

Information on financial sanctions targets by regime may also be found at-

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

The Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 and have replaced Part 1 of Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020. The purpose of this Regulation is to give effect to UNSCR 1373 (2001) adopted by the Security Council of the United Nations on 28th September 2001 relating to terrorism. Resolution 1373 includes a requirement that Member States of the United Nations must (a) prevent the financing of terrorist acts, including the freezing of funds and economic resources of persons who commit or attempt to commit terrorist acts or participate in or facilitate such acts, and (b) prohibit their nationals and those within their territories from making funds, financial services or economic resources available to such persons. The Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 took effect in the TCI through the passage of The Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020 which came fully into force on 31 December 2020 and confers power on the Governor to designate persons who are, or have been, involved in terrorism.

2.5 Who does financial sanctions apply to

The Sanctions Orders all provide that the obligations under the Orders apply to

- a) any person⁵ in the Islands and territorial sea of the TCI,
- 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 a British protected person and is ordinarily resident in the Islands, or
 - ii. a body incorporated or constituted under the law of any part of the Islands, and
- c) any person on board a ship or aircraft that is registered in the Islands.

Non-compliance with your obligations under the Orders will result in the commission of an Offence for which you may be liable to a maximum of seven years' imprisonment, a fine or both.

⁵ Natural or legal

3 Financial Sanctions – Obligations of Relevant Institutions

3.1 Who is Responsible for overseeing your Sanctions Obligations

The Governor is responsible for administering the financial sanctions. However, under Sanctions Orders the Governor may delegate or authorise the delegation of any of his or her functions under the Order, to any person or class or description of persons which he approves. Administratively, the Governor undertakes that responsible with the assistance of the Attorney General's Chambers.

The Sanctions Orders also allow the Governor to confer powers on an authorized officer for the purpose of implementing the order. In the orders "authorised officer" is defined as –

- (a) a police or customs officer, or
- (b) a person authorised by the Governor for the purposes of this Schedule, whether generally or in a particular case.

Where a delegation of power has been made by the Governor this will appear in the Gazette and the Financial Services Commission and the Attorney General's Chambers will publish a notice on its website.

You must comply with a lawful request made by the Governor, a person to whom he has delegated any power to or an authorised officer which is done in furtherance of the Sanctions Orders.

3.2 Examination of Lists and Notifications

You are expected to regularly examine the lists detailed below, particularly the UK's Consolidated List.

3.2.1 The Consolidated List

The UK OFSI, is the competent authority for implementing sanctions and making domestic designations maintains a consolidated list of all designated persons subject to financial sanctions under UN and UK legislation. The Consolidated list provides information to help you decide whether you are dealing with someone who is subject to sanctions. Through the Sanctions Orders those lists are applicable in the TCI and are referenced in the Financial Sanctions Notices issued by the AGC and those issued by the FSC. Currently, the TCI does

not maintain its own separate lists but the AGC⁶, FSC⁷ and the FIA⁸ provides links to the UN and UK lists on their sanctions webpages on their websites. Should the TCI issue a separate list, it would also be posted on those websites.

By examining the lists, you may be able to determine whether you are dealing with a person or entity who is subject to sanctions. To assist in properly identifying designated persons or entities the lists will include:

- full name;
- any known aliases;
- honorary, professional or religious titles;
- date of birth,
- place of birth;
- nationality;
- passport details;
- national identification numbers;
- last known 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 or the Governor;
- when the information regarding the designated person/entity was last updated by HM Treasury or the Governor; and
- a unique ID reference number relating to the designated person/entity (in the case of the OFSI/UK's consolidated list).

3.2.1.1 Name and Target Matches

Sometimes it is possible for you to find a name which matches an entry on the OFSI's consolidated list, or the Governor's List, but the other details of the person or entity differ. This is what is called a **name match**. However, a **target match** occurs where the individual or entity you are dealing with matches all the information on the consolidated list or the Governor's List.

Where there is only a name match you do not have to do anything further. If there is a target match you must make a report to the Governor and the Financial Intelligence Agency (FIA), in accordance with AML/CFT laws and take the required freezing action. If after reviewing the information on the consolidated list, you still have uncertainties regarding whether a target match is made, you should contact the Governor's Office and make a report to the FIA.

⁶ - <http://gov.tc/agc/services/sanctions>

⁷ - <http://tcifsc.tc/aml-ctf-sanctions/sanctions>

⁸ - <http://fia.tc>

3.2.1.2 Verification of Matches

Where freezing action is taken as a result of a name match or potential target match, in the report to the Governor you may request that the match is verified against the list of designated persons. The Governor will review the information provided and make consultations as is necessary to determine the match. The Governor will endeavor to provide a response with the findings within 48 hours, unless the Governor further information from you in order to verify whether a match was made. If the Governor, verifies that no match is made, that the person or entity involved is not a designated person or entity, you may unfreeze the assets.

3.2.2 Keeping updated

As OFSI issues its notices, the AGC issues a corresponding Financial Sanctions Notices to the FSC and other stakeholders and the FSC sends out AML Alerts advising of changes to the lists including new entries, amendments to and removals from the lists, which are posted on the websites the AGC, FSC and FIA websites and disseminated to the financial business by the FSC within 24 hours.

OFSI publishes notices describing changes to financial sanctions on the GOV.UK website and notifies its subscribers by email whenever a new notice is published. To subscribe to OFSI e-alerts, click here: <https://public.govdelivery.com/accounts/UKHMTREAS/subscriber/new>

3.2.3 UK and TCI Designations

The Governor is the competent authority in the TCI for making domestic designations in keeping with UNSCR 1373 pursuant to The Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020 which applies to the TCI. The Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020 provides that persons or entities designated by the UK Treasury are automatically designated persons in the TCI.

Where it is necessary for the Governor to make a designation it is to be done by an objective consideration of facts and information to determine whether there are reasonable grounds to suspect that the person or entity is involved in terrorist activity, or are owned or controlled directly or indirectly by a person involved in terrorist activity or is acting on behalf of or at the direction of such a person or is a member of, or associated with, a person who is or has been so involved. The Governor will also consider the likely significant effects of the designation on that person. The Governor in making the designation does so on the basis of national security and that it is necessary to protect the public from terrorism.

The designation cannot be made unless the Secretary of State has been consulted.

Upon making a designation pursuant to the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020, the Governor will take steps to publicise the designation generally unless one or more of the conditions contained in the Order exists for restricting the general

publication. If such conditions do exist, then he must inform persons as he considers appropriate of the designation and the contents of the statement of reasons. Within hours of the making a designation, a notice will be issued, which will be placed on the FSC and AGC's websites and also emailed to FIs, DNFBPs and public sector stakeholders.

The public notification of designations pursuant to the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020 will include -

- a) The requirement for you to engage in asset freezing and the obligations attached thereto (to identify, freeze/block, ensure that no funds and other assets are made available and report relevant funds or other assets, to subsequently prohibit unlicensed dealings with designated persons and entities and to continue to check for transactions relating to the designated person or entity and the actions to be taken if funds or other assets or suspect transactions are discovered).
- b) The benefits of an asset freezing mechanism as a preventive tool to disrupt terrorist support and activity and the importance of complying with the asset freezing obligations (emphasising both the potential criminal and civil liabilities for non-compliance, as well as the reputational risks for financial institutions and DNFBPs of being seen to be in breach).
- c) Information identifying all persons and entities designated. As much information as possible shall be provided to avoid mistaken identity and false positives (potential matches either due to a name match or lack of clarity in identity data).
- d) Information on the point of contact within the public sector where enquiries may be directed for further guidance and assistance.

3.2.4 What must you do

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

If you know or have 'reasonable cause to suspect' that you are in possession or control of, or are otherwise dealing with, the funds or economic resources of a designated person you must:

- freeze them
- not deal with them or make them available to, or for the benefit of, the designated person, unless:
 - there is an exception in the legislation that you can rely on; or
 - you have a licence from the Governor
 - report them to the FIA.

3.3 Effect of Listing and Designations

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 such a person or entity is your client, financial sanctions must be taken against the person or entity without delay.

3.3.1 Asset Freezes

Where the financial sanction is an asset freeze, you are generally prohibited from -

- dealing with the frozen funds or economic resources, belonging to or owned, held or controlled by a designated person
- making funds or economic resources available, directly or indirectly, to, or for the benefit of, a designated person
- engaging in actions that, directly or indirectly, circumvent the financial sanctions prohibitions

This means that all persons, natural and legal persons within the TCI, must immediately take action to the freezing of funds and economic resources or other assets of designated persons or entities. At this stage, persons are also prohibited from making funds, financial services or economic resources available directly or indirectly, wholly or jointly, for the benefit of designated persons and entities; entities owned or controlled, directly or indirectly, by designated persons or entities; and persons and entities acting on behalf of, or at the direction of, designated persons or entities. An asset freeze does not involve a change in ownership of the frozen funds or economic resources, nor are they confiscated or transferred to the Governor for safekeeping.

The freezing action will extend to all funds or other assets owned or controlled directly or indirectly by a designated person or entity or funds or other assets of a person who is acting on behalf of or at the direction of a designated person or entity. If you know or have 'reasonable cause to suspect' that you are in possession or control of, or are otherwise dealing with, the funds or economic resources of a designated person you must take the freezing action and submit a Terrorist Property Report⁹ to the FIA, in accordance with AML/CFT laws and acting under a delegation from the Governor, unless there is an exemption in the Sanctions Orders or the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020 that can be relied upon or you have received a licence from the Governor.

"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 suspicion.¹⁰ In making the assessment of suspicion you may consider your

⁹ The form can be downloaded here <https://fia.tc/wp-content/uploads/2017/03/ORD92014-TERREPF-0515-1.0.pdf>

¹⁰ OFSI - Financial Sanctions Guidance page 14-15

knowledge of the customer or client's business, financial history and background. Reasonable grounds or suspicion will also depend on your own internal compliance regime, assessment, evaluation and Customer Due Diligence (CDD) information.¹¹

You are reminded that you must keep records¹² of potential and actual matches of designated persons and of the actions which you took in respect of the name match or target match.

Failure to adhere to the freezing requirement results in the commission of an offence.

3.3.2 Other Financial Restrictions

Financial sanctions regimes may include other restrictions in addition to asset freezes including restrictions on a wide variety of financial markets and services as explained in section 2.2 above. Where these exist, they will be listed on the individual regime pages on GOV.UK:

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

3.4 Ownership and Control¹³

3.4.1 Ownership

If a person is a designated person their name 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 appear on the consolidated list. However, those entities are similarly subject to financial sanctions.

The TCI adopts the position of the UK OFSI which considers that the key criterion to assessing whether a legal person or entity is owned by another legal person or entity is the possession (directly or indirectly) of more than 50% of the shares or voting rights of an entity or having the right (directly or indirectly) to appoint or remove a majority of the board of directors of the entity or it is reasonable to expect that the person would be able to ensure the affairs of the entity are conducted in accordance with the person's wishes. If any of this criterion is met, and the owner or controller of the entity is also a designated person, then financial sanctions will also apply to the entity in its entirety and the entity would also be subject to an asset freeze. The position is the same in respect of the prohibitions on making funds or economic resources available directly or indirectly to a designated person.

¹¹ FIA-TCI - Guidance on Suspicious Activity and Suspicious Transaction Reporting page 9

¹² See Part 7 of the AML-CFT Code

¹³ OFSI - Financial Sanctions Guidance page 15-16

'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), the view will be taken that all entities that are part of the ownership chain are subject to financial sanctions.

3.4.2 Control

In line with UK guidance, 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)
- Having the ability to direct another entity in accordance with one's wishes. This can be through any means, directly or indirectly. For example, it is 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.

The UK's Financial Sanctions Guideline-General guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018 can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/961516/General_Guidance_-_UK_Financial_Sanctions.pdf

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.

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.

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

3.4.3 Minority Interests

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 may not have been met.

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.

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.

3.4.4 Joint Interests

Funds/economic resources will be subject to an asset freeze even if the designated person owns them jointly with another person, or where the designated person only owns part of them or where a designated person's ownership consists of any interest (whether legal or equitable).

If two or more persons hold shares or rights jointly, each of them will be treated as owning those shares or rights. This also applies to joint arrangements where all holders of shares or rights exercise their rights jointly. In this case, all parties subject to the joint arrangement are considered as owning those shares or rights.

You should consider the above when evaluating the shares or voting rights an individual may have in an entity.

Where the wording above applies, the jointly owned funds/economic resources should be frozen in their entirety.

3.5 Reporting and Responding to Requests for Information

As part of the over-site process the FSC will monitor compliance with financial sanctions for the various supervised entities.

3.5.1 When Should You Make a Report

You must disclose information to the Governor (or the FIA, acting under a delegation from the Governor) where you know or suspect that a person is a designated person or has committed offences relating to making funds and economic resources available to or for the use or benefit of designated persons, which came to you in the course of your business.

When informing the Governor, you must state—

- a) the information or other matter on which the knowledge or suspicion is based,
- b) any information you hold about the customer by which the customer can be identified, and
- c) 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.

The Governor may also make requests for information. A request may include a continuing obligation to keep the Governor informed as circumstances change, or on such regular basis as the Governor may specify. The disclosure must be done as soon as reasonably practicable after that information or other matter comes to its attention. In practice this should mean within hours.

You must also inform the Governor, as soon as practicable, if you credit specified payments to a frozen account. In practice this means within hours.

The reporting obligation does not extend to information which is subject to legal professional privilege. Legal professionals must carefully ascertain whether legal privilege applies, and which information it applies to.

Anything done by you in compliance with the Sanctions Order will not be treated as a breach of any restriction imposed by statute or otherwise.

If you fail to comply with these reporting obligations, you will have committed an offence and may be liable to conviction.

3.5.2 Does Submitting a SAR Satisfy the Reporting Obligation

Please note that reporting to your regulator or submitting a SAR does not meet your reporting obligations under financial sanctions. If you have information to report regarding financial sanctions this must be sent to the Governor.

If you are unsure of your reporting obligations, you should seek independent legal advice.

4 Licensing

4.1 Overview

The licensing process allows access to frozen funds in a way that protects against terrorist financing risks in specified circumstances contained in the Sanctions Orders and the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020.

Under the Sanctions Orders, the Governor acts with the consent of the Secretary of State and has power to grant, vary or revoke licenses in respect of several activities that are otherwise prohibited. The requirement for the Governor to seek the Secretary of State's consent, allows the FCDO to carry out any approval or notification process contained in the international exemption procedure which is to be followed.

In considering whether to issue a licence, the Governor will assess whether the relevant licensing grounds have been met. Licenses may only be granted in line with the specific grounds specified in respect of each sanctions regime. The grounds may vary from regime to regime, so it is important that you check the relevant, up-to-date Sanctions Order. For example, the prohibitions in the DPRK Sanctions Order are much greater than others and the grounds for licensing are more restrictive. Only the activities that fall within the licensing grounds of the Sanctions Order will be considered.

The activities that may be allowed in respect of funds and economic resources of designated persons include -

- a) payment of basic expenses of designated persons and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines, medical treatment, taxes, insurance premiums and public utility charges. This does not mean that a designated person is allowed to continue the lifestyle or business activities they had before they were designated.
- b) payment of reasonable professional fees and expenses associated with the provision of legal services. The fees must be reasonable, and payments of fees and disbursements must relate specifically to the provision of legal advice or involvement in litigation or dispute resolution.
- c) payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources. Re-design, refurbishment or redevelopment to improve value is generally not covered.
- d) payment of necessary extraordinary expenses. The necessity for the payment will have to be justified. It must be unanticipated and it cannot be used where other grounds are more suitable or as a way of avoiding the clear limitations of those other grounds.
- e) satisfaction of a judicial or administrative or arbitral decision made prior to the date on which the Order comes into force and not for the benefit of a designated person. The judgment/decision must have been given before the date of designation and cannot be for the benefit of a designated person.

- f) payment by a designated person of sums due under a contract or agreement entered into prior to the date on which the person was designated, or under an obligation that arose for the designated person prior to that date, provided that the payment is not directly or indirectly received by a designated person.

4.2 Licensing under Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020

Under Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020, the Governor may grant licenses in respect of any of the prohibited activities contained in the Order. Before making a license under the Counter-Terrorism (Sanctions) (Overseas Territories) Order, the Governor must consult UK authorities. Licenses in respect of persons or entities designated by the UK Treasury or listed under resolution 1373 (2001) adopted by the Security Council of the United Nations on 28th September 2001 (“resolution 1373”). require consultation with the UK Treasury. In respect of any designations made by the Governor under the Counter-Terrorism (Sanctions) (Overseas Territories) Order, consultation with the Secretary of State is required.

Licences cannot be issued retrospectively. Neither must you assume that a licence will be granted or engage in any activities prohibited by financial sanctions until you have received an appropriate licence. If you have carried out an act that required a licence, without having obtained one beforehand, you may have committed an offence and may be subject to prosecution.

The Governor may also attach conditions to a licence. Licence conditions acts as safeguards to ensure that funds or economic resources made available to designated persons are not used for terrorist financing.

4.3 The Licensing Process

4.3.1 Under the Sanctions Orders

Applications for licenses should be made in writing to the Governor and supported by evidence which meets the criteria for the relevant licensing ground(s) and provide the basis to grant the licence. Incomplete applications will be sent back, or you will be asked for additional information until the Governor is satisfied that you have provided all with required information for a complete application. For consistency, the application form provided in Annex 2 should be used in respect of licenses under the Sanctions Orders.

Applicants will generally be 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:
 - 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

If you require legal advice regarding making an application and completing the form, you should seek independent legal advice. It is expected that your attorney will fully consider the relevant up-to-date version of the Sanctions Order. Links to these can be found on the relevant financial sanctions regime pages:

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

Once the Governor is satisfied that all the required information has been provided, the request, along with details of any conditions which the Governor proposes to include in the license, will be submitted in writing to the FCDO Sanctions Team¹⁴. The consent of the Secretary of State is required prior to the issue of any license under a Sanctions Order. The application and other relevant information will be forwarded to the FCDO for onward forwarding to the relevant UN Sanctions Committee.

4.3.2 Licensing Timeframe

The requirement for the Governor to seek the Secretary of State's consent and the involvement of the FCDO Sanctions Team, means that it is not possible to specify the exact time that will be involved in the licensing process. However, a response on the application should be provided to you within four weeks. If there is a delay in the processing or consideration of the application, you will be advised of such within the four weeks. Delays may be occasioned if you did not provide all the required information to satisfy the criteria for a licence.

¹⁴ FCO - International Organisation Department - Guidance on Implementation of Sanctions in the Overseas Territories.

4.3.2.1 Urgent Cases

There may also be occasions that call for urgency. In completing the application, the circumstances giving rise to the urgency must be provided in the body of the form.

4.3.2.2 Notifications and Approvals

If consent is given to grant a licence, the licence will specify the acts authorised by it. The licence may be general or granted to a particular person or entity or to a category of persons. It may be subject to conditions, and of indefinite duration or subject to an expiry date.

You will receive notice of any decision to grant the license. If the licence is made to a particular person, then written notice will be sent to the person's last known address, or where the person is a body corporate, partnership or unincorporated body other than a partnership, by posting the notice to its registered or principal office. Where a general license is granted the Governor will take such steps as he considers appropriate to publicise the grant, variation or revocation of the licence. In practice this may be done by Gazetting and/or publication on the FSC and AGC websites.

Knowingly or recklessly providing information that is false in a material respect or providing or producing a document that is not what it purports to be, to obtain a licence is an offence. Any such licence granted will become void from the time it was granted. Failure to comply with any condition imposed by the licence is also an offence.

4.3.3 Variations and Amendments

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

Subject to the provision of all needed information written variation requests to the Governor will be considered within four weeks of receipt. If there is a delay in the consideration of the application for variation the applicant should be advised of such within the four weeks.

4.3.4 Refusal of a Licence

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.

The Governor may also refuse an application if the proposed transaction or activity does not require a licence.

If the Governor decides to refuse to grant, a license may -

- ask the Governor to re-consider his decision
- re-apply with new or supplementary evidence or new supporting arguments
- seek to judicially review the decision

The Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020 specifically provides that an application for judicial review may be made to the Supreme Court where the Governor refuses to grant a licence.

4.3.5 Complying with a Licence

Non-compliance with the conditions in a license or acting outside of the scope of the license will result in the commission of an Offence for which you may be liable to a maximum of seven years imprisonment, a fine or both.

4.3.6 Reporting Conditions

A condition that may be contained in the licence is a requirement to report information to be to Governor within a specific time frame. Conditions placed in each licence may vary. However, failure to comply with these reporting requirements may result in the revocation, suspension or termination of a licence or further restrictions being included in the licence.

4.4 Exemptions – Crediting Frozen Accounts

The Sanctions Orders make provision for exemptions or exceptions from the prohibition regarding dealing with funds and economic resources of designated persons. Activities involving making credits to frozen accounts which fall within a specified exemption under the orders are exempted automatically and there is no requirement for the Governor to grant a licence to allow the doing of that activity.

The activities that may be permitted all relate crediting frozen accounts. This means that once the funds go into the account they also become frozen. Monies that may be paid into frozen accounts generally include:

- interest or other earnings due on the account
- payments due under contracts, agreements or obligations that were concluded or arose before the designated person was so designated
- funds transferred into the account

The specific exemptions that may be available varies depending on the sanctions regime.

Where a financial institution credits any frozen account with funds from a third party, without delay, it must inform the Governor.

5 Delisting

Designated persons are able challenge their listing and request their delisting. The financial sanctions will remain in place while the challenge or request is being considered.

The Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020 extends with modifications provisions of the Sanctions and Anti-Money Laundering Act 2018 -

- a) section 22 (power to vary or revoke designation made under regulations);
- b) section 23 (right to request variation or revocation of designation);
- c) section 24 (periodic review of certain designations);
- d) section 38 (court review of decisions);
- e) section 39 (court reviews: further provision).

Where a delisting is made, a Financial Sanctions Notice will be made. OFSI issues a notice in respect of UN or UK listings and the AGC issues a corresponding Financial Sanctions Notice which is sent to the FSC and other stakeholders. The FSC sends out AML Alerts advising of delisting or removal from the lists. The notices and/or alerts are posted on websites the AGC, FSC and FIA websites and disseminated to the financial business by the FSC within 24 hours.

5.1 When to request Delisting

De-listing is considered appropriate wherever the criteria for listing under the applicable regimes are no longer met. Some examples include: 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.

5.2 What you must do upon notification of De-listings

In the event that the UN Sanctions Committees and/or the Security Council delist any person/entity or a person/entity has been de-listed pursuant to UNSCR 1373, the obligation to freeze no longer exists. The funds or assets that have been frozen must therefore be unfrozen.

You must immediately on receipt of the Financial Sanction Notice 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
- 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 person's/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 the person or entity that the assets are no longer subject to an asset freeze;
- Advise the Governor of the actions taken as soon as practicable.

5.3 UN Listings

For UN listings under the ISIL (Da'esh) and Al-Qaida (UNSCR 1267/1989) sanctions regime, a petition for delisting can be made to the UN Office of the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee. For more information about the Office of the Ombudsperson please see the UN's website:

<https://www.un.org/sc/suborg/en/node/189>

For all other UN listings, a request should be sent to the UN focal point for delisting. More information about the focal point is available on the UN's website:

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

Alternatively, if you are a Turks and Caicos Islander or a resident of the Turks and Caicos Islands or an entity incorporated or otherwise established in the Turks and Caicos Islands can petition the Governor who following an assessment of the petition, will submit the delisting petition to the FCDO, who will decide whether to take the delisting forward to the relevant UN Sanctions Committee or the Security Council.

5.4 UK Listings

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.

For further information, including eligibility to apply for a variation or revocation of a designation, submitting a sanction challenge form and other information, consult the [Foreign, Commonwealth and Development Office guidance](#).

5.5 Designations by the Governor

Designations under the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020 may be revoked at any time and Designated persons may make a request to the Governor for delisting. The designation cannot be revoked unless the Secretary of State has been consulted. Any decision of the Governor in respect of the making, varying, renewal of, or the refusal to revoke or vary, a designation may be appealed by application to the Supreme Court by the designated person.

6 Enforcement

6.1 Evidence and Information Gathering

The evidence and information gathering provisions of most Sanctions Orders are found in the Schedules.

The Governor may make requests for information or production of documents from designated persons, financial institutions or any person in the country regarding the funds and economic resources of designated persons in accordance with the provisions in the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020.

The Sanctions Orders contain general enforcement and evidence gathering provisions to ensure compliance with the orders that may be carried out by officers authorized by the Governor. These include powers of authorized officers to:

- ❖ Request information or production documents
- ❖ Enter and search premises, under a search warrant
- ❖ Inspect and seize anything found during a search
- ❖ Search any person found on the premises entered under a search warrant
- ❖ Take copies of any document
- ❖ If necessary, use reasonable force in the exercise of the powers

The power to require information or produce documents for inspection 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 by you.

If a request is made to you, you must comply with it within such time and in such manner as may be specified in the request.

The Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020 specifically provides that a request may include a continuing obligation for you to keep the Governor informed as circumstances change, or on such regular basis as the Governor may specify.

The Governor can disclose information received or obtained by him to the persons and for the purposes specified in the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020.

If you fail comply with these reporting obligations, you will have committed an offence and may be liable to conviction.

6.2 Offences

Depending on whether the offending act is against a requirement in the Sanctions Orders or the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020, you will commit an offence if you -

- deal with funds or economic resources belonging to, or owned, held or controlled by, a designated person
- make funds and economic resources available to or for the use or benefit of designated persons
- fail to comply with reporting obligations.
- intentionally participate in an activity, knowing designed to circumvent the freezing obligations or to enable or facilitate the contravention of any of those obligations
- without reasonable excuse, refuse or fail within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made for information
- knowingly or recklessly give any information, or produce any document, which is false in a material particular in response to such a request.

6.3 Penalties

Breaches of financial sanctions are a serious criminal offence. Offences under the Sanctions Orders carry a maximum of seven years' imprisonment on indictment or a fine may be imposed or both and, on summary conviction, to a maximum of six months' imprisonment or a fine not exceeding the equivalent of £5,000 or both.

If convicted of an offence under the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020 you will be liable on indictment to a maximum of seven years' imprisonment or to a fine or both and, on summary conviction, to a maximum of twelve months' imprisonment or a fine not exceeding the equivalent of £5,000 or both.

7 PROSCRIPTION

Under the Prevention of Terrorism Ordinance (PTO), the Governor has power, by notice published in the Gazette, to proscribe an organisation by declaring that the specified organisation is engaged in terrorism. Proscription means that an organisation is outlawed in the TCI and that it is illegal for it to operate here. In addition to the organisation proscribed by the Governor any organisation which the UN Security Council has declared as being engaged in terrorism will automatically be a proscribed organisation in the TCI.

In deciding to proscribe an organisation the Governor does so on an objective factual basis considering whether there are reasonable grounds to believe that the organization is engaged in terrorism.

A proscribed organization may within the specified period apply to the Governor requesting revocation of the notice of the proscription. If the Governor refuses to make the revocation of the notice the proscribed organization may, by way of appeal, apply to the Supreme Court for a review of the decision.

ANNEX I – FINANCIAL SANCTIONS NOTICE



ATTORNEY GENERAL'S CHAMBERS

FINANCIAL SANCTIONS NOTICE

FSN-104-22

13/05/2022

Russia

1. The International Division of the Attorney General's Chambers advises that twelve (12) entries have been added to the [Russia regime](#)¹⁵ and the twelve entries are now subject to an asset freeze.
2. Ten (10) entries have been amended in the same regime and are still subject to an asset freeze.
3. This follows an update to the UK Sanctions List. The consolidated list of asset freeze targets has been updated to reflect these changes.
4. The full notice was issued by the Office of Financial Sanctions Implementation of HM Treasury.
To see the full notice [click here](#)
5. The United Kingdom's Consolidated List can be accessed [here](#).
6. The UK Sanctions List can be found [here](#).
7. The UK's Consolidated List of Designated Persons and entities concerning the Russian Regime can be found [here](#)

¹⁵ The [Russia \(Sanctions\) \(Overseas Territories\) Order 2020](#) (Legal Notice 23 of 2021) entered into force for the Islands on 31st December 2020.

ANNEX 2 – LICENSE APPLICATION



Governor's Office
Turks and Caicos
Islands

Licence Application Form

Please note that the form below sets out the minimum information the Governor's Office will need in order to process your application for a licence to allow an activity or transaction to take place that would otherwise be prohibited under asset freezing measures in Sanctions Orders. You may be contacted for further information.

This form should be used for all licence applications relating to UN¹⁶ and UK sanctions regimes reflected in the Sanctions Orders extended to the TCI.

For licence applications relating to the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020 in particular, you should instead write to the Governor's Office setting out the full facts and details of the licence needed.

This form should not be used for export control licence applications or other non-asset-freeze matters.

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.

Please note that the application process requires clearance or prior notification from international authorities (e.g. at UK or UN level). This application and the supporting documents will be disclosed to the Foreign, Commonwealth and Development Office and to the relevant international authority. 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 Sanctions Order. 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 Sanctions Order. Applications which do not do so will be returned with a request that a suitable licensing ground be added.

Please provide documents to support the information below.

¹⁶ The United Kingdom, to ensure that Overseas Territories can implement the sanctions agreed in the UN makes an implementing Order in Council, under the United Nations Act 1946, which is extended to the OTs (Sanctions Orders).

PART I- Particulars of Sanction Regime

Name of regime under which the application is made: (Eritrea, Mali, etc.) _____

Name of the Designated Person _____

Are you requesting an exemption from an asset freeze?
If yes complete Part III and skip Part IV

YES

NO

Are you requesting an exemption from a trade ban?
If yes, you may skip Part III and proceed to Part IV

YES

NO

PART II - Applicant Information

Full Name (if Individual):

Gender: _____

Company Name: (if company)

Date of Application: _____

Nature of Business: _____

Contact Name: _____

Address: _____

Street Address

Apartment/Unit #

City

Island or Province

P.O. Box or Postal Code

Phone: _____

Email

Other contact information: _____

Are you/is your company a designated person (that is, subject to an asset freeze) or owned or controlled by a designated person?

YES

NO

If so please provide details: _____

PART III - Details of the Licence Sought

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:-

PLEASE TICK WHICHEVER APPLIES.

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.

- 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 4 (i.e. the relevant Sanctions Order, article and paragraph): _____

Please give the licence number(s) of any licence(s) already received by the applicant: _____

PART IV - Overview

Briefly outline the transaction and your role in it. What is the prohibited act that the licence is for: _____

PART V -Details of the Transaction(s)

Date of Contract: _____ Date of 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 so please explain the humanitarian purpose full: _____

Value of the goods or services to be supplied or obtained: _____

Seller/Supplier name: _____ Buyer/ Customer: _____

Agent/broker/other intermediary: _____

YES NO

As far as you are aware, is the end user different to the contract customer?

If so please provide details of the end user (if known): _____

As far as you are aware, is the end user owned or controlled by a designated person? YES NO

If so please provide details of the ownership or control (if known): _____

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 so who is the individual or entity: _____

Dates of any transactions / shipments / payments already made: _____

Dates of any future transactions / shipments/ payments: _____

PART VI - Banking Details

Method of payment (e.g. cash, cheque, bank transfer, confirmed or unconfirmed letter of credit, or other method) _____

Correspondent Bank _____

Intermediary Bank _____

Confirming or advisory bank _____

Are payment instructions/funds available for this transaction? YES NO

PART VII - 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 document that support your application or help us to understand it.

Are you providing any additional documentation to support this application? YES NO

If so please list attachments: _____

Part VII - Disclaimer and Confirmation of Information

I certify that my answers are true and complete to the best of my knowledge.

I understand that this application process requires consent from other authorities and as such this application and the supporting documents will be disclosed to the UK Foreign, Commonwealth and Development Office and to the relevant international authority.

Signature: _____ Date: _____

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 Sanctions Order that established the sanctions regime in question.

4. The form is in EIGHT parts:

The form comprises the following 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 effecting 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. Please note 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 relevant Sanctions Order.
- 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.