



FINANCIAL SANCTIONS IN THE TURKS AND CAICOS ISLANDS

Guidance

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INTRODUCTION

This document provides guidance on your obligations in relation to targeted financial sanctions, designations and proscription.

The Governor is the competent authority in the Turks and Caicos Islands (TCI) for the implementation of targeted 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 and Attorney General's Chambers.

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 European Union (EU) implements all sanctions adopted by the UN Security Council, which are applicable in all EU member states, in addition to measures outside of the UNSCRs. The United Kingdom (UK) in turn makes Sanctions Orders applicable to the TCI to reflect the EU Regulations.

The Governor has the power to make designations under Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order 2011, as amended (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 targeted 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 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 Chairman;
- 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; 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:

- To advise the Governor in relation to the prevention of money laundering, terrorist financing and the financing of proliferation;
 - on the development of a national plan of action to include effective mechanisms to enable competent authorities in the Islands to co-ordinate with each other;
 - on participation of the Islands in the international effort;
 - on the development of policies;
- To issue any needed Code and Guidance;
- To advise for the authorisation of payment out of the National Forfeiture Fund; and
- Other functions as necessary for the purposes of the *Proceeds of Crime 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.

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:

- 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
- restrictions on admission/travel bans -prohibiting specified persons from entering into the country

This guidance is concerned primarily with financial sanctions.

2.2 What are Financial Sanctions¹

Financial sanctions are restrictions put in place by the United Nations (UN), European Union (EU) 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 financial 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

¹ 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 Sanctions²

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, into changing 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 EU. Following the adoption of the UNSCRs by the EU through EU regulations, the UK, to ensure that its Overseas Territories (OTs) can implement the sanctions agreed in the UN and the EU makes an implementing Order in Council, under the United Nations Act 1946, which is extended to the OTs (Sanctions Orders)³. Sanctions Orders are published in the TCI Gazette.

The Policing and Crime Act (Financial Sanctions) (Overseas Territories) Order 2017 allows for UN designations of persons or entities subject to financial sanctions to automatically become effective in the TCI. To avoid delay in the implementation of financial sanctions measures imposed by a UNSCR, the UK Treasury has the power, by regulations to create a temporary sanctions regime. Pursuant to Article 11 of the Order, any regulations which create a temporary

² OFSI - Financial Sanctions Guidance page 5

³ 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

sanctions regime shall have effect in the TCI until the earlier of the day on which an Order in Council implementing the relevant UN financial sanctions Resolution enters into force in the TCI or 120 days after the day on which the relevant UN financial sanctions Resolution is adopted. The UK has enacted the United Nations and European Union Financial Sanctions (Linking) Regulations 2017 which allows sanctions to be implemented without delay.

2.4.1 UN Sanctions Regimes⁴

Since 1966, the Security Council has established 30 sanctions regimes, in 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 14 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>

The EU implements all sanctions adopted by the UN Security Council by EU Regulations which are applicable in all EU member states, but the EU Council may also impose measures that go further than or are not covered by the UNSCRs. The UK in turn makes Sanctions Orders applicable to the TCI to reflect the EU Regulations.

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

1. Lebanon - Lebanon (United Nations Sanctions) (Overseas Territories) Order 2007
2. Libya - Libya (Restrictive Measures) (Overseas Territories) Order 2011, as amended⁵
3. Afghanistan - Afghanistan (United Nations Measures) (Overseas Territories) Order 2012

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

⁵ . Libya (Restrictive Measures) (Overseas Territories) (Amendment) Order 2011
 . Libya (Restrictive Measures) (Overseas Territories) (Amendment) Order 2012
 . Libya (Restrictive Measures) (Overseas Territories) (Amendment) Order 2013

4. Somalia and Eritrea - Eritrea (Sanctions) (Overseas Territories) Order 2012, as amended⁶ and Somalia (Sanctions) (Overseas Territories) Order 2012
5. Guinea-Bissau - Guinea-Bissau (Sanctions) (Overseas Territories) Order 2012
6. Democratic People's Republic of Korea - Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2012, as amended⁷
7. Sudan - Sudan (Sanctions) (Overseas Territories) Order 2014
8. South Sudan - South Sudan (Sanctions) (Overseas Territories) Order 2014, as amended⁸
9. Central African Republic - Central African Republic (Sanctions) (Overseas Territories) Order 2014, as amended⁹
10. Yemen - Yemen (Sanctions) (Overseas Territories) (No.2) Order 2015
11. Democratic Republic of the Congo - Democratic Republic of the Congo (Sanctions) (Overseas Territories) Order 2015, amended¹⁰
12. Iraq - Iraq (Sanctions) (Overseas Territories) Order 2015
13. ISIL (Da'esh) and Al-Qaida - ISIL (Da'esh) and Al-Qaida (Sanctions) (Overseas Territories) Order 2016
14. Mali- Mali (Sanctions) (Overseas Territories) Order 2017

2.4.2 EU Autonomous Sanctions

In addition to adopting measures contained in UNSCRs, the EU may also decide to impose its own sanctions, sometimes referred to as 'EU autonomous' sanctions. You can read more about the work of the EU in relation to financial sanctions on their website:

⁶ Somalia (Sanctions) (Overseas Territories) (Amendment) Order 2013

⁷ Democratic People's Republic of Korea (Sanctions) (Overseas Territories) (Amendment) Order 2013

Democratic People's Republic of Korea (Sanctions) (Overseas Territories) (Amendment) (No.2) Order 2013

Democratic People's Republic of Korea (Sanctions) (Overseas Territories) (Amendment) Order 2016

Democratic People's Republic of Korea (Sanctions) (Overseas Territories) (Amendment) (No.2) Order 2016

Democratic People's Republic of Korea (Sanctions) (Overseas Territories) (Amendment) (No.3) Order 2016

Democratic People's Republic of Korea (Sanctions) (Overseas Territories) (Amendment) Order 2017

Democratic People's Republic of Korea (Sanctions) (Overseas Territories) (Amendment) (No.2) Order 2017

Democratic People's Republic of Korea (Sanctions) (Overseas Territories) (Amendment) (No.3) Order 2017

Democratic People's Republic of Korea (Sanctions) (Overseas Territories) (Amendment) (No.4) Order 2017

Democratic People's Republic of Korea (Sanctions) (Overseas Territories) (Amendment) Order 2018

⁸ South Sudan (Sanctions) (Overseas Territories) (Amendment) Order 2015

⁹ Central African Republic (Sanctions) (Overseas Territories) (Amendment) Order 2015

¹⁰ Democratic Republic of the Congo (Sanctions) (Overseas Territories) (Amendment) Order 2017

https://eeas.europa.eu/headquarters/headquarters-homepage/423/sanctions-policy_en

As a UK OT, the TCI also implements EU sanctions measures contained in EU Council Decisions through UK Orders in Council. 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 European Union in Council Decision against specified country regimes. These include:

1. Tunisia (Restrictive Measures) (Overseas Territories) Order 2011
2. Egypt (Restrictive Measures) (Overseas Territories) Order 2011
3. Belarus (Restrictive Measures) (Overseas Territories) Order 2011, as amended¹¹
4. Syria (Restrictive Measures) (Overseas Territories) Order 2012, as amended¹²
5. Zimbabwe (Sanctions) (Overseas Territories) Order 2012, as amended¹³
6. Guinea (Sanctions) (Overseas Territories) Order 2013
7. Burma (Sanctions) (Overseas Territories) Order 2013
8. Ukraine (Sanctions) (Overseas Territories) (No. 2) Order 2014
9. Ukraine (Sanctions) (Overseas Territories) (No. 3) Order 2014
10. Russia, Crimea and Sevastopol (Sanctions) (Overseas Territories) Order 2014, as amended¹⁴
11. Burundi (Sanctions) (Overseas Territories) Order 2015
12. Iran - Iran (Sanctions) (Overseas Territories) Order 2016, amended

¹¹ Belarus (Restrictive Measures) (Overseas Territories) (Amendment) Order 2011

¹² Syria (Restrictive Measures) (Overseas Territories) (Amendment) Order 2012
 Syria (Restrictive Measures) (Overseas Territories) (Amendment) Order 2013
 Syria (Restrictive Measures) (Overseas Territories) (Amendment) (No. 2) Order 2013
 Syria (Restrictive Measures) (Overseas Territories) (Amendment) Order 2014
 Syria (Restrictive Measures) (Overseas Territories) (Amendment) Order 2015
 Syria (Restrictive Measures) (Overseas Territories) (Amendment) (No. 2) Order 2015
 Syria (Restrictive Measures) (Overseas Territories) (Amendment) Order 2017

¹³ Zimbabwe (Sanctions) (Overseas Territories) (Amendment and Revocation) Order 2015

¹⁴ Russia, Crimea and Sevastopol (Sanctions) (Overseas Territories) (Amendment) Order 2014
 Russia, Crimea and Sevastopol (Sanctions) (Overseas Territories) (Amendment) Order 2015

13. Venezuela (Sanctions) (Overseas Territories) Order 2018

2.4.3 Domestic Financial Sanctions and Restrictions

In certain circumstances, the UK can impose its own financial sanctions and restrictions under its own domestic 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)

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>

By the Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order 2011 (“TAFSA Order”), the TCI also can implement domestic sanctions and restrictions.

The Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order 2011, extended to the TCI Part 1 (including Part 1 of Schedule 2) of the Terrorist Asset-Freezing etc. Act 2010 (TAFSA). The purpose of Part 1 of the TAFSA was 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. It also provides for enforcement of Regulation (EC) 2580/2001 on specific measures directed at certain persons and entities with a view to combating terrorism. Unlike other sanctions orders this Order is not specific to any country or terrorist organization.

2.5 Who does financial sanctions apply to

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

- a) any person¹⁵ in the Islands,
- b) any person elsewhere who is–

¹⁵ Natural or legal

- 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.



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.

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 UN and EU Designations

The UK Office of Financial Sanctions Implementation (OFSI), its competent authority for implementing sanctions and making domestic designations maintains a consolidated list of 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. The Consolidated list provides information to help you decide whether you are dealing with someone who is subject to sanctions. Currently the FSC provides links to that list and the UN and EU lists on its sanctions webpage on its website at - <http://tcifsc.tc/aml-ctf-sanctions/sanctions>

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;
- 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).

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 and make a report to the FIA.

3.2.2 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 TAFE as extended to the TCI. The TAFE provides that persons or entities designated by the UK Treasury or listed pursuant Article 2(3) of Council Regulation (EC) 2580/2001 of 27 December 2001 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 (in the case of an 'interim' designation) or believe (in the case of a 'final' designation) 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. The Governor in making the designation does so on the basis that it is necessary to protect the public from terrorism.

An 'interim' designation is for a period not in excess of 30 days and a 'final' designation for a period not in excess of one year, unless renewed.

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

Upon making a designation pursuant to the TAFE the Governor will take steps to publicise the designation generally unless one or more of the conditions contained in the TAFE exists for restricting the general publication. If such conditions do exist, then he may inform persons as he considers appropriate. Within hours of the making a designation, a legal notice will be issued, which will be placed on the FSC and AGC's websites and will also be published in the Gazette.

The public notification of designations pursuant to the TAFE will include -

- a) The requirement for you to engage in asset freezing and the obligations that go along with that (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 unclarity in identity data).
- d) Information on the point of contact within the public sector where enquiries may be directed for further guidance and assistance.

3.2.3 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.

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, targeted financial sanctions must be taken against the person or entity without delay. This means that immediately all persons, natural and legal within the TCI must take action to the freezing of funds and economic resources or other assets of designated persons or entities and you are 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.

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 Report¹⁶ to the FIA, in accordance with AML/CFT laws and make a report the Governor unless there is an exemption in the Sanctions Orders or the TAFE 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.¹⁷ In making the assessment of suspicion you may consider your 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.¹⁸

You are reminded that you must keep records¹⁹ 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.

¹⁶ The form can be downloaded here <https://fia.tc/wp-content/uploads/2017/03/ORD92014-TERREPF-0515-1.0.pdf>

¹⁷ OFSI - Financial Sanctions Guidance page 13

¹⁸ FIA-TCI - Guidance on Suspicious Activity and Suspicious Transaction Reporting page 9

¹⁹ See Part 7 of the AML-CFT Code

3.4 Ownership and Control²⁰

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 is in line with EU guidance and considers that 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.

‘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 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 has not 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.

3.4.3 Control

In line with EU 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.

²⁰ OFSI - Financial Sanctions Guidance page 15-16

- 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)

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

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

3.5 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 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 TAFE.

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 FCO 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 Order 2012, as amended, 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.

Unlike the Sanctions Orders, under the TAFE the Governor may grant licenses in respect of any of the prohibited activities contained in the TAFE. Before making a license under the TAFE the Governor must consult UK authorities. Licenses in respect of persons or entities designated by the UK Treasury or listed pursuant Article 2(3) of Council Regulation (EC) 2580/2001 of 27 December 2001 require consultation with the UK Treasury. In respect of any designations made by the Governor under the TAFE 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.

4.2 The Licensing Process

4.2.1 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 FCO Sanctions Team²¹. 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 FCO for onward forwarding to the relevant UN Sanctions Committee.

4.2.2 Under the TAFA

The TAFA does not contain any specific licensing grounds and instead contain a general power for the Governor to issue licences. A written request for a licence should be submitted to the Governor setting out the full details of the proposed transaction.

4.2.3 Licensing Timeframe

The requirement for the Governor to seek the Secretary of State's consent and the involvement of the FCO 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.

²¹ FCO - International Organisation Department - Guidance on Implementation of Sanctions in the Overseas Territories.

4.2.3.1 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.

4.2.3.2 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.

4.2.4 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.

4.2.5 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 TAFE specifically provides that an application for judicial review may be made to the Supreme Court where the Governor refuses to grant a licence.

4.2.6 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.

4.2.7 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.

4.3 Exemptions – Crediting Frozen Accounts

The Sanctions Orders and the TAFE 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 or the TAFE 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 Delisting²²

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.

5.1 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 FCO, who will decide whether to take the delisting forward to the relevant UN Sanctions Committee or the Security Council.

5.2 EU Listings

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

²² OFSI - Financial Sanctions Guidance pages 35-36

5.3 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. Legal correspondence should be sent to:

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

5.4 Designations by the Governor

Designations under the TAFE 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 TAFE.

The Sanctions Orders and the TAFE 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 TAFE 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 TAFE.

If you fail to 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 TAFE, 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 TAFE 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

10/08/2018

ISIL (Da'esh) and Al-Qaida Organisations

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 entry has been added to the consolidated list and are now subject to an asset freeze.
 - AAW (Group ID: XXXXX) (the "DP")

Legislative Details

3. On 9 August 2018, the United Nations Security Council Committee established by Resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning the ISIL (Da'esh) and Al Qaida Organisations approved the addition of 1 entry to its list of individuals and entities subject to an asset freeze.
4. Unless the DPs are listed under EU Regulation 881/2002 by 9 September 2018, the asset freeze will cease to apply from 11:59 p.m. on 8 September 2018 until the date upon which the DP is 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 assets or making them available (directly or indirectly) to such persons unless licensed by the Governor;
 - iv. report any findings to Governor, together with any additional information that would facilitate compliance with the Sanctions Order ;
 - v. provide any information concerning the frozen assets of designated persons to the Governor. Information reported to Governor may be passed on to other regulatory authorities or law enforcement
6. Failure to comply with financial sanctions legislation or seeking 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/2018/sc13452.doc.htm>
8. Further details on the UN measures in respect of the ISIL (Da'esh) and Al Qaida Organisations 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 ISIL (Da'esh) and Al Qaida Organisations financial sanctions page on the GOV.UK website:
<https://www.gov.uk/government/collections/financial-sanctions-regime-specificconsolidated-lists-and-releases>
10. For more information please see the OFSI guide to financial sanctions:
<https://www.gov.uk/government/publications/financial-sanctions-faqs>

Enquiries

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

The International Division
p.p. H. E. The Governor
2nd Floor, Waterloo Plaza
Waterloo Road
Grand Turk
Turks and Caicos Islands
[AG Chambers@gov.tc](mailto:AG_Chambers@gov.tc)

ANNEX TO NOTICE**FINANCIAL SANCTIONS: ISIL (DA'ESH) AND AL-QAIDA ORGANISATIONS**

Individuals

- 1.
- 2.
- 3.

International Division
Attorney General's Chambers
10/08/2018

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 UN and EU sanctions regimes reflected in the Sanctions Orders²³ extended to the TCI.

For licence applications relating to the Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order 2011 (TAFE Order) 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 EU or UN level). This application and the supporting documents will be disclosed to the UK Foreign and Commonwealth 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.

²³ The United Kingdom, to ensure that Overseas Territories can implement the sanctions agreed in the UN and the EU 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: _____

Last

First

M.I.

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 and Commonwealth 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.