



BERMUDA

Ministry of Legal Affairs and Constitutional Reform  
Financial Sanctions Implementation Unit

# Bermuda Financial Sanctions

## General Guidance for Financial Sanctions



September 2021

This Financial Sanctions guidance is produced by the Financial Sanctions Implementation Unit (FSIU), a unit of the Ministry of Legal Affairs Headquarters, which, pursuant to the Governor's delegation, is responsible for carrying out certain functions with respect to the implementation of financial sanctions for terrorism, terrorist financing and proliferation financing in Bermuda.

The guidance provides important information outlining your obligations under Bermuda's financial sanctions regime, including the approach for licencing and compliance issues.

As sanctions measures are subject to change you should also refer to the relevant, up-to-date legislation as well as FSIU or sector specific guidance where it is available.

This guidance does not constitute legal advice and the FSIU cannot provide legal advice in relation to the application of international sanctions measures to specific cases. As appropriate you should obtain independent legal advice to assist in understanding your obligations in order to ensure your compliance with Bermuda's sanctions regime.

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# 1 Financial Sanctions Overview

## What are financial sanctions?

1. Financial sanctions are enforcement measures used by the international community to achieve, maintain or restore international peace and security in a specified regime. Financial sanctions are imposed on a regime, individual within a regime or entity, by the United Nations (UN), or the United Kingdom (UK) as a tool to comply with certain foreign policy or national security objectives. The effect of financial sanctions is to:
  - limit the provision of certain financial services
  - restrict access to financial markets, funds and economic resources<sup>1</sup>.

## Why are financial sanctions used?

2. Financial sanctions are largely imposed to:
  - **coerce** a regime, or individuals into changing their behaviour, or aspects of it, by increasing the cost on them to such extent that they decide to cease the offending behaviour
  - **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**, resulting in stigmatising and potentially isolating the target, or as a way of sending broader political messages domestically or internationally; and
  - **protect the value of assets** that have been misappropriated from a country until such assets can be repatriated
3. The range of sanctions available include comprehensive economic and trade sanctions, and more targeted measures such as arms embargoes and financial restrictions e.g. asset freezing measures. The Government of Bermuda is committed to playing its role in the maintenance of international peace and security, and therefore as a British Overseas Territory (OT), implements the international sanctions obligations of the United Kingdom (UK). It should be noted that having an effective targeted financial sanctions regime in relation to terrorism and proliferation financing is required under Recommendations 6 and 7 of the [Financial Action Task Force \(FATF\) Standards](#)<sup>2</sup>.

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<sup>1</sup>UK Financial Sanctions: General Guidance, page 5

<sup>2</sup>The FATF is the inter-governmental body, established by the G7 in 1989, which sets the global standards for combating money laundering, terrorist financing and proliferation financing (the FATF Standards). Bermuda is a member of the Caribbean Financial Action Task Force (CFATF), an associate member of the FATF. The Bermuda Government supports the work of the FATF and has demonstrated a strong commitment, via its membership in CFATF, to helping the organisation carry out its mandate.

## Who makes and implements sanctions?

4. Financial sanctions are measures imposed by the United Nations (UN) and member states are required to implement them through Resolutions<sup>3</sup> passed by the UN Security Council.
5. The United Kingdom (UK) also autonomously imposes financial sanctions. These sanctions are implemented via a combination of UK regulations (statutory instruments) and primary legislation. Namely:
  - Sanctions and Anti-Money Laundering Act
  - Counter Terrorism Act 2008
  - Anti-Terrorisms, Crime and Security Act 2001

## Financial sanctions in force in Bermuda

6. Bermuda is subject to the same financial sanctions imposed in the UK. However, for policy reasons almost all of the OT Orders do not extend to Bermuda and are brought into force under the [International Sanctions Act 2003](#) (International Sanctions Act). The International Sanctions Act empowers the Minister responsible for Legal Affairs (Minister) to make such provisions as appear to be necessary or expedient to give effect in Bermuda to the UK's sanctions obligations.
7. Financial sanctions imposed in the UK by country, administration or terrorist group are listed on the HM Treasury's Office of Financial Sanctions Implementation (OFSI) website and can be found here: <https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>. The UK sanctions regimes are updated as needed and you should consult the OFSI website for accurate information regarding sanctions regimes in force in the UK.
8. The UK sanctions measures in the form of Overseas Territory Orders in Council (OT Orders) are extended to Bermuda for the various sanctions regimes through the Minister's powers pursuant to the International Sanctions Act 2003. Each OT Order implements the UN and/or UK sanctions measures.
9. The [International Sanctions Regulations 2013](#) (2013 Regulations) were made pursuant to the International Sanctions Act. The 2013 Regulations list all of the sanctions regime-related Orders in force in Bermuda, and is amended as and when required, providing an up-to-date list of Bermuda's Sanctions Regime (Orders may be added or removed from Schedule 1 of the 2013 Regulations).
10. There are currently 36 regimes that are subject to financial sanctions in the UK that are in force in Bermuda. The list is also available on the government portal [here](https://www.gov.bm/international-sanctions-measures) (<https://www.gov.bm/international-sanctions-measures>).

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<sup>3</sup> The UN website provides further information on financial sanctions here: <https://www.un.org/sc/suborg/en/sanctions/information>

## **The Bermuda Governor's duties and powers**

11. Under each of the Orders, the Governor of Bermuda has certain powers and duties in relation to the administration of financial sanctions measures. Such powers and duties include: the power to designate persons; the duty to publish certain lists; the power to gather information; and the power to issue and revoke licences.
12. The Governor's obligation to publish and maintain a list of designated or listed persons (those subject to targeted financial sanctions) and restricted goods is provided for in the 2013 Regulations, which specifies that the publication of a web address providing links to such lists satisfies the Governor's said obligation<sup>4</sup>.

## **Delegation of Governor's functions to The Minister of Legal Affairs and Constitutional Reform**

13. Effective 25 September 2018, the International Sanctions (Delegation of Governor's Functions) Notice 2018 (BR 104 / 2018) delegated the following Governor's functions to The Minister of Legal Affairs and Constitutional Reform, to:
  - obtain evidence and information;
  - issue and revoke licences;
  - serve as a reporting depository;
  - authorise the exercise of powers in respect of customs powers and investigations or in respect of evidence and information pursuant to the Orders listed in Schedule 11 of the 2013 Regulations; and
  - specify in the currency of the Territory the equivalent amount which is to be taken to sums expressed in sterling in the relevant Order listed in Schedule 1 of the 2013 Regulations.

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<sup>4</sup>The webpage containing the link and further information is [www.gov.bm/international-sanctions-measures](http://www.gov.bm/international-sanctions-measures).

**Table 1: Entities and Responsibilities in Bermuda’s Sanctions Framework**

Entity	Responsibility
Foreign Commonwealth and Development Office (FCDO)	Responsible for the UK’s international sanctions policy, including all international sanctions regimes and designations  Negotiates all international sanctions, which includes negotiating international sanctions for Bermuda.
The Governor	Competent Authority (certain powers are delegated to Minister). Responsible for making designations under Bermuda’s domestic regime and at the request of another country.
The Minister of Legal Affairs and Constitutional Reform	Delegated certain functions by the Governor for implementing financial sanctions, for example in regards to receiving reports and issuing and revoking licences (as per Delegation Notice).
Financial Sanctions Implementation Unit	Provides support to the Minister of Legal Affairs and Constitutional Reform in carrying out certain functions delegated to the Minister from the Governor.  Responsible for raising awareness of financial sanction and compliance responsibilities through outreach, collaborates with law enforcement and operational partners in assessing suspected breaches and ensures robust enforcement.  Engages with UK competent authorities.
Customs Department	Implements trade sanctions and embargoes and enforces breaches of trade sanctions.
Department of Immigration	Assists with the Implementation of travel bans.
Bermuda Police Service (BPS)	Investigates and enforces breaches of financial sanctions.
Supervisory Authorities	Regulates for compliance with financial sanctions obligations. Can impose monetary penalties for regulatory breaches.

**What do financial sanctions measures involve?**

14. Financial sanctions may take many forms as they are used to respond to various circumstances. Types of restrictions commonly used include:

- **Targeted asset freezes** apply to named individuals, entities and organisations, and restrict access to funds and economic resources. An individual or entity subject to an asset freeze, or a designated person will be listed on OFSI’s consolidated list:

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



- **Restrictions on a wide variety of financial markets and services** can apply to named individuals, entities and bodies, specified groups and also entire sectors. Such restrictions 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 certain payments being made or received
  - restrictions on the provision of financial, insurance, brokering or advisory services or other financial assistance
  
- **Directions to cease all business** these measures specify the type of business and can apply to a specific person, group, sector or country.

### Who must comply with financial sanctions

15. All individuals and legal entities in who are within or undertake activities in Bermuda must comply with UN and UK financial sanctions that are in force in Bermuda. Further, financial sanctions will apply to a 'territory person' wherever they are in the world, as well as apply to Bermuda registered ships and aircraft wherever they are in the world.
  
16. Under the various Orders, there are prohibitions related to certain specified persons (designated persons or listed persons) and restricted goods. In March 2017, the Governor issued the International Sanctions Notice 2017<sup>5</sup> that included the web address [www.gov.bm/international-sanctions-measures](http://www.gov.bm/international-sanctions-measures) which provides links to the consolidated list published by the UK Treasury's Office of Financial Sanctions Implementation (OFSI). The publication of this link to the consolidated list fulfils the obligation to publish a list of designated persons in respect of each applicable Order, listed in Schedule 1 to the 2013 Regulations.

### Other unilateral sanctions

17. In addition to sanctions imposed by the UK other countries may impose their own unilateral sanctions or enforce sanctions operated or imposed by other countries. By way of example the United States administers its domestic sanctions programme through the US Treasury's Office of Foreign Assets Controls (OFAC) and may impose sanctions that are not imposed by the UK.
  
18. Compliance with sanctions imposed by other countries is not required under Bermuda's sanctions legislative framework, however persons or entities may be affected by foreign sanctions, for example because of the ownership of their business by a foreign corporation, or because of where or how the business is operated. In addition, the nature of much international trade finance means financial institutions and DNFBPs operating in Bermuda may encounter other sanctions regimes. The FSIU cannot advise

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<sup>5</sup> The 2017 Notice revoked and replaced the International Sanctions Notice 2013

you on matters relating to compliance with foreign sanctions (i.e. sanction regimes not in force in Bermuda or the UK) .

**WITHOUT DELAY implementation of UN sanctions:**

Under the UK's autonomous sanctions regime, where listings are made under a new UN Security Council resolution or sanctions committee, such new listings will have effect in UK law via regulations made under the Sanctions Act 2018. These regulations are extended to the UK's Overseas Territories. The FCDO will publicise the new UN listings; OFSI will add all those subject to financial sanctions to the Consolidated List. Upon receipt of the updated notice from OFSI, the FSIU will publish the new listing and alert Supervisors immediately.

## 2 Who is subject to financial sanctions

19. OFSI publishes a “**consolidated list**” of the persons, organisations and businesses subject to financial sanctions (or asset freeze targets) under UN sanctions and the UK’s autonomous financial sanctions legislation. The entities/persons listed are known as designated persons. The consolidated list is maintained by OFSI and a direct link is also on the Bermuda Government’s sanctions-measures webpage.

The consolidated list can be found here:

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

20. The list includes all designated persons subject to UN sanctions, which are implemented via UK regulations, and those persons subject to domestic designations under UK legislation. OFSI provides the consolidated list to assist persons and businesses to comply with financial sanctions and aims to update the Consolidated List within one working day for all new UN and UK listings that come into force in the UK.
21. OFSI also maintains a separate list of entities subject to specific capital market restrictions that are not contained on the Consolidated List<sup>6</sup>. The list can be found at: <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/ukraine-list-of-persons-subject-to-restrictive-measures-in-view-of-russias-actions-destabilising-the-situation-in-ukraine>.
22. For further information on the restrictions that apply to these entities please see the Russia Sanctions Guidance on GOV.UK: <https://www.gov.uk/government/publications/financial-sanctions-ukraine-sovereignty-and-territorial-integrity>

### UK Sanctions List

23. It is worth noting that the UK’s Foreign Commonwealth and Development Office (FCDO) also publishes a consolidated list in respect of all sanctions in force in the UK (not just financial sanctions) and that list can be found here: <https://www.gov.uk/government/publications/the-uk-sanctions-list>

### Bermuda Sanctions List

24. When a domestic designation occurs the designated person or entity is placed on the Bermuda Sanctions List. This list is on the sanctions measures webpage and is maintained by the FSIU.

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<sup>6</sup> UK Financial Sanctions: General Guidance, page 11

25. If a business or individual has been de-listed and their name still appears on the consolidated list, the entity should email OFSI ([ofsi@hmtreasury.gsi.gov.uk](mailto:ofsi@hmtreasury.gsi.gov.uk)) with evidence of the de-listing for UK delisting. If a business or individual has been de-listed and their name still appears on the Bermuda sanctions list, the entity should email the FSIU ([fsiu@gov.bm](mailto:fsiu@gov.bm)) with evidence of the delisting.

## How to use the consolidated list

26. The consolidated list is a valuable resource as it contains relevant information to aid the identification of designated persons. Information on an individual may include:
- full name
  - aliases
  - date of birth
  - nationality
  - national identification number
  - passport details
  - last known address
  - employment information or role
  - government role
  - date person was added to the list
27. Where the name of an individual or entity matches one or more entries on the consolidated list, this will be considered a **name match**. However, this does not necessarily mean that the individual or entity is the same entity on the list. If you are satisfied that this is the case, you are not required to take further action.
28. If the individual or entity matches all the information on the consolidated list, this is likely to be a **target match**.
29. If you have completed the required screening and remain unsure on whether you have a target match, you may contact the FSIU for assistance.
30. Where you have a target match the required steps to take will depend on the specific sanctions that apply to the target. Asset freezes are discussed further in Chapter 3 below.

## How to get “consolidated list” updates?

### OFSI updates

31. OFSI publishes Notices describing changes to financial sanctions on GOV.UK:

Regime specific consolidated lists-

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

Consolidated list-

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

32. You can subscribe to OFSI to receive email updates whenever a new Notice is published by clicking on the link here:

<https://public.govdelivery.com/accounts/UKHMTREAS/subscriber/new>

### **FSIU updates**

33. When the FSIU receive a notice from OFSI advising of a change to a financial sanctions regime the FSIU:

- updates the sanctions webpage to reflect the change, the link is here: [www.gov.bm/international-sanctions-measures](http://www.gov.bm/international-sanctions-measures)
- sends an email notification to the Supervisory Authorities containing: the relevant update information; advises them to share with their supervised entities; and sets out obligations the supervised entities must follow to comply with the sanctions notice.

# 3 Financial sanctions restrictions and prohibitions

## Restrictions and prohibitions

34. Certain activities or behaviour are **prohibited** where financial sanctions apply. Such activities include making any funds or other assets, economic resources, or financial or other related services, available, directly or indirectly, wholly or jointly, for the benefit of designated persons or entities; or behaving in a certain way if financial sanctions apply.
35. Always refer to the up-to-date version of the legislation imposing the specific financial sanctions which apply in each case to understand exactly what is prohibited. Prohibitions are interpreted widely, which means a wide range of actions will be considered by the FSIU when assessing whether a breach of financial sanctions has occurred.

## Asset Freezes:

### What are they?

36. An asset freeze is a measure which prohibits:
  - 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

Any funds or economic resources must be frozen immediately by the entity/person in possession or control of them. Freezing the assets does not involve a change in ownership of the frozen funds/economic resources, nor are they confiscated or transferred to the FSIU.

### What you are required to do?

37. If you know or have “**reasonable cause to suspect**” that you are in possession or control of, or are otherwise dealing with funds or economic resources owned, held or controlled by a designated person you must:
  - freeze the funds or economic resources immediately

- not deal with them or make them available to, or for the benefit of, the designated persons, unless:
  - there is an exemption in the legislation you can rely on
  - you have been issued a licence from the FSIU
- report them to the FSIU and if you are under a supervisory regime, your supervisor (see Chapter 4)

38. **Reasonable cause** to suspect refers to an objective test that asks “Are there factual circumstances from which an honest and reasonable person should have inferred knowledge or formed a suspicion?”.

**WARNING!**  
**BREACHING SANCTIONS REQUIREMENTS MAY RESULT IN  
 CRIMINAL PROSECUTION**

### **Asset freezing definitions**

39. **Funds**<sup>7</sup> means financial assets and benefits of every kind, including but not limited to:
- a) cash, cheques, claims on money, drafts, money orders and other payment instruments
  - b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations
  - c) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts
  - d) interest, dividends or other income on or value accruing from or generated by assets
  - e) credit, right of set-off, guarantees, performance bonds or other financial commitments
  - f) letters of credit, bills of lading, bills of sale
  - g) documents showing evidence of an interest in funds or financial resources
  - h) any other instrument of export financing.

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<sup>7</sup> Section 60(1) of the UK’s Sanctions and Anti-Money Laundering Act 2018

40. **Economic resources**<sup>8</sup> generally means assets of every kind – tangible or intangible, movable or immovable – which are not funds, but may be used to obtain funds, goods or services. This includes but is not limited to:
- precious metals or stones • antiques • vehicles • property
41. **Goods** generally means items, materials and equipment.
42. **Crypto assets** (digital assets) are covered by the definition of funds set out in section 60 of the Sanctions and Anti-Money Laundering Act 2018. Accordingly these assets are caught by the financial sanctions restrictions.
43. **Dealing with funds**<sup>9</sup>: a person deals with funds if the person:
- (a) uses, alters, moves, transfers or allows access to the funds,
  - (b) deals with the funds in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination, or
  - (c) makes any other change, including portfolio management, that would enable use of the funds.
44. **Dealing with economic resources**<sup>10</sup>: a person deals with economic resources if the person:
- a) exchanges the economic resources for funds, goods or services, or
  - b) uses the economic resources in exchange for funds, goods or services (whether by pledging them as security or otherwise).
45. **Making available funds or economic, directly or indirectly, to a designated person**<sup>11</sup> - funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit. Such conduct may constitute a criminal offence.
46. **“Financial benefit”** includes the discharge (or partial discharge) of a financial obligation for which the designated person is wholly or partly responsible.
47. **Making available funds or economic resources for the benefit of a designated person** - funds or economic benefit are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit; as above this conduct may constitute a criminal offence.

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<sup>8</sup> Section 60(2)

<sup>9</sup> Part 4 of the Democratic People’s Republic of Korea (Sanctions) (EU Exit) Regulations 2019; the same definitions are found in other Sanctions Act Regulations, for the various sanctions regimes, which are modified and implemented in Bermuda through Orders in Council and extended under the International Sanctions Regulations 2013

<sup>10</sup> ibid

<sup>11</sup> ibid



In these circumstances, 'financial benefit' includes the discharge, in whole or in part, of a financial obligation for which the designated person is wholly or partly responsible.

48. Useful examples demonstrating how the FSIU will apply this prohibition are noted in the **Frequently Asked Questions**, published with this Guidance.

### **Other financial restrictions**

49. As noted previously, financial sanctions regimes may include other restrictions in addition to asset freezes. Where these exist they are listed on the individual regime pages on GOV.UK:

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

## 4 Ownership and control

50. When a person is designated their name is 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. The entities may not be designated themselves, and thus not placed on the consolidated list; however such entities are also subject to financial sanctions<sup>12</sup>.

### Ownership

51. The key criterion for 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.
52. "Owned" is interpreted to include direct and indirect ownership. If it is determined a designated person (DP) is the ultimate beneficial owner of an entity (for example, DP owns a corporate body that owns another corporate body), the view taken is that all entities that are part of the ownership chain are subject to financial sanctions.
53. UK sanctions regulations define owned or controlled as follows:

*A person who is not an individual ("C") is "owned or controlled directly or indirectly" by another person ("P"):*

*a) if P—*

- a) holds directly or indirectly more than 50% of the shares in C,*
- b) holds directly or indirectly more than 50% of the voting rights in C,*
- or*
- c) holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of C; **and***

- b) it is reasonable, having regard to all the circumstances, to expect that P would (if P chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of C are conducted in accordance with P's wishes.*

### Minority interests

54. Where a designated person has a minority interest in another legal person or entity this may not mean that financial sanctions also apply to them as the ownership criterion has not been met (however, please also refer to the "Control" section below).

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<sup>12</sup> UK Financial Sanctions: General Guidance, page 17

55. It is important for entities to be alert to any changes in the stake held by a designated person in case it increases to greater than 50% (or the DP obtains majority interest) at which point financial sanctions will also apply to that legal person or entity.

## Control

56. Whether, a designated person is in “control” of another legal person or entity is another consideration. Financial sanctions apply in this situation even where a designated person may only possess a minority interest (as discussed above).
57. An entity is owned or controlled directly or indirectly by another person in any of the following circumstances<sup>13</sup>:
- The person holds, directly or indirectly, more than 50% of the shares or voting rights in an entity;
  - The person has 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. By way of example this could include:
    - Having appointed, solely as a result of exercising one's voting rights, a majority of the members of the administrative, management or supervisory bodies of an 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 an entity, a majority of shareholders' or members' voting rights in that legal person or entity;
    - Having the right to exercise a dominant influence over an entity, pursuant to an agreement entered into with that entity, or to a provision in its Memorandum or Articles of Association, where the law governing that entity permits its being subject to such agreement or provision;

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<sup>13</sup> UK Financial Sanctions: General Guidance, page 17

- Having 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. By way of 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. Similarly, a designated person registering assets in the name of associates or family members.
58. Where any of the above criteria are met, and the person who owns or controls the legal person or entity is also a designated person, then financial sanctions will also apply to that legal person or entity in its entirety (i.e. these assets should also be frozen). The prohibitions on making funds or economic resources available directly or indirectly to a designated person, also prohibit making them available to an entity who is owned or controlled, directly or indirectly, by the designated person. Where possible or necessary, the Bermuda Government will look to designate owned or controlled legal persons/entities/individuals in their own right.

### **Joint Interests**

59. For the purposes of the asset freeze a designated person is taken to own funds/economic resources even if they are owned jointly with another person, or where the designated person only owns part of them. Further, a designated person is taken to own funds/economic resources where the designated person's ownership consists of any interest (whether legal or equitable).
60. Moreover, if two or more persons hold shares or rights jointly, each person 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 such circumstances, all parties subject to the joint arrangement are considered as owning those shares or rights. The above should be considered when evaluating the shares or voting rights a person may have in an entity. Where such arrangements or the wording above applies, the jointly owned assets (funds/economic resources) should be frozen in their entirety<sup>14</sup>.

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<sup>14</sup> UK Financial Sanctions: General Guidance, page 18

# 5 Your reporting responsibilities to the FSIU

## Reporting Obligations

61. Financial Sanctions obligations under the Bermuda sanctions regime require **all** relevant firms, natural and legal persons, entities and bodies to supply the FSIU as soon as practicable, with any information if they know or reasonably suspect a person is designated or has committed offences under the International Sanctions Regulations, where such information is received in the course of carrying on their business. The reporting obligation includes all legal persons; not just financial institutions and professionals.
62. The International Sanctions Regulations 2013, which enforces the UK Regulations, set out specific reporting obligations for a “**relevant firm**”.

## Relevant Firm

63. Definitions of relevant firms are set out in the OT Orders for each sanctions regime. In essence, a **relevant firm**<sup>15</sup> is defined as –
  - a) a person that has permission under Part 4A of the Financial Services and Markets Act 2000 (permission to carry on regulated activity);
  - b) an undertaking that by way of business—
    - i) operates a currency exchange office,
    - ii) transmits money (or any representation of monetary value) by any means, or
    - iii) cashes cheques that are made payable to customers;
  - c) a firm or sole practitioner that is—
    - i) a statutory auditor within the meaning of Part 42 of the Companies Act 2006 (statutory auditors), or
    - ii) a local auditor within the meaning of section 4(1) of the Local Audit and Accountability Act 2014 (general requirements for audit)(a);
  - d) a firm or sole practitioner that provides to other persons, by way of business—
    - i) accountancy services,
    - ii) legal or notarial services,

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<sup>15</sup> The Democratic People’s Republic of Korea (Sanctions) (Overseas Territories) Order 2020, Schedule 2, Section 69 provides an example

- iii) advice about tax affairs, or
  - iv) trust or company services within the meaning of paragraph (2);
- e) a firm or sole practitioner that carries out, or whose employees carry out, estate agency work;
- f) the holder of a casino operating licence within the meaning given by section 65(2)(a) of the Gambling Act 2005 (nature of a licence)(b);
- g) a person engaged in the business of making, supplying, selling (including selling by auction) or exchanging—
- i) articles made from gold, silver, platinum or palladium, or
  - ii) precious stones or pearls.

### What must relevant firms do?

64. If you are a relevant firm, you must report to the FSIU as soon as practicable if you know or have a reasonable cause to suspect that a person:
- is a designated person;
  - has committed an offence under the legislation.
65. You are required to report this information, or other matters on which your knowledge or suspicion is based, if it came to you in the course of conducting your business.
66. When reporting to the FSIU, you **must** include:
- the information or other matters on which the knowledge or suspicion is based; and
  - any information that you hold about the individual or designated person, by which they can be identified.
67. If you know or have a reasonable cause to suspect that a person is a designated person, and that person is a customer of your institution or business, you must also state the nature and amount or quantity of any funds or economic resources held by you for that customer. For examples of the type of information that is required to be reported see Table 2 below.
68. If you are unsure of any of your reporting obligations, you should seek independent legal advice.

**Table 2: Examples of the type of information to be reported<sup>16</sup>**

<p>A designated person or entity</p>	<p>A customer of a relevant firm is a suspected or known designated person or entity.</p> <p>In addition to providing the FSIU with any information you hold regarding the designated person/entity that enables identification of them, if the designated person is a customer/client you must also inform the FSIU about the nature, amount and quantity of any funds and or economic resources held on behalf of the customer/client at the time this knowledge or suspicion arose.</p>
<p>Funds and economic resources</p>	<p>Details must be provided regarding the nature, amount or quantity of any funds and economic resources held by your firm.</p> <p>Funds or economic resources may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• cash</li> <li>• cheques</li> <li>• crypto assets</li> <li>• bond futures</li> <li>• precious metals or stones</li> <li>• vehicles</li> <li>• antiques</li> </ul>
<p>Credits to frozen accounts</p>	<p>A relevant firm must inform the FSIU immediately whenever it credits a frozen account where it receives funds transferred to it for the purpose of crediting such account.</p> <p>*a relevant firm does not need to report to the FSIU when it credits an account with interest or other such earnings.</p>

## How to report

69. A Compliance Reporting Form (CRF) must be completed when making a report to the FSIU. The CRF should be used when reporting suspected designated persons, assets you have frozen, and suspected breaches of financial sanctions and should be emailed to [fsiu@gov.bm](mailto:fsiu@gov.bm), and can also be sent to the Financial Sanctions Implementation Unit<sup>17</sup>.

<sup>16</sup> UK Financial Sanctions: General Guidance, page 21

<sup>17</sup> Address: FSIU, Minister of Legal Affairs and Constitutional Reform Headquarters, Global House 4<sup>th</sup> Floor, 43 Church Street, Hamilton HM 12, Bermuda

The CRF is located on the FSIU webpage here: <https://www.gov.bm/international-sanctions-measures>

70. All reports to the FSIU that involve a designated person should include the Group ID reference number. The Group ID is a unique identifier for a designated person which can be found in their entry on the consolidated list:  
<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>
71. Any information provided to the FSIU will only be used for the purposes of which it is received.

### **Responsibilities of relevant firms**

72. If you are a relevant firm you must have adequate resources to implement policies and procedures to comply with Bermuda's Sanctions Regime.

Your resources should provide for adequate policies and procedures to comply with your sanctions obligations, which should be properly documented, reviewed and endorsed by senior management, including the Board should be documented, reviewed and endorsed by senior management.

73. You should also determine your risk profile with reference to the following non-exhaustive list of risk factors:
- customer, product and activities
  - distribution channels
  - complexity and volume of transactions
  - processing and systems
  - operating environment
  - screening processes of intermediaries
  - geographical risk
  - any other relevant sanctions regulations
74. Relevant staff should all be trained and assessed on how to comply with your financial sanctions compliance procedures. Such procedures should be recorded, audited and updated.
75. Your processes should include adequate mechanisms at the start of a new business relationship, and on an ongoing basis, in order to prevent designated persons from entering into prohibited transaction. Such measures may include screening the names of your clients, including any beneficial owners, against the consolidated list to ensure



that you are not engaging in business with a designated person. Existing clients should also be checked against consolidated list on an ongoing basis to capture newly designated persons that have been added to the list.

76. It is your responsibility to ensure that you are receiving notifications on a timely basis of changes to the consolidated list.
77. If at any time you know or have reasonable cause to suspect that you are in possession or control or are otherwise dealing with the funds or economic resources of a designated person, you **MUST**:
- immediately freeze the funds and or economic resources of the designated person;
  - not enter into financial transactions or provide financial assistance or services in relation to:
    - the designated person or any third party;
    - proliferation and nuclear or other sanctioned activities unless there is an exemption in legislation in which you can rely on, or unless you have obtained a licence from the FSU.
  - Immediately report them to the FSU.
  - Complete the Compliance Reporting Form as soon as possible.
    - where you have already reported details of accounts, economic resources or other funds held frozen for designated persons, you are not required to report these details again.
    - If there are details of any other involvement with a listed individual or entity, directly or indirectly, or of any attempted transactions involving those individuals or entities, this should be reported to the FSU.
    - any failure to comply with financial sanctions legislation, or to seek to circumvent provisions is a criminal offence and may result in prosecution.

## **Powers to require information from you**

78. Under the OT Orders<sup>18</sup>, an authorised officer has powers to require you to provide information or produce any document or goods in your possession or control which he may require for the purpose of:

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<sup>18</sup> Article 19 -24 Schedule 2 of The Afghanistan (Sanctions) (Overseas Territories) Order 2020 and all other OOIC.

- establishing the nature and amount or quantity of funds or economic resources, owned, held or controlled by or on behalf of a designated person;
- establishing the nature and amount or quantity of funds or economic resources made available directly or indirectly to, or for the benefit of, a designated person;
- establishing the nature of any financial transactions entered into by a designated person;
- monitoring compliance with or detecting evasion of any provision of financial sanctions regulations including licensing and reporting conditions and obligations; and/or
- detecting or obtaining evidence of the commission of an offence.

79. For a complete list of the authorised officer's powers to request information, please refer to the legislation underpinning each particular financial sanctions regime.
80. The power to require information, or produce for inspection a document or goods, includes a power to specify the form in which the information or document should be given, and the period within which the information, document or goods should be provided or produced for inspection.
81. Where such a request is made, you must comply with it within such time and in such manner as may be specified in the request.
82. Failure to comply with a request for information, including providing false information, destroying documents or, otherwise intentionally obstructing the Governor when exercising these powers, is an offence and may result in a criminal prosecution.

## **Record keeping**

83. You should maintain records of any potential matches to names on sanctions lists, whether the match turns out to be a true match or a false positive.
84. You should, as a minimum, keep the following information about any match:
- the information or other grounds which triggered the match (i.e. a 'hit' provided by screening software);
  - any further checks or enquiries undertaken;
  - the Sanctions Regime;
  - the person(s) involved, including any members of compliance or senior management who authorised treatment of the match as a false positive;

- the nature of the relationship with the person or entity involved, including attempted or refused transactions;
- subsequent action taken (i.e. freezing accounts)
- if you consulted with, or filed a report with the FSIU.

### **Other reporting obligations**

85. As indicated above, you have a responsibility under the Bermuda sanctions regime to report to the FSIU, which is in addition to any other non-financial sanctions reporting obligations you may have. Other obligations may include reporting requirements by your supervisor/regulator or, if relevant, submitting Suspicious Activity Reports (SARs) to the Financial Intelligence Agency (FIA).
86. Take note that simply reporting to your regulator or the FIA does not meet your reporting obligations under the financial sanctions regimes. If you have information to report regarding financial sanctions, this must be sent to the FSIU at: [fsiu@gov.bm](mailto:fsiu@gov.bm).
87. If you are unclear about your reporting obligations, you should seek independent legal advice.

## 6 Exceptions and licensing

88. The following sections provide a general overview of the standard of exceptions and licensing grounds pursuant to financial sanctions obligations in the OT Orders. The grounds may vary from regime to regime so it is important that you check the relevant, up-to-date OT Orders.
89. Specific exceptions and licensing powers can allow an otherwise prohibited transaction(s) to take place in certain circumstances.
90. A licence is the written authorisation from The Minister of Legal Affairs and Constitutional Reform, with the consent of the UK Secretary of State, permitting the otherwise prohibited transactions. For UK Treasury designations under the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020, the Minister must consult with the UK Treasury before the issuance of a licence.
91. An exemption to a prohibition applies automatically in certain defined circumstances and does not require you to obtain a licence from the FSUI.

### Crediting Frozen Accounts

92. Asset freezing legislation generally permits you to make the following payments into a frozen account without the need for a licence from the FSUI, provided those funds are frozen after being paid into a frozen account:<sup>19</sup>
  - any interest or earnings on the account;
  - any payments due to a designated person under contracts, agreements or obligations that were concluded or arose before the date the person became sanctioned; and
  - any payment to a frozen account from a third party, provided that the incoming funds are also frozen and the third party informs FSUI of the transaction immediately without delay.

### Licensing overview

93. The Minister can only issue licences where there are specific and relevant licensing grounds providing the avenue to do so, and where the specific conditions in the grounds have been met. The available grounds can be found in the legislation underpinning each particular financial sanctions regime:  
<https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>

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<sup>19</sup> Exceptions and licenses provisions of UK sanctions regulations

**Please note that the Minister will only consider licensing those activities that fall within the licensing grounds set out in the relevant OT Order.**

94. In order to licence as proportionately as possible whilst mitigating the risk of terrorist financing, the Minister may also attach conditions to a licence. Licence conditions apply safeguards to ensure that funds or economic resources can be made available to designated persons in a way that protects against terrorist financing risks. In this way, appropriate conditions facilitate the granting of a licence that it might otherwise not be possible to grant.
95. The conditions that would apply to licences reflect two broad policy objectives:
- to ensure that designated persons do not have access to large amounts of cash, which can be more easily diverted to terrorist activity; and
  - to ensure that there is a reasonable audit trail to address terrorist finance risks and that the FSIU, on behalf of the Minister, can monitor compliance with the terms of the licence and identify if any breaches of the legislation has have occurred.
96. Licences will not be issued retrospectively and will be considered on a case by case basis. You should not assume that a licence will be granted or engage in activities prohibited by financial sanctions until you have received an appropriate licence.
97. You must not continue to carry out any action(s) which are not authorised by a licence.
98. It is a criminal offence to deal with funds that should be frozen, or make economic resources available to a designated person without an appropriate licence.
99. It is also an offence for you to knowingly or recklessly provide false or misleading information in any licence application. Any such licence granted is void from the time it was granted. Doing so may result in a criminal prosecution.

## Licensing grounds

100. Some of the common grounds for obtaining a licence in Bermuda are for:
- a) the basic expenses of the designated person or dependent family members;
  - b) reasonable professional fees and disbursement of incurred expenses in relation to legal services;
  - c) fees or services charges for the maintenance of frozen funds or economic resources;
  - d) routine maintenance of frozen accounts and economic resources;
  - e) extraordinary expenses; and
  - f) obligations under a contract entered into or an obligation that arose prior to the designation of the person in question.

To see the full list of grounds, please consult the Bermuda: Asset Freeze Licence Application Form.

## Applying for a licence

101. You must provide evidence to support an application and demonstrate that all criteria of the relevant licensing grounds (where applicable) have been met. A completed application is one where all the information is received that would enable a decision to be made about whether there is a legal basis to grant a licence. Incomplete applications will be sent back, or you will be asked for additional information until the FSIU is satisfied that your application can be considered complete.
102. It is anticipated that a licence application will be considered within 6 weeks of receipt of completed application, however this does not mean that a licence will necessarily be issued within 6 weeks. Take note that failure to submit a complete application (which includes all relevant, or requested, supporting documentation will result in delays to your licence application process.
103. You should not engage in any activities prohibited by financial sanctions until you have received an appropriate licence.

## Urgent cases

104. FSIU will prioritise urgent and humanitarian cases. If a request is urgent, please indicate this in your application, and explain why.

105. The FSIU will endeavour to assist applicants who contact us to understand the licensing process as well as our evidentiary requirements. However, we cannot provide legal advice and applicants should consider taking independent legal advice before applying, especially for complicated matters.
106. The FSIU expects that legal and professional advisers will have fully considered the relevant law and formed a view about an application before approaching the FSIU for guidance or submitting an application.
107. The FSIU does not charge a fee for licences.

### Submitting a licence application

108. Applicants should use the online form to apply for a licence from the FSIU. The form is available at:  
<https://www.gov.bm/international-sanctions-measures#International%20Sanctions>.

### Tips for applicants<sup>20</sup>

- i. Read this guidance and up-to-date version of the relevant legislation
- ii. Identify the appropriate licensing ground
- iii. Use the licence application form on the FSIU webpage (you may wish to seek legal advice to support this process)
- iv. Provide a clear description of the payment chain and all parties involved
- v. Ensure that all relevant information and supporting evidence is included with the application
- vi. Apply for the licence a minimum of six weeks in advance
- vii. Be available to fully engage with the FSIU regarding your application
- viii. Where applicable, make sure your bank is aware of the situation

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<sup>20</sup> UK Financial Sanctions: General Guidance, page 32

109. In line with international best practice, the FSIU's view is that specificity in licensing regarding the transaction to be authorised is key in achieving compliance with financial sanctions. Licence applicants should therefore be prepared to provide full details of transactions relevant to any licence applications. Information Applicants will generally be required to provide includes:
- 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
110. Applicants are encouraged to always refer to the up-to-date version of the legislation that imposes the relevant sanction regime. Links to these can be found on the relevant financial sanctions regime pages:

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

## **Terrorist Financing**

111. If you seek a licence under Terrorism and Terrorist Financing or the ISIL (Da'esh" and Al-Qaida organisations regime, you should email the FSIU ([fsiu@gov.bm](mailto:fsiu@gov.bm)) setting out the full details of your proposed transaction.

## **Notification and approvals**

112. The Minister of Legal Affairs and Constitutional Reform may issue a financial sanctions licence only with the consent of the UK Secretary of State. This process may affect the time-line for the issuance of the licence.
113. The Minister may also need to notify, and in some cases seek approval from, the the relevant United Nations Sanctions Committee, via the UK Foreign, Commonwealth and Development Office, before issuing a licence. As noted above, this process may affect the time-line for the issuance of the licence.



114. On the grant, variation or revocation of a licence, the FSIU will give written notice to the person, category of persons or entity.

### **Amending a licence**

115. Requests for an amendment, variation or extension of a licence should be submitted to the FSIU's office as soon as it is apparent that a change is required. Full supporting information and arguments should be provided.
116. It is anticipated that an amendment request will be considered within 3 weeks of receipt.

### **Refusal of a licence**

117. If the FSIU refuses to issue a licence, the proposed transaction or activities will not be lawful. The FSIU will write to the applicant giving reasons for refusing the application.
118. The FSIU may also refuse an application if the applicant does not require a licence for the proposed transaction or activities (see crediting frozen accounts above).
119. If an application for a licence is refused, the applicant has the following options:
- ask the FSIU to review its decision;
  - re-apply with new or supplementary evidence or new supporting arguments; and
  - seek judicial review of the decision.

### **Complying with a licence**

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

### **Reporting under a licence**

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

## 7 Compliance and enforcement

123. The FSIU is responsible for monitoring compliance with the various financial sanctions regimes, and for assessing suspected breaches. The FSIU has the power to refer cases to law enforcement agencies for investigation and potential prosecution.
124. Moreover, the supervisory authorities for relevant firms are responsible for monitoring their supervised entities' compliance with Bermuda's sanctions regime<sup>21</sup>.
125. The FSIU's assessment of breaches is informed by our overall approach to financial sanctions compliance. This approach covers the whole lifecycle of compliance in respect of financial sanctions. The FSIU endeavours to take a holistic approach to support those seeking to comply and to raise the level of financial compliance awareness by:
  - promoting compliance, publicising financial sanctions, and engaging with the private sector;
  - enabling compliance by making it easier to comply, and providing customers with guidance and alerts to help them fulfil their own compliance responsibilities; and
  - responding to non-compliance by intervening to disrupt attempted breaches and by tackling breaches effectively.
126. These actions are intended to change behaviour, directly preventing future non-compliance by the individual and more widely through the impact of compliance and enforcement actions.
127. While a decision to pursue a criminal prosecution for breaches of financial sanctions ultimately lies with the prosecuting authorities, the FSIU will consider the following when initially considering the course of action to take:
  - whether the breach was self-disclosed fully and promptly;
  - the level of cooperation with any inquiries; and
  - action being taken to improve future compliance.

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<sup>21</sup> Section 5 of the [Proceeds of Crime \(Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement\) Act 2008](#)

## Reporting a suspected breach of financial sanctions

128. Your reporting obligations to FSIU are set out in the 'Your Reporting Responsibilities' in this guide. Where you know or have reasonable cause to suspect that a breach has occurred this must be reported to the FSIU as soon as practicable.

## Offences

Offences are set out in all of the OT Orders and may include:

- making funds or economic resources available to a designated person or entity
- dealing with frozen funds or economic resources
- activities that circumvent an asset freeze
- failure to comply with reporting obligation
- non-compliance or breach of licencing conditions.

## Penalties for breaches of financial sanctions

129. Breaches of financial sanctions are considered to be a serious criminal offence. Upon conviction on indictment, offences under the OT Orders in regards to UN / UK financial sanctions provide for a term of imprisonment of up to seven years or a fine or both; and on summary conviction, imprisonment for a maximum of 6 months or to a fine not exceeding £5,000.00 or its Bermuda dollar equivalent or both.
130. In addition, supervisory authorities have the power to issue civil penalties for breach of obligations under Bermuda's sanctions regime<sup>22</sup>.

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<sup>22</sup> Pursuant to the Proceeds of Crime (AML ATF Supervision and Enforcement) Act 2008 (section 20) competent authorities have the power to issue civil penalties where an AML/ATF regulated financial institution, financial group or insurer, a real estate broker, real estate agent or a regulated non-financial business or profession supervised by the authority, fails to comply with its international sanctions obligations.

## 8 Designations

131. The Foreign, Commonwealth and Development Office (FCDO) negotiates all international sanctions for the UK and its overseas territories, including Bermuda. The Governor of Bermuda is the competent authority that has responsibility for proposing persons or entities for designations under: existing sanctions regimes; Bermuda's domestic sanctions regime; and at the request of another country.
132. Under existing regimes the Governor's powers to propose a designation are met by complying with the requirements of the specific regime as outlined by the relevant UNSCR committee. The Governor carries out his powers through coordination with relevant domestic partners and the FCDO.

### Domestic designations

133. For the national designation process the Governor is the Competent Authority for making final designations under the regulation 4 of the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020. However before making a final designation the Governor must consult with the UK Secretary of State.

### Request for designation by another country

134. The process for domestic designation can also be used by the Governor to make designations at the request of other countries, provided the statutory test in the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020 is met.
135. Pursuant to the modifications of the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 by the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020, the Governor may make a final designation where it is reasonable to suspect that a person is an "involved person". An involved person is defined in Regulation 6 (2) as a person who:
- a) *is or has been involved in terrorist activity,*
  - b) *is owned or controlled directly or indirectly (within the meaning of regulation 7) by a person who is or has been so involved,*
  - c) *is acting on behalf of or at the direction of a person who is or has been so involved, or*
  - d) *is a member of, or associated with, a person who is or has been so involved.*

136. Involvement in terrorist activity includes (regulation 6(3)):

- a) *being responsible for, engaging in or providing support for, the commission, preparation or instigation of acts of terrorism;*
- b) *providing financial services, or making available funds or economic resources, for the purposes of terrorism;*
- c) *facilitating, promoting or encouraging terrorism;*
- d) *providing or receiving training for the purposes of terrorism;*
- e) *travelling or attempting to travel from or into the relevant territory for the purposes of terrorism;*
- f) *carrying out recruitment activities for a person involved in terrorism;*
- g) *being responsible for, engaging in, being complicit in, providing support for, or promoting, the abduction, enslavement, forced marriage or rape of, or sexual violence against, persons outside the relevant territory on behalf of, or in the name of, a person who is involved in terrorism;*
- h) *supporting or assisting any person who is known or believed by the person concerned to be involved in any activity mentioned in subparagraphs (a) to (g); or*
- i) *being involved in assisting the contravention or circumvention of any relevant provision.*

137. Designation is not automatic upon receipt of a request. The requesting country would have to complete a Designations Impact Assessment Form (DIA) , which will record the reasons for proposing financial sanctions against the person as well as the evidence to support the designation. The completed form should be sent to the FSIU. The FSIU vets the DIA Form to ensure it is complete and provides the completed package to the Minister and the Governor to progress.

138. The Governor and the FSIU liaise with the FCDO as needed during this process. The FCDO Sanctions team will assess the DIA information from both a legal and policy standpoint in deciding whether to pursue the proposed measures.

139. When completing the DIA form, requesting countries are strongly advised to provide as much **open source information** as possible in the DIA form.

140. Applicants should consider the relevant legislation in its entirety when making an application to ensure the statutory test in the Counter-Terrorism Regulations is met.
141. Where the statutory test is met and the Governor designates an individual or entity, they are added to the Bermuda Designated Persons list, which is on the sanctions webpage and the target and supervisory authorities are notified in the manner prescribed previously in 'FSIU updates' (see Chapter 2).

## 9 De-listing and challenging designations

142. Designated persons and entities who are subject to financial sanctions can challenge their listing by making a request for delisting. The financial sanctions remain in place while the challenge or request is being considered.
143. When a decision is reached that supports the challenge the listed individual or entity is removed from the consolidated list of financial sanctions targets. That is, OFSI removes the individual or entity and communicates a UN delisting, as well as UK revocations of designations under the Counter-Terrorism Regulations, by updating its consolidated list within one business day.
144. The revocation of a Bermuda designation listing would result in the FSIU reflecting the change in the Bermuda Designated Persons list on the sanctions webpage, and notifying the designated person/entity and the supervisory authorities in the manner prescribed in Chapter 2, under 'FSIU updates'.

### When to request delisting?

145. Delisting is considered appropriate whenever the listing criteria under the applicable sanctions regime are no longer met. Some examples include: cases of mistaken listing, whenever relevant changes in fact or new evidence emerge, upon the death of a listed person, or upon the liquidation of a listed entity.

### False positives

146. A "**false positive**" is where the potential match to a listed person or entity (due to the common nature of the name, or the vague identifying data) is, after thorough investigation, determined not to be a match.
147. Where a false positive occurs, i.e. where a person or entity is subject to sanctions measures (such as an asset freeze), and they assert that they are not the intended target, the person or entity should first contact the relevant institution that has applied the financial sanction.
148. Making the distinction between designated and non-designated persons or entities may be difficult. There are some instances where the funds of a person or entity that was not the intended target of a restrictive or prohibited measure are frozen, due to the identifiers matching those of a designated person.

149. The person or entity should then request an explanation as to why the assets are frozen, including why the institution believes that they are the intended target match on the consolidated list. It is important to note that the burden of proof concerning the determination of “false positives” is on the person or entity. The affected person/ entity should submit evidence to the relevant institution, business or profession and also provide a detailed statement or evidence to demonstrate why they are not the targeted match.
150. The parties should work together within the relevant institution, business or profession’s sanctions policies to resolve this matter. If the relevant institution or the person or entity, after exhausting all of the resources available to them, are still unable to confirm that the customer is not the intended match, either party should then inform the FSIU.

### FSIU’s Role

151. Where the findings of the FSIU, upon consideration of all material facts and circumstances, determine the person or entity **is not** the designated person, the FSIU will inform the involved parties of their finding. The relevant institution, business or profession should take steps to immediately unfreeze any funds or economic resources, and should further inform the FSIU of any action taken right away.
152. Where the findings of the FSIU, upon consideration of all material facts and circumstances, determine the person or entity **is** the designated party, the FSIU will inform all parties as to the finding and the asset freeze will remain in place.
153. In the cases where the FSIU is unable to determine a claim of mistaken identity after a thorough investigation, and the claim is not clearly unfounded, they will advise OFSI, and request the provision of an authoritative finding regarding the person or entity’s identity in order to assist in the determination of their designation status. As soon as OFSI provides an authoritative finding the FSIU will inform all parties involved.

### How to make a delisting request?

154. Requests (or petitions) for delisting are sent to the competent authority with the relevant supporting information. The relevant competent authority will vary based on the sanctions regime which designates the person or entity. If you require assistance identifying which competent authority to submit a delisting request, you can contact the Financial Sanctions Implementation Unit for assistance at (441) 292-2463.

### Bermuda listings under UNSC Resolution 1373

155. To delist a Bermuda originating listing made under UNSC Resolution 1373, designated persons and entities should submit a petition for delisting to the Governor. The Governor then assesses the petition and consults with the UK Secretary of State. Where



the UK is in agreement with the petition the Governor will revoke a final designation pursuant to the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020. A copy of a petition to delist should be sent to the FSIU.

156. To challenge a designation pursuant to UNSCR 1373 a designated person or entity may appeal to the Supreme Court of Bermuda against any such designation.

### UN listings

157. Persons subject to designation have a right to request the UK Government secure removal from UN listings pursuant to section 25 of the Sanctions and Anti-Money Laundering Act 2018.
158. To challenge a UN listing, individuals, groups, undertakings and/or entities inscribed on the sanctions list of one of the Security Council sanctions committees, can submit de-listing requests either through the Governor or directly through one of the applicable UN delisting agencies (the Office of the Ombudsperson or the UN Focal Point). De-listing requests to the Governor should be copied to the FSIU.
159. Requests for delistings submitted to the Governor are initially assessed by the FSIU; and if supported by the Governor, the delisting petition will be submitted to the UK Foreign, Commonwealth and Development Office (FCDO) as the FCDO is responsible for negotiating all international sanctions for the UK, which includes the UK overseas territories. The FCDO, as the Member State to the UN, will ultimately decide whether to take the delisting forward to the relevant UN Sanctions Committee or the Security Council.
160. To petition the Governor, you should contact Government House and the contact information is noted below:

Address: The Governor of Bermuda  
Government House  
11 Langton Hill  
Pembroke HM13  
Bermuda

Telephone: (441) 292 3600  
e-mail: [governor@gov.bm](mailto:governor@gov.bm)

161. Alternatively, petitions for delisting made directly to the UN should note the following:

162. For UN listings under the ISIL (Da'esh) and Al-Qaida sanctions regime (1267/1989), a petition for delisting can be made to the **Office of the Ombudsperson** to the ISIL (Da'esh) and Al-Qaida Sanctions Committee:

Address: Office of the Ombudsperson  
Room DC2 2206  
United Nations  
New York, NY 10017  
United States of America  
Telephone: +1 212 963 8226  
E-mail: [ombudsperson@un.org](mailto:ombudsperson@un.org)

163. More information about the Office of the Ombudsperson is available on the UN's website: <https://www.un.org/sc/suborg/en/ombudsperson>.

164. For all other UN listings, a request should be sent to the **UN Focal Point** for delisting:

Address: Focal Point for De-listing  
Security Council Subsidiary Organs Branch  
Room DC2 0853B  
United Nations  
New York, N.Y. 10017  
United States of America  
Telephone: +1 917 367 9448  
Fax: +1 212 963 1300  
Email: [delisting@un.org](mailto:delisting@un.org)

More information about the Focal Point is available on the UN's website: <https://www.un.org/sc/suborg/en/sanctions/delisting>.

## UK listings

165. For UK listings under its domestic sanctions regimes there are avenues of appeal and judicial review within the specific legislation under which the designation is made.
166. If you have been designated under the Sanctions and Anti-Money Laundering Act 2018 and wish to request the review of your designation or the removal of your listing, you should complete a "Sanctions Review Request Form: Designated Persons and UN Listed Persons" which can be found [here](#).
167. This form is used to request review of a designation or UN listing. Guidance on how to request variations or revocation of a sanctions designation or review of a UN listing can be obtained [here](#).

168. Once you have completed the form, you should send to the Governor via the FSIU at:

Financial Sanctions Implementation Unit  
Ministry of Legal Affairs and Constitutional Reform  
Global House, Fourth Floor  
43 Church Street  
Hamilton HM 12  
Bermuda

Email: [fsiu@gov.bm](mailto:fsiu@gov.bm)

169. The FSIU strongly advises all regulated entities to subscribe to OFSI's Consolidated List here:

<https://public.govdelivery.com/accounts/UKHMTREAS/subscriber/new>.

170. This is the most comprehensive and up-to-date list of financial sanctions in operation in Bermuda. As noted previously, the FSIU sends out notifications of persons/entities removed from the consolidated list to Supervisory authorities and is in the process of establishing a subscription service to enhance its delivery of information and raise awareness of and compliance with financial sanctions.

171. Supervisory authorities inform their respective supervised entities of de-listing updates generally and send targeted information to supervised entities known or suspected to be holding targeted funds and assets of de-listed persons/entities.

### **What you must do upon notification of de-listings**

172. Where the UNSCRs 1267/1989, 1988, 1718 Sanctions Committees and the Security Council pursuant to UNSCR 2231, delist any individual/entity or an individual/entity has been de-listed pursuant to UNSCR 1373, the frozen funds or assets must be unfrozen immediately as the obligation to freeze no longer exists.

173. Therefore, upon receiving notification advising the removal of a person/entity from the Consolidated List, you must, without delay, take the following steps to effect a de-listing:

- a) Check whether you have frozen funds or assets of any person/entity removed from the Consolidated List
- b) Verify that the person/entity is no longer subject to the asset freeze

- c) Remove the person/entity from your institution's list of persons/entities subject to financial sanctions
- d) Un-freeze the assets of the person/entity and reactivate the relevant accounts
- e) Send notification to the person/entity that the assets are no longer subject to an asset freeze
- f) Notify the FSIU of the actions you have taken, as soon as practicable.

# 10 Glossary

**Disclaimer:** The following is a general description of the terms used throughout this guide. Please see the most recent version of the relevant legislation for the exact terms used in context. If you are in doubt about any of the below, please contact the FSIU or seek independent legal advice.

**Asset Freeze** A type of financial sanction. Under an asset freeze it is generally prohibited to:

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

**Bermuda Regulations** See Statutory instruments.

**Competent Authority** Refers to all designated national authorities with statutory power who implement Bermuda's anti-money laundering and anti-terrorist regime. This includes financial supervisors established as independent non-governmental authorities with statutory powers. In particular, this includes the FIA; the authorities that have the function of investigating and/or prosecuting money laundering, associated predicate offences and terrorist financing, and seizing/freezing and confiscating criminal assets; authorities receiving reports on cross-border transportation of currency & BNIs; and authorities that have AML/CFT supervisory or monitoring responsibilities aimed at ensuring compliance by financial institutions and DNFBPs with AML/CFT requirements. SRBs are not to be regarded as competent authorities.

**Consolidated List** List maintained by FSIU containing designated persons subject to financial sanctions.

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

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

**Designated Person**

A person subject to financial sanctions. Specifically, the term designated person or entity refers to:

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

(ii) individuals, groups, undertakings and entities designated by the Committee of the Security Council established pursuant to resolution 1988 (2011) (the 1988 Committee), as being associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan, or entities and other groups and undertakings associated with the Taliban; any natural or legal person or entity designated by jurisdictions or a supra-national jurisdiction pursuant to Security Council resolution 1373 (2001);

(iv) any individual, natural or legal person or entity designated for the application of targeted financial sanctions pursuant to Security Council resolution 1718 (2006) and any future successor resolutions by the Security Council in annexes to the relevant resolutions, or by the Security Council Committee established pursuant to resolution 1718 (2006) (the 1718 Sanctions Committee) pursuant to Security Council resolution 1718 (2006); and

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

**Designation**

The term designation refers to the identification of a person individual or entity that is subject to financial sanctions pursuant to:

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

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

**Economic resources**

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

<b>Exemption</b>	Generally found in financial sanctions legislation. An exemption to a prohibition applies automatically in certain defined circumstances and does not require you to obtain a licence.
<b>FSIU</b>	The Financial Sanctions Implementation Unit is part of the Ministry of Legal Affairs HQ, Bermuda's competent authority for implementing financial sanctions.
<b>Funds</b>	<p>Generally means financial assets and benefits of every kind, including but not limited to:</p> <ul style="list-style-type: none"> <li>- Cash, cheques, claims on money, drafts, money orders and other payment instruments;</li> <li>- Deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;</li> <li>- Publicly and privately traded securities and debt instruments, including stocks and shares, certificates, representing securities, bonds, notes, warrants, debentures and derivatives contracts</li> <li>- Interest, dividends or other income on or value accruing from or generated by assets</li> <li>- Credit, right of set-off, guarantees, performance bonds or other financial commitments;</li> <li>- Letters of credit, bills of lading, bills of sale; and</li> <li>- Documents showing evidence of an interest in funds or financial resources.</li> </ul>
<b>Goods</b>	Generally means items, materials, and equipment.
<b>Licence</b>	A written authorisation from FSIU permitting an otherwise prohibited act.
<b>Legal persons</b>	Legal persons refer to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities.
<b>Name match</b>	The situation where a person you are dealing with partially matches the details of a designated person on the consolidated list. They are unlikely to be a target match.
<b>OFSI</b>	Office of Financial Sanctions Implementation. Part of HM Treasury and the UK's competent authority for implementing financial sanctions.
<b>Ownership</b>	The possession of more than 50% of the proprietary rights of an entity or having a majority interest in it. Includes both direct and indirect ownership.
<b>Person</b>	Can be a natural person (an individual), or a legal person, body or entity.
<b>Reasonable cause to suspect</b>	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.

**Relevant institution**

Refers to the following:

- a business that carries on deposit-taking business within the meaning of section 4 of the Banks and Deposit Companies Act 1999;
- a business that carries on investment business within the meaning of section 3 of the Investment Business Act 2003;
- an insurer (and not a reinsurer) registered under section 4 of the Insurance Act 1978 who carries on long term business falling within paragraph (a) or (c) of the definition of "long-term business" in section 1(1) of the Insurance Act 1978;
- an insurance manager or broker registered under section 10 of the Insurance Act 1978, but in relation to an insurance broker, only in so far as he acts as a broker in connection with long term business (other than reinsurance business) falling within paragraph (a) or (c) of the definition of "long-term business" in section 1(1) of the Insurance Act 1978;
- a business that carries on the business of a fund administrator within the meaning of section 2(2) of the Investment Funds Act 2006;
- a business that carries on money service business within the meaning of section 2(2) of the Money Service Business Act 2016;
- the operator of an investment fund within the meaning of section 2 of the Investment Funds Act 2006; or
- a business that operates a currency exchange office, transmits money by any means, or cashes cheques which are made payable to customers.

**Statutory Instruments (SIs)**

Also referred to as secondary, delegated or subordinate legislation. These SIs are a form of legislation that allows an Act of Parliament to be brought into force or amended without Parliament having to amend that Act.

**Target Match**

The situation where the person you are dealing with matches the details of a designated person on the consolidated list. Likely to be a confirmed match for that person.

**Terrorist**

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

**Terrorist act**

A terrorist act includes:

(a) an act which constitutes an offence within the scope of, and as defined in one of the following treaties: (i) Convention for the Suppression of Unlawful Seizure of Aircraft (1970); (ii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); (iii) Convention on



the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973); (iv) International Convention against the Taking of Hostages (1979); (v) Convention on the Physical Protection of Nuclear Material (1980); (vi) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988); (vii) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005); (viii) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (2005); (ix) International Convention for the Suppression of Terrorist Bombings (1997); and (x) International Convention for the Suppression of the Financing of Terrorism (1999).

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

**Terrorist financing**

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

**Terrorist Organisation**

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

**Without delay**

The phrase *without delay* means, ideally, within a matter of hours of a designation by the United Nations Security Council or its relevant Sanctions Committee (e.g. the 1267 Committee, the 1988 Committee, the 1718 Sanctions Committee or the 1737 Sanctions Committee). For the purposes of S/RES/1373(2001), the phrase *without delay* means upon having reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, one who finances terrorism or a terrorist organisation. In both cases, the phrase *without delay* should be interpreted in the context of the need to prevent the flight or dissipation of funds or other assets which are linked to terrorists, terrorist organisations, those who finance terrorism, and to the financing of proliferation of weapons of mass destruction, and the need for global, concerted action to interdict and disrupt their flows swiftly.

**Virtual Assets**

This term refers to any digital representation of value that can be digitally traded, transferred or used for payment<sup>23</sup>. Statutory definitions of “funds” and “economic resources” are wide. Virtual assets are considered to be covered by these definitions and are therefore caught by the financial sanctions restrictions. (AKA crypto currency, crypto assets)

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<sup>23</sup> (FATF, 2021)