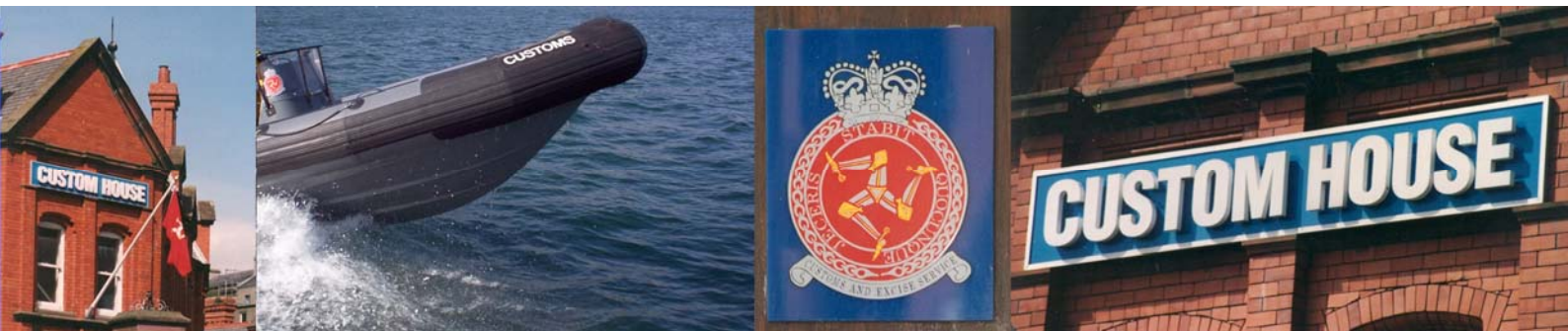


Treasury
Customs and Excise Division

Sanctions Notice 26

United Nations Sanctions
European Union Sanctions

Financial Sanctions Regimes



October 2008
(Updated to 6 September 2017)



Isle of Man
Government

Reilrys Ellan Vannin

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About this Notice

This Notice draws attention in convenient form to the Orders and Regulations made under the United Nations Act 1946 and European Communities (Isle of Man) Act 1973 which place financial sanctions on certain named individuals and entities.

This Notice provides guidance on certain aspects only of the Orders and Regulations, and should be read in conjunction with those Orders and Regulations.

The Treasury has appointed its Customs and Excise Division to act for the purpose of enforcing financial sanctions. Accordingly, certain powers have been delegated by the Treasury to the Division.

Details of current regimes may be found on the Customs and Excise website at <http://www.gov.im/treasury/customs/sanctions.xml>

The Island will seek to maintain its list of persons and entities affected by the various sanctions regimes so that they correspond to those adopted by the UK. The UK lists are maintained by HM Treasury and may be found at—
http://www.hm-treasury.gov.uk/fin_sanctions_index.htm

If you subscribe to the RSS feed provided by Customs and Excise you will be sent copies of all news releases issued by the Division and advising of new sanctions measures, changes to sanctions lists, additions and deletions etc. The feed can be subscribed to at -
<https://www.gov.im/categories/tax-vat-and-your-money/customs-and-excise/news/>

Enquiries concerning this Notice should be addressed to the address given below and marked for the attention of the Sanctions Officer.

Enquiries may also be made by—

- facsimile transmission (01624 661725)
- Email (customs@gov.im)
- Telephone (01624 648138)

The address for any enquiries or applications relating to this Notice is—

The Sanctions Officer
The Treasury
Customs and Excise Division
PO Box 6
Custom House
North Quay
Douglas
Isle of Man
IM99 1AG

This Notice is provided for information purposes only, and its contents should not be taken as a definitive statement of the law. You are advised to seek independent legal advice if you believe you are affected by anything contained in this Notice.

Direction

The Customs and Excise Division, as agent for the Treasury, **directs** that any funds held for or on behalf of the individuals or entities named in the published lists having effect in the Island must not be made available, except under the authority of a licence in writing from the Treasury.

Any funds should be blocked or frozen and the details reported to the Division.

All persons in business or a profession in the Island, including financial institutions, **must** check whether they maintain any account, or otherwise hold or control funds or economic resources, for individuals or entities included in the lists and, if so, they should freeze the account, funds or economic resources and report their findings to the Division.

Any person, entity or body with information that would facilitate compliance with the sanctions Regulation(s) **must** supply such information to the Division and co-operate in any verification of the information.

What are sanctions?

Sanctions are prohibitions and restrictions put in place with the aim of maintaining or restoring international peace and security. They generally target specific individuals or entities, or particular sectors, industries or interests. They may be aimed at such people and things in a particular country or territory, or some organisation or element within them. There are also sanctions that target those persons and organisations involved in terrorism, including Al-Qaida.

The Isle of Man does not issue its own lists. Government policy is to maintain the lists of those affected so that they are the same as those designated by HM Treasury in the UK. In turn, the UK lists reflect both UN and EU measures (both of which publish their own lists), as well as some national sanctions. Other sources of sanctions include the Office of Foreign Asset Control (OFAC) in the United States. Whilst the sanctions imposed by OFAC may differ from those imposed by the EU or UK, and if so would have no legal effect in the Isle of Man, because of the extra-territorial effect of the US measures, and their implications for international banking using the dollar, any business has to take note of them.

The types of sanctions that may be imposed include -

- targeted sanctions focused on named persons or entities, and generally freezing assets and prohibiting making any assets available to them, directly or indirectly (these may be referred to as "specific directions");
- economic sanctions that prohibit doing business with, or making funds or economic resources available to, designated persons, businesses or other entities, directly or indirectly (these may be referred to as "general directions");

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- currency or exchange control (such as the requirement for prior notification or authorisation for funds sent to or from Iran);
 - arms embargoes, which would normally encompass all types of military and paramilitary equipment (note that certain goods, such as landmines, are subject to a total prohibition and others, such as policing and riot control equipment, are subject to strict controls under export and trade control law);
 - providing investment, or financial or technical assistance in general or for particular industry sectors or territories, including that related to military or paramilitary equipment or activity;
 - where specified entities are subject to capital market restrictions (such as which were imposed in respect of a number of Russian banks in 2014);
 - controls on the supply of dual-use items (i.e. items with both a legitimate civilian use as well as a potential military or WMD use), including supplies of technology etc and intangible supplies;
 - import or export embargoes involving specific types of goods (e.g. oil products), or their movement using aircraft or vessels, including facilitating such trade by means of financial or technical assistance, brokering, providing insurance etc;
 - measures designed to prevent the WMD proliferation;
 - visa and travel bans (e.g. banning members of a ruling regime from visiting the EU).

All of the above are in addition to -

- normal import and export controls;
- trade controls which prohibit or require the licensing for trafficking and brokering movements of certain goods (such as military equipment) between other countries (i.e. where the goods are not imported into, or exported from, the Isle of Man or UK);
- other EU or international measures on the movements of particular types or categories of goods intended to prevent, monitor or control the trade in those goods, such as -
 - the Kimberley Process certification scheme intended to prevent the trade in “blood” or “conflict” diamonds;
 - the Wassenaar Arrangement on dual-use items;
 - the PIC Convention and REACH Regulation on the import, export, manufacture and supply of chemicals;
 - EU restrictions on the export of electrical and other waste products;
 - the FLEGT controls on the import into the EU of timber products; and

- CITES controls on the movements of endangered species.

Trade sanctions

The UN, EU and UK can all impose sanctions on the trade or doing business with countries, organisations, entities or persons. In some cases these sanctions can involve named businesses, organisations or persons - but more usually involve a prohibition exporting to, or importing from, somewhere certain goods or commodities. The most common prohibitions are arms embargoes, which complement existing export licensing and trade licensing controls. However, they can also involve a ban on the use of EU or UK vessels or aircraft (which would include Isle of Man vessels and aircraft) to undertake trade with, or calling at, named countries.

Note that having an import, export or trade control licence for a transaction, shipment or movement does not mean that a sanctions licence is not required.

Domestic sanctions

The Terrorism and Other Crime (Financial Restrictions) Act 2014 contains powers for the Treasury in the Island to issue directions, make freezing orders or designations that may have some or all of similar effects as financial (or trade) sanctions. The use of such powers is likely to be exceptional¹.

The power to impose freezing orders contained in earlier legislation had been used on two occasions in recent years, but none are currently in existence.

There are protocols prepared by Customs and Excise which govern the issue and making of such directions, freezing orders or designations.

Introduction

1. In the Isle of Man the Treasury is responsible for administering United Nations (UN) and European Union (EU) sanctions regimes. These include regimes imposed from time to time against specified countries, territories and entities; and also those intended to combat the funding of terrorism. Whilst this Notice is concerned only with sanctions regimes that impose financial or economic sanctions, it must be remembered that sanctions on trading, export embargoes and export prohibitions and licensing controls may also exist - and these can include the supply of certain goods by a person in the Island but where the trade or movement takes place between two other countries.
2. The Treasury has assigned responsibility for the sanctions regimes to its Customs and Excise Division, and the Sanctions Officer in that Division is the relevant person responsible for ensuring regimes and lists of persons subject to restrictions are kept up to date. The Sanctions Officer is also the person responsible for dealing with applications for licences, dealing with enquiries and is the person to whom notification of frozen accounts must be provided.

1 The power under section 24 of the Act providing for the automatic designation in the Island of those designated by the UK authorities for the purposes of terrorism, ISIL, Al-Qaida or Taliban sanctions is a separate and distinct power.

3. There is a responsibility for ALL persons and entities in the Island to be aware of the restrictions imposed by the various sanctions regimes. There is a particular requirement for professional regulated entities such as corporate service providers to be aware of them in the context of carrying out due diligence checks on existing and prospective clients. However, many of the restrictions imposed by the sanctions regimes impinge most directly on financial institutions, including banks and insurance companies which would be required to freeze assets they control on behalf of those affected by the regimes.
4. If ANY person in the Island is aware of the presence of funds or other assets owned or controlled by, or on behalf of, a person or entity on any sanctions list they should notify the Sanctions Officer.
5. Anyone who has any responsibility for administering, controlling or managing such funds or assets, or is or has been involved in such administration, control, management or the supply or sale of the assets, should notify the Sanctions Officer.
6. Anyone with information relating to persons or entities on any sanctions list, or to funds or assets owned or controlled by such a person or entity, should inform the Sanctions Officer.
- 6A. The Regulations providing for the implementation of the sanctions normally provide that the Treasury can serve a written notice on anyone to whom the measures apply, requiring them to furnish the Treasury with any information in their possession or control, or produce any document in their possession or control, for the owner of those funds shall furnish the Treasury with any information in their possession or control, or produce any document in their possession or control, for the purpose of allowing the Treasury to ensure compliance with, or detect evasion of, the sanctions. Failure to furnish such information or documents without reasonable excuse is an offence.
7. The Treasury may issue a notice directing that funds should be frozen and may not be made available to any person except under the authority of a licence issued by the Treasury. Such a notice may be contained in a news release published by Customs and Excise which will be available on the Isle of Man Government website (see page 3 for details of how to subscribe to the necessary feed to receive news releases from Customs and Excise).
- 7A. An RSS feed on the Customs and Excise website enables businesses to receive copies of all news releases relating to sanctions, confirming changes to sanctions measures and lists, as well as related export control measures. See page 3 for details of how to subscribe to the feed.
8. The Orders also provide the Treasury with powers to obtain information, carry out enquiries etc.
- 8A. **OFAC sanctions**

Businesses in the Isle of Man may also be affected by sanctions imposed by the US authorities and implemented by the Office of Foreign Assets Control (OFAC). OFAC regulations may be imposed on -

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- US citizens wherever they are located, i.e. whether in the USA or not;
 - permanent resident immigrants, whether located inside or outside the USA;
 - persons and entities in the USA;
 - persons and entities who trade in US dollars; and
 - bodies incorporated in the USA and their foreign branches.

In addition, in certain cases they can also apply to all foreign subsidiaries owned or controlled by US companies, and foreign persons who are in possession of goods of US origin.

Whilst in some cases US sanctions will correspond to those in force in the Island, such as where they implement UN Security Council Resolutions, they may not and OFAC sanctions do not have any legal effect in the Island.

However, businesses need to be aware of the US sanctions, and that if found to be in breach of them could face severe commercial problems and/or penalties for individuals, or adversely affect any commercial interests in the USA.

Furthermore, should a person or entity be listed by OFAC this may be a reason to undertake enhanced due diligence in relation to any proposed transaction involving them and to submit a suspicious activity report to the Financial Intelligence Unit (FIU).

Requests for delisting may be made to OFAC, in writing to the Office of the Director, including by email to OFAC.Reconsideration@treasury.gov

Proscribed organisations

- 8B. An organisation may be proscribed ('banned') under the Terrorism Act 2000 (of Parliament) if the Home Secretary believes it is involved in terrorism and it is proportionate to do so. Because proscription involves different restrictions, and because not all proscribed organisations are subject to financial sanctions, the list of proscribed organisations is NOT included in the Consolidated List.

The list of proscribed organisations is maintained by the Home Office.

The list of proscribed organisations also applies in the Isle of Man under the Anti-Terrorism and Crime Act 2003.

The current list of proscribed organisations and the restrictions placed upon them will be contained in a release from the Home Office, the May 2017 edition of which may be found at -

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612076/20170503_Proscription.pdf

Directions for Financial Institutions

9. Financial institutions **MUST**—
 - a. check whether they maintain accounts for any of those individuals or organisations listed, and if so
 - b. freeze the accounts and report findings to the Customs and Excise Division.

If there are details of other involvement with a listed individual or entity, directly or indirectly, or of any attempted (or suspected attempted) transactions involving those individuals or entities, this should also be reported to the Customs and Excise Division. See paragraph 13A below for guidance on lifting blocks on accounts etc.

Record-keeping

- 9A. Businesses should maintain records of any potential matches to names on sanctions lists - whether the match turns out to be a true match or a false positive (see paragraph 32AB below).

A business should, as a minimum, keep the following information about any match -

- the information or other grounds which triggered the match (e.g. a “hit” provided by screening software);
 - any further checks or enquiries undertaken;
 - the sanctions regime;
 - the person(s) involved, including any members of compliance or senior management who authorised treatment of the match as a false positive;
 - the nature of the relationship with the person or entity involved, including attempted or refused transactions;
 - subsequent action taken (e.g. freezing of funds);
 - if Customs and Excise, the FIU, FSA or other agency was consulted;
 - if the match was formally reported to the FIU and/or Customs and Excise.
10. A bank or other financial institution which knows or suspects that a customer or other person identified in a published list with which it has had business dealings has committed an offence under one of the sanctions orders, **MUST** report the information on which its knowledge or suspicion is based to the Treasury’s Customs and Excise Division as soon as reasonably practicable. Failure to do so is an offence.
 - 10A. See Annex A for a suggested 10-step programme to help ensure sanctions compliance.

Frozen accounts

11. The sterling, foreign currency and gold bullion accounts of named parties included in lists issued or endorsed by the Treasury and held in the Island by persons authorised by the Financial Services Authority (FSA) will be blocked and designated as a "Frozen account".

Funds held by advocates, accountants and other professional or regulated persons on behalf of such parties should be placed in a separate account that should be designated as a "Frozen account".

12. Where the particular sanctions order does not require persons other than a financial institution, or other specified type of person, to block or freeze assets belonging to a person on a sanctions list it should be borne in mind that, notwithstanding this, acting to assist in the placing, movement or use of any funds may nevertheless constitute an offence under the Island's anti-money laundering legislation. Those affected are advised therefore to consult the Sanctions Officer and the Financial Intelligence Unit (FIU) for advice.

What does "owned", "jointly owned", "held" or "controlled" mean?

- 12A. Where assets known or suspected to be connected to terrorism are involved, section 5A of the Terrorism and Other Crime (Financial Restrictions) Act 2014 (inserted by section 18 of the Terrorism and Crime (Miscellaneous Amendments) Act 2016) makes clear that the words "owned", "held", "controlled", "directly" and "indirectly" have the same meaning as they have in Council Regulation (EC) No 2580/2001; and that references to funds or economic resources being held by a designated person includes a reference to them being owned, held or controlled directly or indirectly.

The fact that funds or economic resources are owned, held or controlled by a designated person jointly with another person or otherwise does not prevent those funds or resources being treated as being owned, held or controlled by the designated person.

Ownership of a legal entity would normally mean ownership of 50% or more of the proprietary rights, shares; or control of them, including sharing jointly and severally the financial liabilities of a legal person, group or entity, or guaranteeing them.

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.

- 12B. The Treasury interprets the meaning of "all funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies" in other EU sanctions regimes as having the same meaning as in paragraph 12A above.

It is particularly important where any assets, funds or economic resources are held, owned or controlled by means of complex legal structures or arrangements. Reports made to the FIU or Customs and Excise should involve where it is known or suspected that assets, funds or economic resources, whether in the Island or elsewhere, are owned, held or controlled through complex legal structures or arrangements.

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.

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.

Payments involving frozen accounts

13. Payments from Frozen accounts are prohibited unless a written licence has been granted by the Treasury.

Removal from sanctions lists and lifting blocks and freezes of funds, accounts etc

- 13A. If a name is removed from the sanctions lists this will be advised by news release published by Customs and Excise (see page 3 for details of how to subscribe to the necessary feed). If a name is removed from a sanctions list, or the sanctions as a whole are lifted, any block of accounts or the freezing of funds or other economic resources are automatically removed.

However, any business which had involvement with any person or entity formerly on a sanctions list, or had blocked accounts or froze funds or other economic resources because of a sanctions measure, should preserve the record of their actions and details of the involvement, account and resources in case the Treasury, Police or regulator wishes to inspect the record.

If advised of a delisting, or a repeal or other change that results in a block on an account, or the freezing of funds or other economic resources, to be lifted there is no need to inform Customs and Excise or the FIU of the action you have taken.

Requests for delisting may be made to OFAC, in writing to the Office of the Director, including by email to OFAC.Reconsideration@treasury.gov

Suspicion of involvement in criminal activity, terrorism, terrorist financing or links to persons etc affected by a sanctions regime

14. Regardless of whether any entity and/or person is named on a list notified by the Treasury, if any person or institution suspects—
 - a. that the funds of any customer or client is or may be used for facilitating, or providing material support for, acts of terrorism;

- b. that their customer or client may be associated with, or acting on behalf of, a person etc affected by a sanctions regime; or
- c. that a customer or client may be concerned in money laundering or other criminal activity;

they should report their suspicions immediately to the FIU.

This includes details of any attempted transactions by a client or customer, or a prospective customer or client.

Legal professional privilege

- 14A. The reporting requirements do not apply to information to which legal professional privilege is attached. However, it is expected that legal professionals would carefully ascertain whether legal privilege applies, and which information it applies to. The Treasury may challenge a blanket ascertain of legal professional privilege where it is not satisfied that such careful consideration has been made.

Various typical offences

(The following are examples, and not intended as an exhaustive list)

- 15. It is an offence to invite funds, or to receive or provide funds if it is known, or there is reasonable cause to suspect, the funds may be used for the purposes of terrorism, or the person or entity appears on a published list of persons subject to UN or EU sanctions concerned with terrorism and terrorist financing.
- 16. It is an offence to make available any funds or financial or related services to, or for the benefit of, those involved in terrorism, or those controlled by them, or acting on their behalf.
- 17. It is generally an offence to make funds available, directly or indirectly, for a person or entity included on a published list.
- 18. Any person who intentionally engages in activities designed to enable or facilitate the making available of funds may be guilty of an offence.
- 19. It would be an offence for an institution not to disclose to the Treasury information relating to those it has dealings with (since 10 October 2001), if it knows or suspects that that person is involved in any way in terrorism. There is also legal cover for the disclosure of such information to the Treasury.
- 20. It would be an offence to make a false statement in order to obtain a licence for the release of funds etc.

Failure to provide information or providing false information

- 21. Failure or refusal to furnish such information or documents without reasonable excuse may be an offence. Intentionally furnishing false information or a false explanation, or damaging or disposing of a document in order to evade such a requirement, may also be an offence.

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22. Providing false information to the Treasury is an offence, and providing false information for the purposes of obtaining a licence (or failing to comply with any condition of the licence) is an offence.

Licences

23. The Treasury may issue a notice directing that funds should be frozen and may not be made available to any person except under the authority of a licence issued by the Treasury.
24. Licences for the release of funds must be in writing.
25. Licences may be general, or may be specific and in relation to a particular person or particular funds or an amount of funds.
26. Applications for licences must be sent to the Sanctions Officer at Customs and Excise. A recommendation is made to the Treasury Minister, and it is the Minister who formally issued or denies the applicant a licence.

See Sanctions Notice 32 which contains a protocol on the granting of a licence by the Treasury.

It is important to note that the Treasury can only issue licences where there are specific and relevant licensing grounds enabling us to do so, and where the conditions in those grounds have been met. The available grounds can be found in the legislation underpinning each particular financial sanctions regime.

The licensing grounds in EU and UK sanctions regimes are interpreted narrowly, which is in keeping with relevant case law and takes into account the way in which other EU Member States deal with them. This means that the Treasury will only consider licensing those activities that fall within the licensing grounds set out in the legislation.

Licences cannot be issued retrospectively.

A licence does not compel any party, including the financial institutions involved in the payment route, to take any action, nor does it confirm that the proposed transaction is lawful aside from financial sanctions considerations.

Exemptions and derogations

- 26A. An exemption to a prohibition applies automatically in certain defined circumstances and does not require a licence. A derogation is an exemption contained within the sanctions Regulation or regulations.

Typical examples are where the sanctions allows the crediting of interest to blocked accounts, basic needs or legal fees, or where contracts predating the imposition of the sanctions may be allowed to be executed. One needs to consult the detail of the sanctions legislation involved.

UK licences and licences in other jurisdictions

- 26B. UK licences do not have automatic effect in the Island.

Licences issued by the Treasury only apply to actions subject to Isle of Man jurisdiction. If the prohibited activity also comes under another country's jurisdiction (including the UK) applicants should consider what other licences they may need to comply with their requirements. For instance, if a payment will pass through several jurisdictions they may need to apply for a licence from each of those countries' competent authorities.

OFSI is the competent authority for the UK. A list of the competent authorities for EU Member States is annexed to EU sanctions Regulations.

Appeals

27. If a person considers they have been unfairly affected by a sanctions regime, or by the blocking or freezing of any assets as a consequence of a sanctions regime, they should make representations, in the first instance, to the Sanctions Officer.
28. Any person affected by a sanctions measure has the right to seek redress by means of a Petition of Doleance in the High Court. In addition, the sanctions order or regulations concerned may contain specific appeal provisions.
- 28A. In addition, Part 4 of the Terrorism and Other Crime (Financial Restrictions) Act 2014 provides recourse to the High Court if the designation, freezing order or direction involved has been issued by the Treasury under Part 2 of that Act (and which would relate to terrorism, proliferation or money laundering) or for the purposes of the Al-Qa'ida and Taliban (United Nations Measures) (Isle of Man) Order 2002. However, no application may be made to set aside a decision to make a direction if the Treasury certifies that, in making the order involved, it formed a reasonable belief concerning a risk to the interests of the Island in reliance on a measure adopted by the United Kingdom Treasury. Furthermore, making an appeal does not suspend the effect of the decision to which the appeal relates.
29. It should be borne in mind that if persons and entities have been included on sanctions lists by the UN or EU there may be limited scope to consider their removal from lists having effect in the Island.
30. It should also be remembered that the sanctions regimes and the freezing of assets are generally civil in nature, and actions involving assets would be *in rem* (i.e. against the assets and not *in personam* (against the person)).
- 30A. See paragraph 13A above for details of how to apply to OFAC for removal from the lists issued by that organisation in the USA.

Definitions

31. "Funds" generally means—

financial assets and economic benefits of any kind, including (but not limited to) gold coin, gold bullion, cash, cheques, claims on money, drafts, money orders, and other payment instruments; deposits with financial institutions or other entities,

balances on accounts, debts and debt obligations; securities and debt instruments (including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, debenture stock and derivatives contracts); interest, dividends or other income on value accruing from and generated by assets; credit, rights of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export financing.

The definition is drawn so broadly as to include virtually all forms of asset, actual or potential. Therefore, you should assume that any dealings with persons, organisations or territories involved in terrorism and/or included in lists issued by the Treasury may be prohibited.

- 31A. Economic resources means assets of every kind, whether tangible or intangible, movable or immovable, (such as goods, property, or rights) which are not funds themselves but can be used to obtain funds, goods or services.
32. A "published list" means persons or entities (or lists of persons or entities) which have either been published by the Treasury and been declared to be subject to sanctions, or which the Treasury has notified by means of a news release or Public Notice as being a list of persons or entities subject to sanctions. See page 3 for details of how to subscribe to the necessary feed.

What is "proliferation" of weapons of mass destruction and its financing

- 32A. Proliferation financing can be -
- a. terrorism financing which provides financial support to terrorist organisations that would want to acquire and/or use a WMD; or
 - b. financing from a state or state-controlled or sponsored entity with the aim of providing a state with a WMD, or to enhance, improve or replace an existing one.

Proliferation financing is an important element in both of these and, as with international criminal networks, proliferation support networks use the international financial system to carry out transactions and business deals. Unscrupulous persons may also take advantage of the potential profits to be made by facilitating the movements of sensitive materials, goods, technology and expertise, providing seemingly legitimate front organisations or acting as representatives or middlemen.

Ransom payments

- 32AA. The anti-terrorism and sanctions legislation of the Island makes it illegal to make payments to terrorists and terrorist organisations or for the purposes of terrorism, either directly or indirectly.

In particular, payments made to those individuals, undertakings and entities included on the Al-Qaida Sanctions List for the purpose of ransoms would be illegal, regardless of how or by whom the ransom is paid.

The prohibitions have extra-territorial effect, meaning that an offence can be

committed by Island persons or legal entities, even if the activity takes place outside the Island.

However, a clear distinction may be made between payments of ransom to terrorists, or for the purpose of terrorism, and those which may be made for reasons of other forms of criminality, such as piracy at sea.

Businesses and individuals are advised to exercise extreme caution in respect of any transactions that involve the payment of ransoms. Any relevant information should be reported to Customs and Excise, if potential sanctions issues are involved, or the FIU.

You should also be aware that a request to become involved in a transaction involving the payment of a ransom could give rise to knowledge or suspicion, or reasonable grounds for knowledge or suspicion that someone is involved in criminal activity or terrorist financing, in which case a disclosure should be made to the FIU.

False positives

32AB. The majority of matches that screening of clients and accounts will produce, whether using screening software or otherwise, are likely to be “false positives”. This would be following further review undertaken by the business to either confirm the match or treat it as false.

True matches would be where there is no doubt that the person or entity involved is the target of the sanctions regime. However, there may be a potential or partial match where the name and/or some of the supporting identifying information appears to indicate that you have found a match.

A “false positive” is where there is an apparent match to a target on a sanctions list but, after further investigation, it is decided that the person or entity involved is not, in fact, that designated by the Treasury.

The Treasury does not specify the precise nature of the further enquiries that a business should undertake to satisfy itself that the match is a false positive. However, the business should have both -

- a process detailing how it carries out checks to confirm or treat a match as a false positive; and
- a record of false positives and details of the information or evidence that led the business to decide that it was a false positive, as well as who made the decision to treat the match as a false positive and on what grounds.

Therefore, a record and audit trail for each match should be maintained, whether they turn out to be a true match or not (see also paragraph 9A above).

Examples of offences and penalties for sanctions offences

32B. The following table lists some of the offences and penalties provided in the Terrorism and Other Crimes (Financial Restrictions) Act 2014 (TOCFRA) for breaches of sanctions law relating to “designated persons” (which includes those persons

included on terrorism sanctions lists having effect in the Island). They may be regarded as indicative of typical offences and penalties provided for throughout sanctions legislation.

You should note, however, that unlawful acts relating to sanctions and individuals, entities, organisations, countries and territories subject to sanctions may also be breaches of export control law (see Notice 279 MAN), trade control law (see Notice 279T MAN), the Proceeds of Crime Act 2008, the Anti-Terrorism and Crime Act 2003 or other provisions in the criminal law.

Offence	Summary Conviction	Conviction on Information
Dealing with funds or economic resources owned, held or controlled by a designated person TOCFRA 44	Up to 12 months custody; Up to £5,000 fine; or Both	Up to 7 years custody; An unlimited fine; or Both
Making funds or financial services available to designated person TOCFRA 45	Up to 12 months custody; Up to £5,000 fine; or Both	Up to 7 years custody; An unlimited fine; or Both
Making funds or financial services available for benefit of designated person TOCFRA 46	Up to 12 months custody; Up to £5,000 fine; or Both	Up to 7 years custody; An unlimited fine; or Both
Making economic resources available to designated person TOCFRA 47	Up to 12 months custody; Up to £5,000 fine; or Both	Up to 7 years custody; An unlimited fine; or Both
Making economic resources available for benefit of designated person TOCFRA 48	Up to 12 months custody; Up to £5,000 fine; or Both	Up to 7 years custody; An unlimited fine; or Both
Intentional participation in activities knowing that the object or effect of them is (whether directly or indirectly) to circumvent any prohibitions, or to enable or facilitate the contravention of any such prohibition relating to a designated person TOCFRA 49	Up to 12 months custody; Up to £5,000 fine; or Both	Up to 7 years custody; An unlimited fine; or Both
For the purpose of obtaining a licence, knowingly or recklessly, providing information that is false in a material respect, providing or producing a document that is not what it purports to be, or failing to comply with a condition of a licence TOCFRA 51	Up to 12 months custody; Up to £5,000 fine; or Both	Up to 2 years custody; An unlimited fine; or Both

Amendments to this Notice

33. New paragraph 8A re OFAC sanctions inserted 23 July 2013.
34. Index added, and definition of sanctions and new paragraph 32A defining proliferation inserted 18 September 2014.
35. New paragraph 32B and table inserted re typical sanctions offences and penalties, 20 March 2015.
36. New paragraph 32AA re ransom payments inserted 30 June 2015.
37. New paragraph 28A inserted, and paragraphs 29 and 30 amended, 21 July 2015.
38. New "directions" on page 4 substituted; new paragraph 6A inserted re information powers and references to FSC and FCU amended, 25 November 2015.
39. Paragraphs 9 and 14 amended to make reference to the need to report attempted transactions, 5 February 2016.
40. Definition of economic resources added as new paragraph 31A, 15 March 2016.
41. Paragraph 32A substituted, 19 July 2016.
42. New paragraph 9A (record-keeping) and 32AB (false positives) added 13 January 2017.
43. References to RSS feed added on page 3 and in paragraphs 7 and 32; new paragraphs 7A (re RSS feeds) and 13A (re unblocking/unfreezing assets) inserted, 7 March 2017.
44. Paragraphs 8A and 13A amended, and new paragraph 30A inserted, to refer to the procedure for seeking delisting by OFAC, 21 April 2017.
45. New paragraphs 12A and 12B inserted to clarify definition of funds and economic resources where owned, held or controlled jointly or indirectly, 3 May 2017.
46. Paragraph 12B amended with reference to complex legal structures and arrangements, 11 May 2017.
47. Amendments made to make clear that not only financial institutions are subject to reporting requirements of the sanctions, 3 August 2017.
48. New Annex A - 10 steps to a sanctions compliance environment added, 8 August 2017.
49. Reference to "capital market restrictions" added on page 5; Introduction amended to add reference to trade sanctions and domestic sanctions; new paragraph 8B (proscribed organisations), 14A (legal professional privilege), 26A (exemptions and derogations) and 26B (UK licences and licences in other jurisdictions); paragraphs 12A, 12B and 26 amended, 14 August 2017.

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50. Paragraph 8B amended to add link to list of proscribed organisations, 6 September 2017.

Isle of Man Customs and Excise Website

Amendments to these sanctions will be advised by means of news releases which will be published on the official Isle of Man Government website at <http://www.gov.im/>

The Isle of Man Customs and Excise website will contain details of all current sanctions, news releases and links to relevant lists <http://www.gov.im/categories/tax-vat-and-your-money/customs-and-excise/>

Annex A

10 STEPS TO A SANCTIONS COMPLIANCE ENVIRONMENT

Step 1 **ADOPT A TOP-DOWN APPROACH TO COMPLIANCE**

It is vital that there is corporate leadership and board and senior management buy-in - with this commitment clearly and forcefully emphasised to managers, employees, clients and suppliers.

Step 2 **ESTABLISH & MAINTAIN UP TO DATE POLICIES AND PROCEDURES**

These should be clear and concise, available to all managers and employees, with clients, customers, suppliers and other third parties made aware of them as appropriate. They must be clearly communicated.

They should include clear identification of responsibilities and reporting structures within the organisation, stress the policies of the organisation, including in respect of disclosures, reporting of suspicions and due diligence.

Step 3 **ENSURE AWARENESS AND APPLICABILITY OF RELEVANT GUIDANCE**

As provided by the regulator(s), the FIU, Customs and Excise and the Government as a whole; as well as by relevant UK Government, trade organisations, and other sources (e.g. the EU, UN, OFAC).

Step 4 **UNDERTAKE SCREENING USING UP TO DATE INFORMATION - NAMES**

Using such materials as provided by official bodies (OFSI Consolidated List, FCO, OFAC) and/or private sector organisations (e.g. World-Check, C5).

Step 5 **USE OR CONSIDER USE OF OTHER CHECKS AND SCREENING**

To protect the organisation against bribery, corruption, trade-based money laundering, terrorist financing, proliferation and proliferation financing.

Using information from the UK's Export Control Joint Unit, NSG Trigger List, EU Dual-Use Regulation and Common Military Lists, etc.

Step 6 **IMPLEMENT A RISK-BASED APPROACH**

There is no easy one size fits all approach that can be adopted.

Adopt a risk-based approach and risk assessment process according to business types, customer profiles, countries involved, products and services, delivery channels, degree of practical control available and the supporting evidence.

Ensure awareness of risks and of the latest trends, typologies and red flags.

Step 7 IF IN DOUBT - ASK

The regulators, FIU and Customs and Excise are there to help; it is better to be safe than sorry.

Step 8 MAINTAIN RECORDS OF CHECKS AND DISCLOSURES

Including "false positives" and contacts with regulators, FIU and law enforcement.

Step 9 TRAIN AND KEEP UP TO DATE

Regularly train and update employees and managers. Consider if (and how) to inform or educate third parties. Ensure your training and in-house knowledge is kept up to date. Require or encourage employees and managers to undertake external compliance training, undertake relevant CPD and to research and prepare training that can be used within the organisation and could be communicated to others outside the organisation. Encourage participation in local and national trade bodies and interaction with official bodies (including in for a such as the AML/CFT Advisory Group and the GSC AML Forum).

Step 10 DOCUMENT WHAT YOU DO AND HOW YOU ENSURE ITS ADEQUACY AND RELEVANCE

As well as being useful as a part of any induction and ongoing training, this would also be of use to demonstrate to current or potential clients and customers your competency and commitment, as well as proving your credibility to regulators and other official bodies.

It could also prove useful when applying for forms of licensing, authorisation (e.g. if applying for AEO status or the equivalent) or approvals, or when required to demonstrate standards to other outside bodies (e.g. if seeking ISO or similar approvals).

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Isle of Man
Government

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