



TARGETED FINANCIAL SANCTIONS: OVERARCHING GUIDANCE ON COMPLIANCE FOR FIRMS

DECEMBER 2023

INTRODUCTION

This guidance has been issued to assist businesses in complying with their obligations in relation to targeted financial sanctions¹ that have been implemented in Guernsey². It complements other guidance on sanctions issued by the Policy & Resources Committee, which is available here: [Sanctions - States of Guernsey \(gov.gg\)](https://www.gov.gg/Sanctions-States-of-Guernsey).

The guidance takes the form of FAQs. It is primarily aimed at targeted financial sanctions regimes in relation to terrorism and the proliferation of weapons of mass destruction, but is also applicable to other targeted financial sanctions regimes.

Please note that, as with other guidance provided by the Policy & Resources Committee, this document does not constitute legal advice and it is recommended that, where necessary, independent legal advice is sought. Please also be aware that while this document sets out the effect of legal provisions, this is done to assist the lay reader and should not be taken as a definitive summary of the legal position or a substitute for reading the legislation itself.

FAQ 1: Who should read this guidance?

This guidance should be read by board members, money laundering reporting officers, compliance teams, internal audit officers and customer facing staff - in short, everyone who has a role in helping the business to comply with targeted financial sanctions.

FAQ 2: What are targeted financial sanctions?

Targeted financial sanctions are financial restrictions applicable to specific individuals or entities that have been designated (i.e. listed) by the UN or the UK. The Policy & Resources Committee also has the power to list individuals or entities in terrorist financing cases. To date, the Policy & Resources Committee has not had any reason to exercise this power (see FAQ 13 on this point). All targeted financial sanctions regimes enacted by the UN are implemented in Guernsey by giving effect to UK sanctions regimes that themselves implement the UN regimes. Guernsey also gives effect to autonomous UK sanctions regimes

¹ Sanctions regimes usually include other types of restrictions, but these are outside the scope of this document.

² For ease of reading, in this document the Bailiwick of Guernsey is described as Guernsey.

or listings (i.e. regimes or listings issued independently by the UK). Further details about all current sanctions regimes applicable in Guernsey are available via the link in the introduction.

The restrictions imposed by targeted financial sanctions comprise a requirement to freeze assets that are directly or indirectly owned or controlled by a listed person, a prohibition on making funds or economic resources directly or indirectly available to or for the benefit of a listed person, and a prohibition on the intentional circumvention of these measures, directly or indirectly. The origin or intended use of assets for these purposes is irrelevant, so targeted financial sanctions will apply to both legitimately acquired assets that are intended to be used for lawful purposes and assets with a criminal link or purpose.

Failure to comply with targeted financial sanctions is a criminal offence.

FAQ 3: Who must comply with targeted financial sanctions?

The obligation to comply with targeted financial sanctions that have been given effect in Guernsey applies to all legal and natural persons within the jurisdiction. It therefore applies to all businesses, their officers and persons who work or act for them. In addition, under the extra-territoriality provisions in UK sanctions regimes, those regimes are directly applicable to natural persons in Guernsey that are UK nationals (i.e. British) and to legal entities that are incorporated or constituted under the law of any part of the UK. This means that there will be many individuals and some businesses that are subject to both Guernsey and UK sanctions.

FAQ 4: When do listings take effect?

All listings (or changes to listings) made by the UN are automatically and immediately effective under UK sanctions regimes as soon as they are made. The same is true of autonomous UK listings (or changes to listings). These listings or changes are therefore also automatically and immediately effective under Guernsey's legal framework (and the same would apply to any listings or changes to listings made by the Policy & Resources Committee). This means in turn that the legal obligation on businesses to comply with a new listing takes immediate effect when the listing is made, without the need for any legislation or other measures (e.g. notifications) to be taken by the Guernsey authorities. Therefore, it is imperative that businesses take steps to ensure that they are aware of new listings (or changes to listings) as soon as they are made.

FAQ 5: How can businesses find out about new listings or changes to listings as soon as they are made?

Updates about listings from both HM Treasury's Office of Financial Sanctions Implementation and the UN are available to subscribers. Businesses who do not already subscribe to these updates should do so. Access to UK updates is available via this link: [Get emails from GOV.UK - GOV.UK \(www.gov.uk\)](#). Access to UN updates may be obtained by sending a request for subscription to the mailing list of updates to UN listings to sc-sanctionslists@un.org;

The Financial Intelligence Unit also issues notices about new listings and changes to listings via its THEMIS system on behalf of the Policy & Resources Committee. Businesses which are

not already registered to receive THEMIS updates from the Financial Intelligence Unit should do so via this link: [Contacting the FIU team - Financial Investigation Unit \(gov.gg\)](#)

FAQ 6: What is meant by direct or indirect ownership of assets?

Direct ownership by a listed person will obviously arise where assets are held in the name of that person.

Indirect ownership is more difficult to determine and will depend on the facts of any given case. An obvious example would be where assets are held by a company in which the listed person holds more than 50% of shares or voting rights, or if the listed person holds the right directly or indirectly to appoint or remove a majority of the board of directors. This is specified in the UK sanctions regimes dealing with terrorist financing and proliferation financing, as well as in most other UK sanctions regimes.

The UK regimes also specify other matters that are relevant to assessing ownership of shares or rights (e.g. joint ownership of shares or rights, joint arrangements, shares or rights held via a chain of ownership or by nominees) which are effectively the same as the provisions regarding ownership of shares or rights in Guernsey's beneficial ownership framework. Therefore, businesses will be familiar with looking through ownership structures and applying these concepts.

FAQ 7: What is meant by direct or indirect control of assets?

Businesses should note that control of assets is separate from, and additional to, ownership of assets. In other words, if a listed person does not meet the ownership test outlined above in respect of any given assets, those assets may still be captured by the asset freeze if the listed person controls them in some other way.

Where assets are held by a legal entity in which the listed person has no direct or indirect legal interest, the UK sanctions regimes specify that a person controls that entity (and therefore the assets) if it is reasonable to expect that the listed person can control the way in the affairs of the legal entity are conducted.

The UK sanctions regimes do not define what is meant by direct or indirect control of assets in other circumstances. Therefore, as with the test for control under the beneficial ownership framework, this will depend on the particular facts in any given case. Matters such as familial or other relationships will obviously be relevant, as will other factors such as patterns of behaviour in relation to the assets. It is important to be aware that the Guernsey authorities take a cautious approach to the issue of control.

FAQ 8: What is meant by making funds or economic resources directly or indirectly available to or for the benefit of a listed person?

The UK sanctions regimes do not define what is meant by making funds or economic resources directly or indirectly available to someone. Clearly, making a payment into a bank account in the name of a listed person or otherwise transferring assets to that person would comprise

making funds or economic resources available to or for the benefit of that person directly. However, apart from an obvious situation of that kind (which is unlikely to arise in practice), this issue will depend on the particular facts in any given case and the extent to which it is reasonable to expect that the listed person will receive or benefit from property that is transferred or made available to a third party. Please be aware that here too, the Guernsey authorities take a cautious approach.

FAQ 9: Are there any circumstances in which it is possible to use or obtain access to frozen assets?

Use or access to frozen funds may be authorised by a licence issued by the Policy & Resources Committee in limited circumstances, which vary depending on the sanctions regime in question. Further information about licences is available using the link in the introduction.

FAQ 10: Are there any reporting obligations or tipping off prohibitions in relation to targeted financial sanctions?

Reports on frozen assets or other sanctions issues must be made to the Policy and Resources Committee under all sanctions regimes. In addition, reports must also be made to the Financial Intelligence Unit in sanctions cases where there is a suspicion of money laundering, terrorist financing or proliferation financing. There is no general tipping off prohibition in relation to sanctions, but tipping off provisions apply to suspicions of money laundering, terrorist financing or proliferation financing. Further information about reporting obligations and tipping off is available using the link in the introduction.

FAQ 11: What should businesses do if a person is de-listed?

As with listings, de-listings are immediately effective under Guernsey's legal framework (and that of the UK). Therefore, as soon as a person is de-listed, they are no longer subject to targeted financial sanctions so there is no restriction on access to or use of their assets from a sanctions perspective. Any action taken by businesses to release or use previously frozen assets should be reported in advance to the Policy & Resources Committee.

FAQ 12: What should businesses do if an unlisted person's assets are frozen?

If the assets of an unlisted person have been frozen, the steps that a business should take as regards the unfreezing of those assets will depend on the reasons why the assets were frozen. For example, different considerations are likely to apply in a situation where a person has been wrongly identified as a listed person from those that apply in a situation where a person holds assets jointly with a listed person. Therefore, if a business believes that assets should be unfrozen, it should contact the Policy & Resources Committee before taking any action.

There may also be cases where an unlisted person whose assets have been frozen by a Guernsey business contacts the Policy & Resources Committee directly to request assistance in getting the assets unfrozen. In that situation, the Policy & Resources Committee will liaise with the business as appropriate in respect of the way forward.

FAQ 13: Can businesses share information that may be relevant to listings?

The Guernsey authorities recognise that a robust and accurate listing process is essential for the effectiveness of targeted financial sanctions. This applies to all regimes but is particularly important in respect of regimes related to activities that threaten global security such as terrorism or the proliferation of weapons of mass destruction, and to the financing of those activities. Therefore, businesses are encouraged to share with the Policy & Resources Committee any information they have which suggests that an unlisted person meets the criteria for listing under a sanctions regime that has been implemented in Guernsey, or that there is a need to remove or change an existing listing under such a regime. This information may be provided by businesses to the Policy & Resources Committee under section 10A of the Disclosure (Bailiwick of Guernsey) Law, 2007.