



Government of the Cayman Islands

## **Registrar of Non-Profit Organisations**

### **How to Address Risk of Targeted Financial Sanctions**



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## Guidance on Targeted Financial Sanctions for the Non-Profit Organisation Sector

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### **What are financial sanctions?**

Financial sanctions are prohibitions and restrictions put in place by the United Nations, European Union, United Kingdom and the Cayman Islands, with the aim of maintaining or restoring international peace and security. They can:

- Limit the provision of certain financial services
- Restrict access to financial markets, funds and economic resources.

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 and ISIL.

Financial sanctions are generally imposed to:

- Coerce a regime, or individuals within a regime into changing their behavior (or aspect of it) by increasing the cost on them to such an extent that they decide to cease the offending behavior;
- Constrain a target by denying them access to key resources needed to continue their offending behavior, including the financing of terrorism or nuclear proliferation;
- Signal disapproval, stigmatizing and potentially isolating a regime or individual or as a way of sending broader political messages nationally or internationally and or
- Protect the value of assets that have been misappropriated from a country until these assets can be repatriated.

From time-to-time, the UK Government passes Overseas Territories Orders in Council (OOICs or Orders) implementing UN and EU sanctions and extending such sanctions to its British Overseas Territories. When extended to the Cayman Islands, these OOICs have the force of law in the jurisdiction, breaches of which may constitute an offence for which fines and/or criminal convictions may result. Sanctions will apply to all relevant institutions, businesses or professions and Non-Profit Organisations (“NPOs”).



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The Cayman Islands can also impose its own domestic financial sanctions in certain circumstances under Section 2 (a) of Schedule 4A the Terrorism Law (2018 Revision) (TL) and Section 3 (1) of the Proliferation Financing (Prohibition) Law (2017 Revision) (PFPL).

A significant obligation under the TL and the PFPL is for you to:

- **Freeze without delay** and without prior notice, the funds or economic resources owned, held or controlled by a designated person.

### **The Obligation of the Non-Profit Organisation**

NPOs are prohibited from carrying out certain activities if financial sanctions apply. What is prohibited depends on the exact terms of the relevant financial sanctions legislation (OOIC, TL and PFPL). When conducting transactions with new parties especially where it involves an overseas jurisdiction the NPO should make checks (due diligence) on the consolidated list to ensure that the entity is not dealing with a designated person or entity.

**You should always refer to the up-to-date version of the legislation imposing the specific financial sanctions that apply in your case to understand exactly what is prohibited.**

If the financial sanction takes the form of an asset-freeze, you are generally prohibited from:

- dealing with the 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, or
- engaging in actions that directly or indirectly circumvent the financial sanctions.

### **Reporting Obligations**

NPOs are obliged to report to the Governor (using the office of the Financial Reporting Authority (FRA)) 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.

NPOs 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.

When reporting to the FRA, you must include:



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- the information or other matter on which the knowledge or suspicion is based, and
- any information you hold about the person or designated person by which they can be identified.

If the NPO knows or have a reasonable cause to suspect that a person is a designated person, and that person is a donor, beneficiary or customer, the NPO must also state the nature and amount or quantity of any funds or economic resources held by them for that customer.

The NPO is also required to report credits to frozen accounts and any actions taken in compliance with the prohibition requirements of the United Nations Security Council Resolutions (UNSCRs), including attempted transactions.

The FRA Industry Guidance provides more information on reporting obligations.

If the NPO is unsure of its reporting obligations, the controllers and or senior officers should seek independent legal advice or contact the Registrar of NPOs.

### **How to Report**

A Compliance Reporting Form (CRF) (new) must be completed when making a report to the FRA. The CRF should be used when reporting suspected designated persons, frozen assets, and suspected breaches of financial sanctions.

You should email the CRF, including any associated documents, to [financialsanctions@gov.ky](mailto:financialsanctions@gov.ky). You should include "Suspected breach", "Suspected designated person" or "Frozen assets" in the subject line of their email, whichever is most applicable.

All reports to the FRA 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.

### **OFFENCES AND PENALTIES**

**Offences will depend on the particular legislation, but can include:**

- making funds or economic resources available to a designated person (except where an exemption applies or under license),



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- dealing with funds or economic resources that must be frozen (except where an exemption applies or under license),
- failing to comply with reporting obligations,
- activities that circumvent an asset freeze, and
- breaches of licensing conditions.

### **Penalties:**

- Breaches of financial sanctions are considered to be a serious criminal offence. Offences under the **OOICs** carry a maximum of seven years imprisonment on conviction on indictment, or to a fine or to both, or on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent or to both.
- Similarly offences under **Schedule 4A of the TL** carry a maximum of seven years imprisonment on conviction on indictment or a fine or to both, or on summary conviction, to a fine of CI\$ 10,000, or to term of imprisonment of twelve months, or to both.
- Under the **PFPL**, the FRA has the power to impose civil penalties of such amounts as it considers appropriate (not exceeding CI\$40,000) on a person who fails to comply with freezing and reporting obligations of any frozen funds or economic resources. A person who fails to comply with a freezing obligation is also liable (a) on summary conviction to a fine of CI\$50,000; or (b) on conviction on indictment, to a fine of CI\$70,000, or imprisonment for a term of three years, or to both. A person who fails to comply with a reporting obligation is liable on summary conviction to a fine of CI\$10,000.

### **Due Diligence**

NPOs are reminded as a best practice, that they carry out appropriate customer due diligence on donors, beneficiaries (where applicable, an example would be a new international donor providing large donations and requesting that the NPO support a particular cause or person, or in the case of beneficiaries who are located in international high risk jurisdiction). Checks can be done using the United Nations Security Council Sanction List Search <https://scsanctions.un.org/search/>.