



Jersey Financial  
Services Commission

## **SANCTIONS**

### **General Information**

Issued: January 2011  
Last Updated: 4 February 2015

## GENERAL INFORMATION

This guidance has been formulated to provide general information regarding sanctions. For particular information regarding financial sanctions, go to the Practical Guidance document: [http://www.jerseyfsc.org/pdf/Financial\\_Sanctions\\_Practical\\_Guidance.pdf](http://www.jerseyfsc.org/pdf/Financial_Sanctions_Practical_Guidance.pdf)

This document aims to answer the following questions:

1. What are sanctions?
2. Why are sanctions used?
3. What form do sanctions measures take?
4. How are sanctions measures implemented in Jersey?
5. Who is required to comply with sanctions measures implemented in Jersey?
6. Why is it important to comply with sanctions legislation?
7. How long does a sanctions measure last?
8. Who has responsibility for sanctions matters in Jersey?
9. Financial Sanctions
10. Challenging European Union and United Nations Designations

### 1. WHAT ARE SANCTIONS?

1. A sanction is a measure adopted against a country, regime, or person believed to be violating international law.
2. The two key supranational bodies to adopt sanctions measures are the United Nations (“UN”) and the European Union (“EU”).
3. The UN Security Council can take measures to maintain, or restore, international peace or security. Such measures range from economic sanctions to international military action. Each Member State is then called upon to implement the requirements of a sanctions measure in its own territory.
4. The EU applies sanctions in pursuit of specific objectives of the Common Foreign and Security Council, as set out in the Treaty of the European Union. EU sanctions are either adopted to ensure compliance with UN sanctions requirements, or autonomously by the EU to advance specific EU objectives. EU Regulations imposing sanctions apply directly in Member States. Further legislation is, however, required in each Member State to impose penalties for sanctions breaches under EU Regulations.
5. A country may also impose sanctions unilaterally as an extension of its foreign policy, for example the United States via the Office of Foreign Assets Control (OFAC sanctions).

### 2. WHY ARE SANCTIONS USED?

6. Each measure adopted will have its own objective in respect of the particular country, regime or person. Examples of objectives that sanctions measures may seek to achieve are:
  - A change in the conduct of a particular country, regime or person.
  - To place pressure on a country, regime or person to comply with set objectives.
  - As a punitive measure when international peace and security are threatened and diplomatic efforts have failed.
  - To deter, prevent and suppress the financing of terrorism and terrorist acts.

### 3. WHAT FORM DO SANCTIONS MEASURES TAKE?

7. Sanctions tend to take the form of restrictive/coercive measures. Measures may be economic, diplomatic or cultural such as:
- The freezing of funds.
  - The withdrawal of financial services.
  - Bans or restrictions on trade.
  - Bans or restrictions on travel.
  - Suspension from international organisations.

### 4. HOW ARE SANCTIONS MEASURES IMPLEMENTED IN JERSEY?

8. In Jersey, international sanctions measures are implemented by local legislation. There is no single piece of legislation that sets out the sanctions regime in Jersey. Each measure, or set of measures, will be contained in their own specific legislation. The particular legislation will specify what can and cannot be provided under the terms of that sanctions measure.

#### 9. EU Sanctions

- EU sanctions measures do not, as a matter of course, directly apply in Jersey unless they apply a restriction on the movement of goods (import or export). For policy reasons EU sanctions are, however, usually adopted and implemented via local legislation.
- EU sanctions are implemented in Jersey by Orders made by the Minister for External Relations under the [European Union Legislation \(Implementation\) \(Jersey\) Law 2014](#) (the “**EU Implementation Law**”). Once an Order is made, it is published: on the States Greffe website; in the Jersey Evening Post (“**JEP**”) as a Gazette Notice; and will appear on both the [Commission’s website](#) and the Jersey Law website ([www.jerseylaw.je](http://www.jerseylaw.je)).
- The Minister for External Relations has made the following Order under the EU Implementation Law:
  - EU Legislation (Sanctions) (General Provisions) (Jersey) Order 2014 (the “**General Provisions Order**”);
- The General Provisions Order provides standard provisions which sanctions Orders may apply or not (and if applied the provisions may be modified).
- A sanctions Order may provide that an EU Regulation is to have effect in Jersey as though it were an enactment.
- A sanctions Order may also use ambulatory references with the effect that any amendments to the lists in the Annexes to the EU Regulation will automatically apply.
- A sanctions Order Implementing EU sanctions takes the following format:
  - EU Legislation (Sanctions – Country X) (Jersey) Order [Year]
  - For example: EU Legislation (Sanctions – Al-Qaida) (Jersey) Order 2014.

#### 10. UN Sanctions

- In the past, United Nations sanctions orders were prepared in line with section one of the United Nations Action 1946, forwarded to the Privy Council for Royal Assent and registered in the Royal Court. This process was slow and has now been replaced by the EU sanctions process described above. However, until all the UN sanctions orders have been replaced by equivalent EU measures, some of the older UN orders will still remain in force.
- The orders that remain in force are listed on the [Jersey Law website](#). Changes made by the UN Sanctions Committee may effect various changes without the need for a fresh order; for example, amendments made to a list of ‘designated persons’.

## **5. WHO IS REQUIRED TO COMPLY WITH SANCTIONS MEASURES IMPLEMENTED IN JERSEY?**

11. In broad terms, sanctions measures implemented in Jersey apply to all:
  - Persons (legal and natural persons) located in or operating in or from within Jersey.
  - Persons (legal and natural persons) incorporated or constituted under the Law of Jersey.
12. Certain sanctions measures may place duties on specific persons or sectors. For example the sanctions measures against Iran place certain additional duties on financial and credit institutions incorporated, constituted or doing business (in whole or part) in Jersey.
13. As a country's sanctions measures tend to be applicable to nationals of that country and bodies constituted or incorporated under the law of that country, wherever those persons are situated, it is important to understand any obligations that may follow from having such links to another country.

## **6. WHY IS IT IMPORTANT TO COMPLY WITH SANCTIONS LEGISLATION?**

14. Breaches may result in prosecution for criminal offences and/or fines.
15. Penalties for breaching sanctions are set out in the legislation implementing the particular sanction measure(s). A person guilty of an offence is liable on conviction to imprisonment and/or a fine. Prosecutions may take place not only against a business, but also key players within a business if a breach takes place with their connivance or neglect.
16. Compliance with sanctions legislation is important for a number of reasons. If a person does not comply with sanctions measures, a person may help finance or assist:
  - Terrorism or terrorist organisations;
  - the production, development or use of weapons, including chemical, nuclear and biological warfare (weapons of mass destruction);
  - political repression or human rights abuses within a state.
17. Helping to assist or finance any of the above is likely to result in reputational damage to a business, and to the Island.

## **7. HOW LONG DOES A SANCTIONS MEASURE LAST?**

18. Some sanctions measures are for a specific duration, others are unlimited. It is important to check the time frame of a sanctions measure by reference to the relevant legislation.

## **8. WHO HAS RESPONSIBILITY FOR SANCTIONS MATTERS IN JERSEY?**

19. A range of individuals and departments have responsibilities under sanctions legislation.

### **THE CHIEF MINISTER'S DEPARTMENT (THE "CMD")**

20. The CMD is responsible for the overall sanctions policy in Jersey. This includes:
  - Co-ordinating the introduction of sanctions measures, via Jersey legislation.
  - Acting as the reporting depository for sanctions matters.
  - Licensing exemptions.

## STATES OF JERSEY CUSTOMS AND IMMIGRATION SERVICE

21. The States of Jersey Customs and Immigration Service are responsible for the enforcement of any sanctions targeting the movement of goods.
22. In Jersey controls over the export and import of goods are governed by the [Customs and Excise \(Import and Export Control\) \(Jersey\) Order 2006](#) and the [Open General Export Licence](#).

## JERSEY FINANCIAL SERVICES COMMISSION (THE “COMMISSION”)

23. Under Article 5 of the [Financial Services \(Jersey\) Law 1998](#), the Commission has the power to generally supervise persons registered by it. Article 11 of the [Money Laundering \(Jersey\) Order 2008](#) (the “MLO”) requires that relevant persons must maintain appropriate policies and procedures in respect of that person’s financial services business in order to prevent and detect money laundering. Under Article 11(3)(e) of the MLO this includes policies and procedures to determine whether a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country or territory that is subject to measures for purposes connected with the prevention and detection of money laundering, such measures being imposed by one or more countries or sanctioned by the European Union or the United Nations. As a result the Commission monitors financial services businesses to ensure that they comply with Article 11(3)(e) of the MLO.
24. The Commission also conducts outreach to raise Industry awareness of sanctions vulnerabilities, with a view to securing the efficient and effective provision of financial services in or from within Jersey under Article 8(3)(d) of the [Financial Services Commission \(Jersey\) Law 1998](#).

## INDIVIDUAL BUSINESSES

25. The responsibility for monitoring and ensuring compliance with sanction measures rests with individual businesses.

## 9. FINANCIAL SANCTIONS

26. Financial sanctions cover the provision of funds, economic resources and/or financial services.
27. Financial sanctions are either comprehensive or targeted.
28. Comprehensive sanctions are aimed at a particular regime and may result in the:
  - prohibition of the transfer of funds to a sanctioned country;
  - freezing of a particular government’s assets; or
  - freezing of assets of corporate entities and/or the residents of a sanctioned country.
29. Targeted sanctions are aimed at particular individuals or entities.

### COMMON MISCONCEPTIONS ABOUT FINANCIAL SANCTIONS (ADAPTED FROM THE ‘FINANCIAL SERVICES FIRMS APPROACH TO UK FINANCIAL SANCTIONS’ PUBLISHED BY THE FORMER FINANCIAL SERVICES AUTHORITY IN APRIL 2009)

The following are commonly held misconceptions regarding financial sanctions:

1. Individuals and entities who are the subject of sanctions are all based overseas.
  - *This is incorrect as sanctioned individuals and entities can be based anywhere, including in the UK.*
2. Financial sanctions are a form of FSA enforcement action.
  - *Financial sanctions are measures adopted by the international community and are not a form of FSA enforcement action.*
3. Customer due diligence checks for anti-money laundering purposes are the same as screening sanctions lists.

- *Checking a client's identity alone will not confirm whether the individual is the subject of sanctions measures.*
- 4. Sanctions targets are the same as Politically Exposed Persons (“PEPs”).
  - *Most PEPS are not in fact subject to sanctions. Some, however, will be.*
- 5. Funds of those sanctioned cannot be frozen because it may constitute ‘tipping-off’
  - *Lists detailing sanctions targets are publically available and most individuals or entities will be aware they are on such lists. This means that freezing the assets of a sanctioned person and informing them of that fact alone will not constitute tipping-off. If, however, it is necessary in the circumstances to file a Suspicious Activity Report (“SAR”) (see section 7 of the [Financial Sanctions Practical Guidance](#)) then disclosure of that fact would in the majority of cases constitute tipping-off under [Article 35 of the Proceeds of Crime \(Jersey\) Law 1999](#), [Article 35 Terrorism \(Jersey\) Law 2002](#).*
- 6. A firm is exempt from the sanctions regime because they only process low value transactions.
  - *There are no exemptions for low value transactions.*
- 7. Sanctions screening is unnecessary where a firm does not hold client money or deal with payments.
  - *Sanctions screening is necessary even if a firm does not handle money or payments because some sanctions extend to the simple provision of financial services.*
- 8. Sanctions do not apply to insurance business, or are a no or low risk area in insurance business.
  - *Financial sanctions can apply to the provision of all financial services, including insurance.*

## 10. CHALLENGING EUROPEAN UNION AND UNITED NATIONS DESIGNATIONS

30. Any natural person affected by inclusion on a sanctions list issued by the European Commission may make a request to the Commission for the grounds for their listing. Such a request should be sent to:  
  
The Council of the European Commission  
General Secretariat  
Rue de la Loi 175  
1048 Bruxelles  
Belgium
31. Persons and entities who are subject to sanctions because they are listed by the Sanctions Committee of the United Nations may petition that Committee for de-listing by contacting the Office of the Ombudsman at the United Nations Headquarters in New York, at the address below:  
  
Office of the Ombudsman  
Room DC2-2286  
United Nations  
New York, NY 10017  
USA