



**Gibraltar Financial Intelligence Unit**

HM Government of Gibraltar

# Financial Sanctions

Guidance Notes

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## Scope

This guidance is produced by the Gibraltar Financial Intelligence Unit (GFIU).<sup>1</sup> It outlines its understanding of obligations under financial sanctions, as well as its understanding of the possible approaches to licensing and compliance issues that Gibraltar's competent authorities (the Chief Minister under the Sanctions Act 2019 and the Minister for Financial Services under the Terrorist Asset-Freezing Regulations 2011) might take. Note, however, that other bodies - and other legislation, such as the Counter Terrorism Act 2010 and the Export Control Act 2005 and their respective subsidiary legislation -, could also be relevant. This guidance also takes into account relevant case law and EU guidance. It is general in nature so you should always also refer to the relevant, up-to-date legislation. Please note that the relevant competent authority in Gibraltar would consider each matter on the facts, and the specific legal requirements that apply. Neither the GFIU nor the Gibraltar competent authorities can issue definitive guidance on how the law might be applied in a particular case or how an EU or Gibraltar court might interpret the law. **Finally, this guidance does not represent legal advice. If you are unsure about your obligations in a given case, you should take independent legal advice.**

### Leaving the European Union (EU)

EU legislation regarding sanctions remains in force at the date of publication of this guidance.

## 1 Overview of financial sanctions

### 1.1 Why do we have financial sanctions?

Financial sanctions are restrictions put in place by the UN, EU, UK or Gibraltar in appropriate cases to achieve a specific policy or security objective. Financial sanctions can:

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

Financial sanctions are generally imposed to do one or more of the following:

- coerce a regime, or individuals within a regime, into changing their behaviour (or aspects of it) by increasing the cost on them to such an 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, stigmatising and potentially isolating a regime or individual, or as a way of sending broader political messages nationally or internationally
- protect the value of assets that have been misappropriated from a country until these assets can be repatriated

### 1.2 Who is involved in making and implementing sanctions

The United Nations (UN) imposes financial sanctions and requires member states to implement them through Resolutions passed by the UN Security Council. You can read more about the UN's work on financial sanctions on their website:

<https://www.un.org/sc/suborg/en/sanctions/information>

The European Union (EU) implements all financial sanctions imposed by the UN. It does this through EU regulations which have direct legal effect in all EU member states, as well as Gibraltar. The EU can also impose its own financial sanctions, sometimes referred to as 'EU autonomous' sanctions. These are also implemented through regulations that have direct

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<sup>1</sup> This guidance document has been adapted from the guidance published by the Office of Financial Sanctions Implementation (OFSI) of the United Kingdom. The OFSI's work is gratefully acknowledged.

effect in all member states, as well as Gibraltar. You can read more about the work of the EU in relation to financial sanctions on their website:

[https://eeas.europa.eu/headquarters/headquarters-homepage/423/sanctions-policy\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/423/sanctions-policy_en)

Gibraltar recently enacted the Sanctions Act 2019 to update and modernise its sanctions regime. Importantly, it provides for the automatic recognition and enforcement in Gibraltar of UN, EU and UK sanctions. You can access this important legislation here:

<https://www.gibraltarlaws.gov.gi/articles/2019-06o.pdf>

In certain circumstances, Gibraltar can impose its own financial sanctions and restrictions under Part 3 of the Sanctions Act 2019 or the Terrorist Asset-Freezing Regulations 2011.

As noted, the Sanctions Act 2019 (under section 62(e)) effectively means that sanctions imposed by the UK are automatically recognised in Gibraltar. This means that the UK's list of asset freeze targets (<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>), which includes UN, EU and UK sanctions, provides a very useful and up to date database of sanctioned targets that need to be acted upon by Gibraltar's financial sector. However, Gibraltar users should be careful to ensure that they are aware of any additional targets that have been designated locally. Local designations can be accessed on the GFIU website.

### 1.3 Types of financial sanctions

Financial sanctions come in many forms as they are developed in response to a given situation. The most common types of financial sanctions used in recent years are:

- targeted asset freezes: these apply to named individuals, entities and bodies, restricting access to funds and economic resources
- restrictions on a wide variety of financial markets and services: these can apply to named individuals, entities and bodies, specified groups, or entire sectors

To date these 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 will specify the type of business and can apply to a specific person, group, sector or country

### 1.4 Who needs to comply with financial sanctions

Financial sanctions apply more broadly than simply to the persons subject to them. The following outlines where financial sanctions apply and who needs to comply with them.

- EU financial sanctions (including where they implement UN sanctions) apply within the territory of the EU and to all EU persons, wherever they are in the world
- UK financial sanctions apply within the territory of the UK and to all UK persons, wherever they are in the world (and apply in Gibraltar more generally because Gibraltar has decided under the Sanctions Act 2019 to recognise and enforce UK sanctions automatically).
- all individuals and legal entities who are within or undertake activities within Gibraltar must comply with UN, EU, UK and Gibraltar financial sanctions that are in force
- all Gibraltar legal entities established under Gibraltar law, including their branches, must also comply with Gibraltar financial sanctions that are in force, irrespective of where their activities take place
- all EU nationals and legal entities established under EU law must comply with the EU financial sanctions that are in force, irrespective of where their activities take place

## 2 Who is subject to financial sanctions

### 2.1 Consolidated List

The ‘consolidated list’ (<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>) includes all designated persons subject to financial sanctions under EU and UK legislation, as well as those subject to UN sanctions which are implemented through EU regulations. The consolidated list is meant to help businesses and individuals comply with financial sanctions and is highly relevant to Gibraltar’s financial sector. The consolidated list is updated within one working day for all new UN, EU and UK listings coming into force in the UK, and within three working days for all other amendments. It does not include Gibraltar sanctions designations, and you should therefore visit the GFIU website to ensure that your search is as complete as possible. If you have been de-listed but your name still appears on the consolidated list, you should email the Gibraltar competent authority via [admin@gfiu.gov.gi](mailto:admin@gfiu.gov.gi) with evidence of your de-listing, such as the relevant EU regulation.

Recent changes, introduced by the Sanctions Act 2019, provide for the automatic recognition and enforcement of international sanctions, which are defined in section 6(2) of that Act as:

- (a) any restrictive measures imposed by the United Nations Security Council “UN sanctions”;
- (b) any restrictive measures imposed by the European Union “EU sanctions”;
- (c) any restrictive measures imposed by means of a designation, within the meaning of the Terrorist Asset-Freezing etc. Act 2010 (c.38) of the United Kingdom;
- (d) any restrictive measures imposed by an organisation that is notified by the Government by notice published in the Gazette,
- (e) any restrictive measures imposed by the United Kingdom under the Sanctions and Anti-Money Laundering Act 2018 (c.13),

### 2.2 Using the consolidated list

The consolidated list contains a range of information to aid the identification of designated persons. For an individual this can include their:

- aliases
- date of birth
- passport details
- nationality
- last known address
- employment or government role

You may find that the name of an individual or entity you are dealing with matches one or more entries on the consolidated list. This is known as a name match. However, it does not necessarily mean that the individual or entity you are dealing with is the same one on the list. If you are satisfied that this is the case, you do not need to take further action. If the individual or entity you are dealing with matches all the information on the consolidated list, this is likely to be a target match. If having consulted the consolidated list you are still unsure on whether you have a target match, you can contact the Gibraltar competent authority for assistance.

**Table 2A: Name and target matches**

Situation	Assessment
You have a name match for a person who is listed as a Syrian colonel, commanding troops in Syria at the start of the civil war. However, the	Name match



person you are dealing with is aged 17 and was born in Australia.	
You have a name match for a Russian former MP accused of misappropriation. However, the man you are dealing with is a retired restaurant owner with a different date of birth. You've also carried out business with him over the last ten years.	Name match
You have a close name match for a person subject to a terrorist asset freeze and they have a similar date of birth but a different address.	Potential target match. You may have identified a new alias being used to circumvent financial sanctions. You should contact Gibraltar competent authority immediately.

What you are required to do next if you have a target match will depend on the specific sanctions that apply. For asset freezes, this is outlined in Section 3.1.2 of this guide.

### 2.2.2 Getting updates

The Gibraltar competent authority publishes Notices describing changes to financial sanctions on GOV.UK: <https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidatedlists-and-releases>

Gibraltar competent authority notifies its subscribers by email whenever a new Notice is published. To subscribe to Gibraltar competent authority's alerts, click here:

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

### 2.2.3 Proscription under the Sanctions Act 2019

An organisation may be proscribed under Part 2 of the Terrorism Act 2018 <https://www.gibraltarlaws.gov.gi/articles/2018-25o.pdf>, which references organisations published in Schedule 2 of the Terrorism Act 2000 of the United Kingdom. Because proscription involves different restrictions, and because not all proscribed organisations are subject financial sanctions, the list of proscribed organisations is not included in Gibraltar competent authority's consolidated list. The list of proscribed organisations is maintained by the Home Office and can be found on GOV.UK:

<https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2>

## 3 Financial sanctions restrictions

You are prohibited from carrying out certain activities or behaving in a certain way if financial sanctions apply. You should always refer to the up-to-date version of the legislation imposing the specific financial sanctions which apply in your case to understand exactly what is prohibited. It is possible that the relevant competent authority in Gibraltar will interpret prohibitions widely, which is in keeping with the way in which the EU courts and other member states approach them. This means that while the competent authority will not necessarily seek to draw in activities that clearly fall outside of a prohibition, it may consider a wide range of actions when assessing if a breach of financial sanctions has taken place. This section provides an overview of asset-freezing, which is the most common form of financial sanction.

## 3.1 Asset freezes

### 3.1.1 What do they do?

Where the financial sanction is 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

The funds and economic resources are to be frozen immediately by the person in possession or control of them. An asset freeze does not involve a change in ownership of the frozen funds or economic resources, nor are they confiscated or transferred to the Gibraltar competent authority for safekeeping.

### 3.1.2 What must you do?

If you know or have reasonable cause to suspect that you are in possession or control of, or are otherwise dealing with, the funds or economic resources of a designated person you must:

- freeze them
- not deal with them or make them available to, or for the benefit of, the designated person, unless:
  - there is an exemption in the legislation that you can rely on
  - you have a licence from the Gibraltar competent authority (the Chief Minister or the Minister for Financial Services, depending on the legislative basis of the designation)
- report them to the Gibraltar competent authority

In terms of reporting obligations, reasonable suspicion (Schedule 4 to the Sanctions Act 2019) 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. A breach of these requirements may result in a criminal prosecution or a monetary penalty.

### 3.1.3 Asset freezing terminology

Funds generally means financial assets and benefits of every kind, including but not limited to:

- 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
- publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts
- interest, dividends or other income on or value accruing from or generated by assets
- credit, right of set-off, guarantees, performance bonds or other financial commitments
- letters of credit, bills of lading, bills of sale
- documents showing evidence of an interest in funds or financial resources

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 services.

Goods generally means items, materials and equipment.

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



Dealing with economic resources generally means using the economic resources to obtain funds, goods, or services in any way, including, but not limited to, by selling, hiring or mortgaging them. The everyday use by a designated person of their own economic resources for personal consumption is not prohibited.

Making available funds or economic resources, directly or indirectly, to a designated person If funds are made available (directly or indirectly) to a designated person, or economic resources are made available (directly or indirectly) that would likely be exchanged, or used in exchange, for funds, goods, or services, this may constitute a criminal offence.

Making available funds or economic resources for the benefit of a designated person If funds or economic resources are made available for the benefit of a designated person and they obtain, or are able to obtain, a 'significant financial benefit', this may constitute a criminal offence. In this case, 'financial benefit' includes the discharge, in whole or in part, of a financial obligation for which the designated person is wholly or partly responsible.

### 3.2 Other financial restrictions

Financial sanctions regimes may include other restrictions in addition to asset freezes. A useful resource in this regard is the individual regime pages accessible on:

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

## 4 Ownership and control

If a person is a designated person his or her name will be 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. Those entities may not be designated in their own right, so their name may not appear on the consolidated list. However, those entities are similarly subject to financial sanctions.

### 4.1 Ownership

In line with EU guidance, the Gibraltar competent authority may consider that the key criterion to 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. The Gibraltar competent authority may interpret 'owned' to include both direct and indirect ownership. If the ultimate beneficial ownership of an entity rests with a designated person (for example, they own a corporate body which owns another corporate body), Gibraltar competent authority takes the view that all entities that are part of the ownership chain are subject to financial sanctions.

#### Box 4.A:

##### Ownership example

For example, Entity Z is not listed on the consolidated list. However, your research shows that the majority owner of Entity Z is designated Entity A.

As the ownership criterion has been met, Entity Z is also subject to the same restrictions as designated Entity A.

#### 4.1.2 Minority interests

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 possesses a minority interest.

## 4.2 Control

In line with EU guidance, it is likely that the relevant Gibraltar competent authority would consider that the satisfaction of at least one of the following criteria is sufficient to establish whether a legal person or entity is controlled by another legal person or entity, alone or pursuant to an agreement with another shareholder or other third party.

- Having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity
- Having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person or 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 entity, a majority of shareholders' or members' voting rights in that legal person or entity
- Having the right to exercise a dominant influence over a legal person or entity, pursuant to an agreement entered into with that legal person or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person or entity permits its being subject to such agreement or provision
- Having the power to exercise 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)

The EU's Best Practices guide can be found here:

<http://data.consilium.europa.eu/doc/document/ST-10254-2015-INIT/en/pdf>

The competent authority could interpret EU guidance broadly in respect of ownership and control. The above list of criteria is intended to be indicative of the factors leading to control being established and should not be seen as exhaustive.

It's 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 or monetary penalty.

## 5 Your reporting obligations to the Gibraltar competent authority

### 5.1 EU financial sanctions regimes

EU financial sanctions regimes have two reporting components to them. The first is a general obligation that applies to everyone. The second is a more targeted obligation that applies to specified businesses and professions.

### 5.1.1 General reporting requirement

EU regulations require natural and legal persons, entities and bodies to supply the relevant competent authority as soon as practicable with any information that would 'facilitate compliance' with the regulations. Any information provided will only be used for the purposes for which it was provided or received.

This requirement applies to natural and legal persons, entities and bodies in Gibraltar or under Gibraltarian jurisdiction and not just to credit or financial institutions or to individuals working for them.

If you are unsure of your reporting obligations, you should seek independent legal advice.

For the purposes of Schedule 4 to the Sanctions Act 2019, a Gibraltar competent authority is likely to consider a 'relevant institution' as being a relevant institution as defined under regulation 15(1) of the Terrorist Asset-Freezing Regulations 2011 (see 5.1.2 below).

### 5.1.2 Relevant institution or relevant business or profession

Section 7(4) and Schedule 4 to the Sanctions Act 2019 set out specific reporting obligations for a 'relevant institution or relevant business or profession'.

'Relevant institution' includes:

- (a) a person licensed or authorised under the Financial Services (Investment and Fiduciary Services) Act 1989 or the Financial Services (Banking Act) 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

or

- (c) a designated non-financial business or profession as defined by the FATF and not otherwise covered by this Act".

'Relevant business or profession' includes:

- (a) an auditor;
- (b) a casino;
- (c) a dealer in precious metals or stones;
- (d) an estate agent;
- (e) an external accountant;
- (f) an independent legal professional;
- (g) a tax adviser; and
- (h) a trust or company service provider,

operating in Gibraltar.

### 5.1.3 What you must report

If you are a relevant institution or relevant business or profession you must report to the Gibraltar competent authority as soon as practicable if you know or have reasonable cause to suspect that a person:

- is a designated person

- has committed an offence under the regulations

You are required to report this information, or other matter on which your knowledge or suspicion is based, if it came to you in the course of carrying on your business.

When reporting you must include:

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

If you know or have reasonable cause to suspect that a person is a designated person and that person is a customer of your institution, you must also state the nature and amount or quantity of any funds or economic resources held by you for that customer.

Examples of the kind of information to be provided can be found in Table 5.A.

If you are unsure of your reporting obligations, you should seek independent legal advice.

**Table 5.A: Examples of information to be reported**

Reporting Area	Example
Person is a designated person	A customer or client of yours is a designated person. You must provide the Gibraltar competent authority with any information you hold about the designated person by which they can be identified.
Offences	Exact offences will depend on the particular legislation, but can include: <ul style="list-style-type: none"> <li>• making funds or economic resources available to a designated person (except where an exemption applies or under licence)</li> <li>• dealing with funds or economic resources that must be frozen (except where an exemption applies or under licence)</li> <li>• activities that circumvent an asset freeze</li> <li>• breaches of licensing conditions</li> </ul>
Funds and economic resources	You must include details of any funds and economic resources that you have frozen.
Credits to frozen accounts	A relevant institutions must inform the Gibraltar competent authority without delay whenever it credits a frozen account with: <ul style="list-style-type: none"> <li>• payments due under prior contracts</li> <li>• payments made under judicial decisions rendered in an EU member state</li> <li>• funds transferred to an account by a third party</li> </ul>

### 5.3 How to report

Reports of frozen funds and economic resources, information regarding a designated person, and notifications of credits to frozen accounts should be emailed to: [admin@gfiu.gov.gi](mailto:admin@gfiu.gov.gi).

Reports regarding suspected breaches should be submitted to the same email address. Gibraltar competent authority will handle all information it receives in accordance with the relevant sanctions legislation and the Data Protection Act 2004. All reports to the Gibraltar competent authority involving a designated person should include their '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.



## 5.4 Legal professional privilege

Both EU regulations and the Sanctions Act 2019 make clear that the reporting requirements do not apply to information to which legal professional privilege is attached. However, legal professionals are expected carefully to ascertain whether legal privilege applies, and which information it applies to. The Gibraltar competent authority might challenge a blanket assertion of legal professional privilege where it is not satisfied that such careful consideration has been made.

## 5.5 Reporting offences

A relevant institution or relevant business or profession that fails to comply with its reporting obligations, as set out in the relevant legislation, will be committing an offence, which may result in a criminal prosecution or a monetary penalty.

## 5.6 The Gibraltar competent authority's powers to require information from you

The Gibraltar competent authority has statutory powers to require you to provide information. This includes powers to:

- establish the extent of funds and economic resources belonging to, owned, held or controlled by or on behalf of a designated person
- request information concerning any disposal of such funds or economic resources
- monitor compliance or detect evasion
- obtain evidence of the commission of an offence
- require the production of documents

When requesting information from you, Gibraltar competent authority will specify:

- the legislative basis for the request
- the time period within which the information is to be provided

In some circumstances the Gibraltar competent authority may specify the manner in which the information should be provided. Failure to comply with a request for information, including by providing false information, destroying documents or, otherwise intentionally obstructing the Gibraltar competent authority when exercising these powers is a criminal offence and may result in a criminal prosecution or a monetary penalty.

## 5.7 Other reporting obligations

Your obligation to report to the Gibraltar competent authority is in addition to any other non-financial sanctions reporting obligations you may have. These could include any reporting required by the Gibraltar Financial Services Commission (GFSC) or submitting Suspicious Activity Reports (SARs) to the Gibraltar Financial Intelligence Unit (GFIU) under the Proceeds of Crime Act 2015.

Please note that reporting to the GFSC or submitting a SAR does not meet your reporting obligations under financial sanctions.

If you have information to report regarding financial sanctions, this must be sent to the Gibraltar competent authority.

If you are unsure of your reporting obligations, you should seek independent legal advice.

## 6 Exemptions and licensing

Specific exemptions and licensing powers are generally contained in financial sanctions legislation and can allow otherwise prohibited transactions to take place in some

circumstances. A licence is a written authorisation from Gibraltar competent authority permitting an otherwise prohibited act. An exemption to a prohibition applies automatically in certain defined circumstances and does not require you to obtain a licence from the Gibraltar competent authority.

The following sections provide a general overview of the standard exemptions and licensing grounds found in financial sanctions legislation. The grounds may vary from regime to regime so it is important that you check the relevant, up-to-date legislation.

## 6.1 Crediting frozen accounts

Asset-freezing legislation generally permits a person to make the following payments into a frozen account without the need for a licence from the Gibraltar competent authority, so long as those funds are frozen after being paid in:

- any interest or earnings on the account
- any payments due to a designated person under contracts, agreement or obligations that were concluded or arose before the date the person became sanctioned.

also generally permits, without the need for a licence, a relevant institution to credit a frozen account with payments from a third party, provided that the incoming funds are also frozen and that it informs the Gibraltar competent authority of the transaction without delay (see Chapter 5 of this guide)

## 6.2 Licensing overview

The Gibraltar competent authority can issue licences under section 10 (and any regulations made under section 31) of the Sanctions Act 2019 where there are specific and relevant licensing grounds enabling it to do so, and where the conditions in those grounds have been met.

The Gibraltar competent authority might interpret licensing grounds in EU and UK sanctions regimes narrowly, which would be in keeping with relevant case law and takes into account the way in which EU member states approach them. This means that the Gibraltar competent authority is likely only to consider licensing those activities that fall within the licensing grounds set out in the legislation. See Table 6.A for more information on Gibraltar competent authority's approach to the licensing grounds generally found in EU financial sanctions regimes.

Licences cannot be issued retrospectively. If you have carried out an act that required a licence, without having obtained one beforehand, you may have breached financial sanctions and you should consult Chapters 5 and 7 of this guide.

A licence from the Gibraltar competent authority 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.

## 6.3 Licensing grounds:

The following table sets out the licensing grounds commonly found in EU regulations as well as the Gibraltar competent authority's possible approach to them.

**Table 6.A: Gibraltar competent authority's approach to licensing grounds**

Licensing ground	Gibraltar competent authority's approach
Basic needs	Case law provides that basic needs involve those expenses which are necessary to ensure that the very existence of the designated person or dependent family members is not imperilled. These needs will be different if the designated person is a legal entity rather than a natural person. Basic needs licences do not enable a designated



	person to continue the lifestyle or business activities they had before they were designated.
Legal free and disbursements	The fees must be reasonable and payments of fees and disbursements must relate specifically to the provision of legal advice or involvement in litigation or dispute resolution.
Fees or service charges for routine holding or maintenance of frozen funds or economic resources	The fees must be for routine activities. Re-design, refurbishment or redevelopment to improve value is generally not covered.
Satisfaction of prior court judgements or arbitration decisions against the designated person or entity	The judgment/decision must have been given before the date of designation and cannot be for the benefit of a designated person.
Satisfaction of prior contractual obligations of the designated person	The contract or obligation must have arisen prior to the date of designation and cannot result in funds or economic resources being made available to the designated person.
Extraordinary expenses	This must be an expense of the designated person and it must be extraordinary in nature (so not recurring or easily anticipated). It cannot be used where other grounds are more suitable or as a way of avoiding the clear limitations of those other grounds.

## 6.4 Licensing timeframes

The Gibraltar competent authority would aim to engage with applicants on the substance of completed applications as soon as possible. This does not mean that a licence will be issued within a prescribed time period.

A completed application is one where the Gibraltar competent authority has received all the information it needs to enable it to make a decision about whether there is a proper basis to grant a licence. Failure to submit all of the necessary information requested by Gibraltar competent authority will result in delays to your application being processed. You should not assume that a licence will be granted or engage in any activities prohibited by financial sanctions until you have received an appropriate licence from Gibraltar competent authority.

### 6.4.1 Urgent and humanitarian cases

The Gibraltar competent authority will try to prioritise urgent and humanitarian cases, i.e. cases that involve a risk of harm or a threat to life. If a request is urgent, please say so when submitting your application and explain why.

### 6.4.2 Notification and approvals

Please note that the Gibraltar competent authority may need to notify, or in some cases seek approval from, either the European Commission or the relevant United Nations Sanctions Committee before it can issue a licence. These requirements are set out in the relevant UN Security Council Resolutions and EU regulations. These requirements will lengthen the processing time for such licence applications and may in some cases prevent a licence from being issued.

## 6.5 Amending licences

Requests for an amendment, variation or extension of a licence should be submitted to Gibraltar competent authority by email as soon as it's apparent that a change is required. Full supporting information and arguments should be provided. If multiple amendments need to be made to a single licence you should group these together into a single request to Gibraltar competent authority. A Gibraltar competent authority would aim to engage with applicants on the substance of completed amendment requests as soon as possible. This does not mean that an amended licence will be issued within a prescribed period. Nor can the Gibraltar competent authority guarantee that last-minute amendment, variations or extensions will be authorised within the requested timeframe. You must not continue to carry out any action(s) which are not authorised by a licence. For example, if a licence has expired or you have reached a cap on permitted spending, further activity will not be lawful. Any such actions will be considered a breach of financial sanctions and may result in a criminal prosecution or monetary penalty.

## 6.6 Refusal of a licence

If the Gibraltar competent authority refuses to issue a licence, the proposed transaction or activities will not be lawful. The Gibraltar competent authority will, if possible, write to you giving reasons for refusing your application. It might also refuse your application if you do not require a licence for the proposed transaction or activities. If you have had an application for a licence refused you have the following options:

- ask the Gibraltar competent authority to review its decision
- re-apply with new or supplementary evidence or new supporting arguments
- seek to have the decision reviewed by a court under Section 48(d) of the Sanctions Act 2019.

You may wish to seek independent legal advice before taking the matter further.

## 6.7 Other jurisdictions

Licences issued by Gibraltar competent authority only apply to actions subject to Gibraltar's jurisdiction. If the prohibited activity also comes under another country's jurisdiction you should consider what other licences you may need to comply with their requirements. For instance, if a payment will pass through several jurisdictions you may need to apply for a licence from each of those countries' competent authorities. A list of the competent authorities for EU member states is annexed to EU sanctions regulations. For example:

[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL\\_2015\\_257\\_R\\_0001&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_257_R_0001&from=EN)

## 6.8 Complying with a licence

Licences issued by the Gibraltar competent authority are not published. However, the Gibraltar competent authority would expect licence holders to share licences with other parties to the transaction and to answer questions about the permissions granted in the licence in the first instance. However, if you are unsure on whether the action you propose to undertake is within the terms of a licence you can seek clarification from the Gibraltar competent authority.

If you are unsure about the validity of a licence that a designated person or their representative has shown to you, you should send a copy of the licence to Gibraltar competent authority. You should not assume that the Gibraltar competent authority agrees with your interpretation of the licence until you receive a response from it.

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 may result in a criminal prosecution or monetary penalty.





## 6.9 Reporting conditions

Licences issued by the Gibraltar competent authority may come with conditions that require information to be reported to it within a specific time frame. A failure to comply with these reporting requirements may result in the revocation, suspension or termination of a licence or further restrictions being included in it. It may also result in a criminal prosecution or monetary penalty. Legal advisors should proactively engage with their clients about the need to provide information to meet the reporting requirements in licences.

## 6.10 Travel to Gibraltar

The Gibraltar competent authority would expect a designated person planning to visit Gibraltar to apply for an appropriate licence authorising any proposed use of funds or economic resources.

The requirement to obtain a licence before travelling may also apply to non-designated persons visiting Gibraltar who are funded, in whole or in part, by a designated person. Anyone dealing with funds that should be frozen, or who makes economic resources available to a designated person without an appropriate licence will be committing an offence, which may result in a criminal prosecution or a monetary penalty. Please note that you should apply for a licence at least eight weeks before travelling, or before applying for a visa, whichever is sooner.

## 6.11 Export licences

If you import or export goods, you need to consider if financial sanctions apply to you. You may need a licence from the Gibraltar competent authority or another relevant authority.

# 7 Compliance and enforcement

The Gibraltar competent authority is responsible for monitoring compliance with financial sanctions. It also has the power to refer cases to law enforcement agencies for investigation and potential prosecution. The Gibraltar competent authority will work with supervisory bodies and regulators to consider all cases reported to it, sharing relevant information accordingly. The Gibraltar competent authority may share information as prescribed by the relevant sanctions legislation and wider legislation, including the Data Protection Act 2004.

## 7.1 Gibraltar competent authority's approach to compliance

The Gibraltar competent authority's assessment of breaches is likely to be informed by its overall approach to financial sanctions compliance. This approach covers the whole lifecycle of compliance in respect of financial sanctions. It is likely to take a holistic approach to ensure compliance rather than simply waiting until the law is broken and responding to the breach.

While a decision to pursue a criminal prosecution for breaches of financial sanctions ultimately lies with the prosecuting authorities, the Gibraltar competent authority is likely to 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
- action being taken to improve future compliance

## 7.2 Reporting a suspected breach of financial sanctions

Your reporting obligations to the Gibraltar competent authority are set out in Chapter 5 of this guide. Where you know or have reasonable cause to suspect that a breach has occurred this must be reported to the Gibraltar competent authority as soon as practicable.



## 7.3 Penalties for breaches of financial sanctions

Breaches of financial sanctions are considered to be a serious criminal offence.

### 7.3.1 Custodial sentences

The maximum term of imprisonment for conviction on indictment is 10 years. For exact penalties, please consult the relevant legislation.

### 7.3.2 Monetary penalties

There is no express maximum fine for a conviction on indictment.

## 8 Challenging designations

Those who are subject to financial sanctions can challenge their listing and request their delisting. The financial sanctions will remain in place while the challenge or request is being considered.

### 8.1 UN listings

For UN listings under the ISIL (Da'esh) and Al-Qaida sanctions regime, a petition for delisting can be made to the UN Office of the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee. For more information about the Office of the Ombudsperson please see the UN's website:

<https://www.un.org/sc/suborg/en/node/189>

For all other UN listings, a request should be sent to the UN focal point for delisting. More information about the focal point is available on the UN's website:

<http://www.un.org/sc/committees/dfp.shtml>

Alternatively, if you are a UK resident or citizen, you can petition the UK to submit a delisting request to the UN by contacting the FCO's Sanctions Section: Address:

Sanctions Section - International Organisations  
Department Foreign and Commonwealth Office  
Room E.302  
King Charles Street  
London SW1A 2AH  
Email: [sanctions@fco.gov.uk](mailto:sanctions@fco.gov.uk)

### 8.2 EU listings

To challenge an EU listing, you should contact the EU directly: Address:

Council of the European Union  
General Secretariat DG C 1C  
Rue de la Loi/Wetstraat 175  
1048 Bruxelles/Brussel  
BELGIQUE/BELGIË  
Email: [sanctions@consilium.europa.eu](mailto:sanctions@consilium.europa.eu)

### 8.3 UK listings

For UK listings under the UK's domestic regimes there are avenues of appeal and judicial review within the specific legislation under which the designation is made. Legal correspondence should be sent to: Address:

The Treasury Solicitor



Government Legal Department  
One Kemble Street  
London WC2B 4TS  
DX 123242 Kingsway

## **8.4 Mistaken identity**

If you believe that your assets have been frozen mistakenly, for instance as a result of mistaken identity, you should first contact the institution that froze your assets requesting an explanation, including a request that they identify whom they believe you are a target match for on the consolidated list.



## Glossary

*Disclaimer – The following is a general description of terms used throughout this guide. For exact terms used in context, please see the up-to-date version of the relevant legislation. If you are in doubt about any of the below, please 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

### **Competent authority**

Designated national authorities of EU member states who implement financial sanctions. For most purposes, the Chief Minister is Gibraltar's competent authority for financial sanctions

### **Consolidated list**

List maintained by the UK containing designated persons subject to financial sanctions (but not including any designations made by Gibraltar, for which you should consult the GFIU website)

### **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, character, destination or other change that would enable the funds to be used, including portfolio management

### **Designated person (DP)**

A person subject to financial sanctions

### **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 services

### **Exemption**

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

### **Funds**

Generally means financial assets and benefits of every kind, including but not limited to:

- 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
- publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts
- interest, dividends or other income on or value accruing from or generated by assets
- credit, right of set-off, guarantees, performance bonds or other financial commitments;
- letters of credit, bills of lading, bills of sale and
- documents showing evidence of an interest in funds or financial resources



## **GFIU**

Gibraltar Financial Intelligence Unit

## **Gibraltar competent authority**

The Chief Minister (or depending on the legislation, this could also be the Minister responsible for financial services). The point of contact in the first instance, however, is the GFIU

## **Goods**

Generally means items, materials and equipment

## **Licence**

A written authorisation from the Gibraltar competent authority permitting an otherwise prohibited act

## **Name match**

The situation where a person you are dealing with partially matches the details of a designated person on the consolidated list. Unlikely to be a target match

## **Office of Financial Sanctions Implementation**

Part of HM Treasury and the UK's competent authority for implementing financial sanctions

## **Ownership**

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

## **Person**

Can be a natural person (an individual), or a legal person, body or entity

## **Proscription**

The power to proscribe (ban) an organisation under the Terrorism Act 2018

## **Reasonable cause to suspect**

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

## **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

## Frequently asked questions (FAQs)

These FAQs set out what we understand could be the Gibraltar competent authority's general approach to common questions, taking into account the range of sanctions in place at the time of publication. They don't contain specific guidance for every situation.

You should also:

- review the up-to-date legislation that applies in your situation
- take independent legal advice if you are unsure of your obligations

Each case referred to the Gibraltar competent authority will be considered on its own facts. If you think that the circumstances of, or legislation relating to, your specific situation produces a different outcome to the answers provided below, you can raise this with the Gibraltar competent authority.

References to 'You' in these FAQs are references to all persons to which each section is addressed. Questions are posed from the point of view of those persons.

### 1.1. Individuals

#### 1.1.1 Can I be paid interest on my bank account/savings?

Generally, you can be paid interest on your bank account or savings. There tend to be express provisions for financial institutions to do this, provided your account is frozen. Alternatively, a Gibraltar competent authority licence can be issued to permit this.

#### 1.1.2 Can someone pay a cheque or transfer funds into my frozen account?

A person can generally pay a cheque into your frozen account if the payment is made as a result of a contract or obligation which arose before the person was designated. Otherwise, a Gibraltar competent authority licence is needed to make this payment.

#### 1.1.3 Can I have a debit card?

You are not prohibited from having a debit card but its use will only be permitted where there is a relevant exemption or a Gibraltar competent authority licence. It's the financial institution's decision on whether they are willing to give you a debit card or maintain your access to existing debit cards. If you are designated under the Terrorist Asset-Freezing Regulations 2011, you probably need a licence from the Minister responsible for financial services to use a debit card.

#### 1.1.4 Can I have a pre-paid card?

You will need a relevant exemption or a Gibraltar competent authority licence to load and use a pre-paid card.

#### 1.1.5 Can I have a credit card?

Any existing credit cards must be frozen. You will need a relevant exemption or a Gibraltar competent authority licence to be given a new credit card or to use any credit card. If you are designated under the Terrorist Asset-freezing Regulations 2011, you probably need a licence from the Minister responsible for financial services to use a credit card.

#### 1.1.6 Can I use vouchers, coupons or rewards points to pay for things?

Vouchers, coupons or reward points are considered to be funds and fall within the asset freeze. Therefore, you need an exemption or a Gibraltar competent authority licence to accept and use vouchers, coupons or reward points.

### 1.1.7 I am a joint signatory on an account. Will it be frozen too?

Any account you are a joint signatory on is likely to be frozen, at least initially, because all funds owned, held or controlled by you must be frozen. The financial institution which holds the account will need to consider the following before it decides whether to allow another signatory to access the funds in the account:

- the ownership of the funds
- the level of control you exercise over the funds
- whether - and to what degree - the funds will be made available to you, or for your benefit, if they use the funds in this way or release the funds to other non-designated signatories to the account
- whether there is a Gibraltar competent authority licence

### 1.1.8 Can I let someone pay a bill for me?

Generally, you will need an exemption or a Gibraltar competent authority licence to let someone else pay a bill for you, where payment of the bill means that you receive a financial benefit. That includes the benefit of not having to pay the bill. For example, it is generally permitted for someone to pay for your share of a meal without a licence. However, paying your monthly utility bill will require a Gibraltar competent authority licence.

### 1.1.9 Can I take out insurance?

Generally, you can take out insurance. The payment of claims is permitted where the payment is exempt or a Gibraltar competent authority licence has been granted. If you are subject to any other asset freeze, providing insurance is not prohibited, but you need an exemption or to apply for a Gibraltar competent authority licence to pay premiums or receive claim payments.

### 1.1.10 Can I invest my funds?

Generally you can't actively invest your funds, or move them from one account to another, to get a better rate of interest. The exemptions or existing licensing grounds found in EU regulations are unlikely to allow such activity to be permitted. Applications for licences in relation to asset freezes imposed by UK law will need to demonstrate that such activity is in line with the licensing policy for that regime.

### 1.1.11 I jointly own an asset. Can I transfer my ownership?

You can't transfer ownership of an asset without an exemption or a Gibraltar competent authority licence.

### 1.1.12 Can I avoid paying my debts?

You can apply for a Gibraltar competent authority licence to make payments to cover obligations incurred prior to your designation. Therefore, if a Gibraltar competent authority licence is granted, you can't use the fact that your assets are frozen for not paying your debts. If you enter into a contract after designation without having a Gibraltar competent authority licence, you may be breaching sanctions. If you don't have a Gibraltar competent authority licence and you fail to tell the provider of the goods or services about the restrictions on your ability to pay, you may also have committed fraud.

### 1.1.13 Can I take employment?

Financial sanctions do not prevent you from taking employment. However, you need an exemption or a Gibraltar competent authority licence in order to be paid and those funds need to be paid into a frozen account.

#### 11.1.14 Can I make use of my own assets, e.g. a car?

You may use your assets for your own personal use but not to generate income unless you have a Gibraltar competent authority licence. For example, you may use your car to do grocery shopping and your house as your personal residence. However, you can't use your car to generate income, e.g. as a courier, or rent your house to someone, without a Gibraltar competent authority licence.

#### 1.1.15 Can I use frozen funds to keep multiple houses open and ready for me to visit?

All asset freezes will enable you to maintain one residence for your use. If you are subject to an asset freeze imposed by EU regulations, it might be the Gibraltar competent authority's view that the basic needs licensing ground only requires one residence to be maintained for use. Licences may be granted for routine maintenance and fees associated with holding other properties. However, this is limited to what is strictly necessary to prevent the property from deteriorating.

#### 1.1.16 Can I use frozen funds to pay for private education for my children?

Your ability to pay for private education for your children may be limited. If you are subject to an asset freeze imposed by EU regulations, the Gibraltar competent authority's view may be that, generally, private education will not be considered to be a basic need where there is a suitable state school alternative available. There may be licensing grounds which permit the payment of private school fees to the end of any current contract, or to the end of the academic year, to minimise disruption to the child. The Gibraltar competent authority will judge licence requests on a case-by-case basis, taking into account the needs of the children. If you're subject to an asset freeze imposed by UK law, you need to demonstrate that such payments are in line with the licensing policy for the regime.

#### 1.1.17 Can I use frozen funds to go on holiday?

You need a Gibraltar competent authority licence to use frozen funds to pay for a holiday. If you wish to use frozen funds, you need to apply for a licence based on the available licensing grounds.

#### 1.1.18 Can I use un-frozen funds from outside of the EU in the UK?

You need a licence because all your funds, or funds made available to you, must be frozen when they enter the EU. The Gibraltar competent authority considers applications for licences to use funds in these circumstances on the same basis as if the funds had initially been held in Gibraltar.

#### 1.1.19 Can I use frozen money in Gibraltar to pay for things outside of the EU?

You may be permitted to use frozen funds in Gibraltar to pay for expenses outside of the EU under a Gibraltar competent authority licence. The Gibraltar competent authority will likely require you to demonstrate that you don't have access to unfrozen funds outside of the EU to meet those expenses before it decides whether to issue a licence.

#### 1.1.20 What reporting obligations apply to me?

The Gibraltar competent authority may ask you for information about your assets and your financial activities as part of our role in implementing financial sanctions. Specific reporting requirements may also be included in any licence you are issued. For example, you may be required to provide a copy of your bank statement and all receipts each month. Failure to comply with reporting requirements on time may result in a criminal prosecution or a monetary penalty. More information on reporting requirements can be found in Chapter 5 of this guide.





## 1.2 Entities and organisations

*If your business is subject to an asset freeze, its continued existence is not prohibited but its operations are strictly limited under the asset freeze.*

### 1.2.1 Can I still pay my suppliers and staff?

You need a Gibraltar competent authority licence to pay existing staff and suppliers. The asset freeze may limit the number of staff and suppliers you continue to need as well as your ability to hire new staff or engage new suppliers.

### 1.2.2 Can I still receive payments from my customers?

Payments due under contracts made prior to your designation can generally be made into your frozen account where there is a relevant exemption to this effect. Dealings that your business has with customers, after designation, will generally need a Gibraltar competent authority licence. The extent to which you are able to operate your business under the asset freeze will be more restricted than prior to your designation. This is likely to limit the amount of activity you can undertake with new customers.

### 1.2.3 Can I still receive goods from my suppliers?

You may be able to obtain a Gibraltar competent authority licence, in limited circumstances, to receive goods from your suppliers. These circumstances are likely to be limited to ensuring that your business's continued existence is not imperilled.

### 1.2.4 Can I invest my profits?

Generally, your business won't be able to actively invest its profits or move funds from one account to another in order to simply get a better rate of interest. If the nature of the business which has been designated is a wealth fund or investment business, Gibraltar competent authority's view is likely to be that limited portfolio management may be permitted, under the 'basic needs' licensing ground, to ensure that the business is not imperilled.

### 1.2.5 Can I pay dividends to shareholders?

You may be able to pay dividends to shareholders under a Gibraltar competent authority licence.

### 1.2.6 Can I issue new equity or debt?

If payments relating to debt or equity issues are due under obligations arising prior to your business' designation, payments may be made into your frozen account without a licence where there is a relevant exemption. You need a Gibraltar competent authority licence to issue new equity or debt. The existing licensing grounds under asset freezes imposed by EU regulations, and licensing policy for asset freezes imposed by UK law, are unlikely to permit the issuing of new equity or debt except in the most exceptional circumstances.

### 1.2.7 Can my business' shares be traded by third parties?

Where your business' shares are owned or controlled by non-designated persons, it is not prohibited for those third-parties to trade those shares, provided that the proceeds of the sale or shares are not made available to the business.

### 1.2.8 Can I maintain my business premises?

Your ability to use business premises to generate income will be limited as a result of the asset freeze. You need a Gibraltar competent authority licence to enable payments to be made, and activities undertaken, to ensure that business premises remain safe. The Gibraltar competent authority considers that existing licensing grounds under asset freezes imposed by EU

regulations, and licensing policy for asset freezes imposed by Gibraltar law, are unlikely to permit significant refurbishment for presentational or business promotion reasons.

### 1.2.9 Can I manage a property portfolio?

You need a Gibraltar competent authority licence to manage a property portfolio. The existing licensing grounds in relation to asset freezes imposed by EU regulations are unlikely to allow such activity to be permitted. However, if the nature of the business which has been designated is property management, the Gibraltar competent authority may take the view that limited portfolio management may be permitted under the 'basic needs' licensing ground, to ensure that the business is not imperilled.

### 1.2.10 Can I obtain insurance?

Generally, you can take out insurance.

The payment of premiums, however, will require a Gibraltar competent authority licence. If you are subject to any other asset freeze, the provision of insurance is not prohibited. However, you need a Gibraltar competent authority licence to pay any premiums and for receipt of any claims payment.

### 1.2.11 As a financial institution which is subject to sanctions, can I continue to operate accounts for customers?

You will need a Gibraltar competent authority licence to release funds to customers.

### 1.2.12 What reporting obligations apply to me?

The Gibraltar competent authority may ask you for information about your assets and your financial activities as part of its role in implementing financial sanctions. Specific reporting requirements may also be included in any licence you are issued. For example, you may be required to provide a copy of your bank statement(s) and all receipts each month. Failure to comply with reporting requirements may result in criminal prosecution or a monetary penalty. More information on reporting requirements can be found in Chapter 5 of this guide.

## 2 Compliance for family, friends and members of the public

*If you undertake an act prohibited by an asset freeze and, at the time you did so, you knew or had reasonable cause to suspect that the act was prohibited, you have breached financial sanctions and may face criminal prosecution or a monetary penalty. If you are unsure about your obligations, you should consider seeking independent legal advice or contact the relevant Gibraltar competent authority.*

### 2.1 Can I give or lend money to a designated person?

You almost certainly need a Gibraltar competent authority licence.

### 2.2 Can I give or lend money to a family member of a designated person?

You can give or lend money to a family member of a designated person. However, you must satisfy yourself that the money is not going to be given to the designated person or used for their significant financial benefit. If you give money to a person who is financially dependent on the designated person, to discharge an obligation of the designated person, you would be giving the money for the benefit of the designated person. If the designated person would receive a significant financial benefit from you giving money to a family member of the designated person, it is likely that you will need a Gibraltar competent authority licence.

### 2.3 Can I give a designated person a gift?

You cannot give a gift of cash, vouchers or other funds without a Gibraltar competent authority licence. The Gibraltar competent authority's view is likely to be that if the gift is an economic resource, e.g. a tangible good, which is of a low value and for personal consumption, it will not breach the asset freeze. Examples of such gifts could include a book, an item of clothing, a box of chocolates or a bunch of flowers. However, if the items are of a higher value or could be used or sold onward to generate income, e.g. a theatre/sporting ticket or a mobile phone, you will require a Gibraltar competent authority licence.

### 2.4 Can I give a gift to a family member of a designated person?

You can give a gift to a family member of a designated person. However, you must satisfy yourself that the gift is not going to be given to or used for the significant benefit of the designated person. If the gift is of significant value, or would normally be something that the designated person is responsible for providing to a person who is financially dependent on them, this may constitute the indirect making available of funds or economic resources for which you require a Gibraltar competent authority licence. For example, the one-off purchase of a toy or clothing for a child that a designated person is financially responsible for is likely to be permitted without a Gibraltar competent authority licence. However, purchasing an item of furniture, or a whole season's worth of clothing for the child, will require a Gibraltar competent authority licence.

### 2.5 Can I loan something to a designated person?

You can loan an item to a designated person without a Gibraltar competent authority licence if the item is not funds and is for personal use by the designated person, unless the extent or value of the loan is significant. However, if the item represents a significant benefit to the designated person or can be used to generate income, a Gibraltar competent authority licence is required. For example, you could lend a designated person a food mixer to make a cake at home but not for use in a take-away business.

### 2.6 Can I give a designated person a meal or a drink?

You can give or pay for a meal or a drink for a designated person's personal consumption. However, if you are regularly providing meals to a designated person or buying them groceries, this requires a Gibraltar competent authority licence.

### 2.7 Can I pay for a designated person's travel?

You need a Gibraltar competent authority licence to pay for a designated person's travel if they would receive a significant financial benefit as a result. For example, you may make a one-off payment for a local bus fare without a Gibraltar competent authority licence. However, long-distance travel, weekly tickets or repeated payments for short trips require a Gibraltar competent authority licence.

### 2.8 Can I pay for a designated person's accommodation?

You probably need a Gibraltar competent authority licence as this may represent the indirect provision of funds to the designated person.

### 2.9 Can I let a designated person stay at my house?

You may allow a designated person to stay at your house for a temporary period without a Gibraltar competent authority licence. However, you should contact the relevant Gibraltar competent authority in such circumstances. The Gibraltar competent authority might consider that allowing a person to share your hotel room or similar accommodation that you have paid for, on a temporary basis, doesn't require a licence, provided you're staying there as well.



However, you need a Gibraltar competent authority licence if you are providing access to accommodation to a designated person for free over a prolonged period of time.

## **2.10 I work for a designated person. What do sanctions mean for me?**

Your employer will need a Gibraltar competent authority licence to pay your salary and expenses. You also need to be careful that your actions at work do not breach any of the conditions of the asset freeze. The continued operation of their business will be restricted by the terms of licences granted. If you are involved in ordering stock or supplies, agreeing contracts or making payments, you should familiarise yourself with the terms of any Gibraltar competent authority licence in place for the business to ensure you comply with the licence. Failure to comply with the terms of the licence may result in criminal prosecution or a monetary penalty. You are not permitted to make payments on behalf of your employer from your own funds while they are in the process of obtaining licences.

## **2.11 I bought goods from a designated person. Can I still receive them?**

The goods may constitute an economic resource. If they are still owned or controlled by the designated person, you need a Gibraltar competent authority licence to allow the goods to be sent to you.

## **2.12 I owe a designated person money under a contract agreed before they were designated. Can I pay them back?**

You may be able to make a payment due as a result of obligations arising prior to the person being designated, as long as the:

- payment is into a frozen account
- relevant sanctions regime contains a relevant exemption

## **2.13 A designated person owes me money. Can I get it back?**

You need a Gibraltar competent authority licence to allow the designated person to pay you. There are clear licensing grounds for such payments where the obligation to make the payment arose before the person was designated. If you entered into a contract with a designated person after their designation, and without a Gibraltar competent authority licence in place, you should contact Gibraltar competent authority for advice. A Gibraltar competent authority licence does not compel a person to make a payment. If the designated person does not wish to pay you, you may need to take legal action to enforce the debt. Instituting legal action is not prohibited by sanctions. However, you may need a Gibraltar competent authority licence to enforce any judgement or settlement agreement.

## **2.14 A designated person is suing me for not completing on a contract. How can I respond to this claim and still comply with sanctions?**

How sanctions apply to your situation will depend on the exact circumstances of the claim and you should consider taking independent legal advice. You may be able to make a payment into a frozen account of the designated person for obligations arising under a contract prior to them being designated, if the relevant sanctions regime contains such an exemption.

A Gibraltar competent authority licence granted in respect of the contract would enable you to complete on the contract. If you do not want to complete on the contract, or are in dispute about whether you have completed the contract, it is not a breach of sanctions for the designated person to bring a claim against you. However, they would need a Gibraltar competent authority licence to pay legal representatives or to enforce any judgement in their favour which requires you to make funds or economic resources available to them. If the designated person is subject to an asset freeze implemented by EU regulations, you can't incur liability for failing to undertake an action, if financial sanctions prevent you from undertaking

that action. This protection will not apply where a Gibraltar competent authority licence is available to allow you to undertake that action.

## 2.15 I am a joint-signatory of an account with a designated person. Can I still access the funds?

Your joint account is likely to be frozen - at least initially - because all funds owned, held or controlled by a designated person must be frozen. The financial institution needs to consider the following before they can decide whether to allow you to access the funds in the account:

- the ownership of the funds
- the level of control the designated person exercises over the funds
- whether and to what degree funds will be made available to, or for the benefit of, the designated person if the funds are released to you
- whether there is a Gibraltar competent authority licence

Where joint-ownership or control applies, you require a Gibraltar competent authority licence to access the funds.

## 2.16 I jointly own an asset with a designated person. Can I sell my share?

You are likely to be able to legally sell your share. However, given the complexities of jointly holding assets with a designated person, you should consider taking independent legal advice prior to entering into any agreement to dispose of your share. Gibraltar competent authority considers that existing licensing grounds under asset freezes, imposed by EU regulations, are unlikely to permit the sale of your share to:

- the designated person
- a third party who has agreed to hold it for the benefit of the designated person

For domestic asset freezes imposed by UK law, an application for a licence would be considered on a case-by-case basis.

## 2.17 I own shares in a designated person. Can I sell those shares?

You can sell your shares on the secondary market without a Gibraltar competent authority licence provided that the sale will not result in funds or economic resources being made available to the designated person

The Gibraltar competent authority might consider that existing licensing grounds under asset freezes imposed by EU regulations are unlikely to permit the sale of your share to:

- the designated person or
- a third party who has agreed to hold it for the benefit of the designated person

For domestic asset freezes imposed by UK law, an application for a licence would have to be made to the appropriate UK authorities for them to consider on a case-by-case basis.

## 2.18 I own shares in a designated person. Can they pay me a dividend?

The designated person needs a Gibraltar competent authority licence to pay you a dividend. As the asset freeze restricts the manner in which the business can operate after designation, the ability to pay dividends may also be limited.

## 2.19 I have a licence but my bank won't process the payment. What can I do?

A Gibraltar competent authority licence does not compel any party to make a payment. If the bank has not seen your licence, it may help if you show it to them. When you are doing business with designated persons, you should talk to your bank about the business they are willing to transact through your accounts under a Gibraltar competent authority licence.

## 2.20 What reporting obligations apply to me?

When a person is designated by the EU, the EU measure will impose a requirement to immediately supply information that would facilitate compliance with the measure. The requirement applies to all persons, and not just the designated person. In respect of financial sanctions, you must provide information to Gibraltar competent authority, including information about the funds and economic resources that have been frozen. See Chapter 5 of the guide for more information.

For all regimes, the Gibraltar competent authority may request information from you to:

- establish the extent of funds and assets belonging to a designated person
- monitor compliance and detect evasion
- obtain evidence of the commission of an offence More information on reporting requirements can be found in Chapter 5 of this guide.

Specific reporting requirements will often be included in licences.

Failure to comply with a Gibraltar competent authority request for information may result in a criminal prosecution or a monetary penalty. If you are unclear on what you need to provide to Gibraltar competent authority, please contact us or seek independent legal advice.

# 3 Compliance for businesses and financial institutions

## Business in general

### 3.1 How do I manage my sanctions risk?

If you undertake an act prohibited by financial sanctions and, at the time you did so, you knew or had reasonable cause to suspect that the act was prohibited, you have breached financial sanctions and may face criminal prosecution or a monetary penalty. The Gibraltar competent authority's view is that financial sanctions are generally widely publicised and that businesses, particularly those operating internationally, will have reasonable cause to suspect that sanctions might be relevant to them. Therefore, they won't be able to avoid liability simply by failing to consider their sanctions risks. The Gibraltar competent authority would expect all businesses who engage in activities, where financial sanctions apply, to stay up-to-date with the sanctions regimes in force, to:

- consider the likely exposure of their business to sanctions
- take appropriate steps to mitigate those risks, taking into account the specific nature of their activities It is important to remember, in this context, that designated persons live and operate in the UK.

While anti-money laundering and anti-corruption systems and controls can be integrated with your sanctions compliance systems, there are important differences in terms of the:

- lists to be considered
- specific prohibitions which also need to be expressly considered Gibraltar competent authority does not require businesses to buy particular software to screen against the sanctions lists. Businesses may find it cost-effective to use specialised software from third parties where, for example, the business is of the view that considerable checking against the Gibraltar competent authority consolidated list is required.

For the consolidated lists, standard direct search tools can be used when the lists are in Excel, PDF and HTML formats. If you decide that individual checks using an e-verification provider or screening software is appropriate for your business, you should understand its capabilities and limits and ensure that it is tailored to your business needs and risk profile. Some issues to consider include:

- does the search facility include the Gibraltar competent authority consolidated list?
- how often does the search facility or screening software update the list?



- does the search facility or screening software offer fuzzy matching, enabling differences in spelling, name reversal and number removal to be identified? If you are unsure what systems and controls you should have in place for your specific business to mitigate your sanctions risk, you should consider taking independent legal advice.

It is important to emphasise that the consolidated list is a UK-created list that does not itself have legal status in Gibraltar. However, as mentioned elsewhere in this guide it is an operationally useful tool (save that it does not include Gibraltar designations). The OFSI offers a sanctions e-mail update alert system in respect of sanctions and subscribing to this service is encouraged by the GFIU and the Gibraltar competent authorities. See <https://public.govdelivery.com/accounts/UKHMTREAS/subscriber/new>

### 3.1.1 Can I talk to my customers, contractors or suppliers about sanctions?

You can discuss sanctions with your customers, contractors and suppliers. There are no 'tipping off' provisions in relation to sanctions which prevent you discussing sanctions compliance with any person. In most cases, the fact that a person is subject to sanctions is a matter of public record.

If you have been:

informed by Gibraltar competent authority that a person is subject to a designation under Terrorist Asset-Freezing Regulations 2011;

and that the Gibraltar competent authority has restricted those notified of the designation and specified that information contained in it is to be treated as confidential, you must:

- comply with the restrictions in the Sanctions Act 2019 and
- not disclose the confidential information without lawful authority

For example, you would have lawful authority to disclose the information to the limited extent that disclosure (for example within your organisation) is necessary to give effect to the asset freeze and ensure compliance with it. Contravention of this prohibition is a criminal offence.

### 3.1.2 I bought goods from a designated person. Can I still receive them?

The goods may be an economic resource and, if they are still owned or controlled by the designated person, a Gibraltar competent authority licence is needed for you to receive the goods.

### 3.1.3 I sold goods to a designated person. Can I still deliver them?

The goods will generally constitute an economic resource and you need a Gibraltar competent authority licence to deliver them. If the good is of low value and purely for personal consumption - such as food, water or electricity or gas for domestic use - you may provide such goods without a licence.

### 3.1.4 A designated person owes me money. Can I recover it?

You need a Gibraltar competent authority licence to allow the designated person to pay you. If the asset freeze relates to a regime implemented at EU level, there are likely to be clear licensing grounds for such payments where the obligations to make the payment arose before the person was designated. If you entered into a contract with a designated person after their designation without a Gibraltar competent authority licence in place, or the asset freeze relates to any of the domestic asset freeze regimes (including the Terrorist Asset-Freezing Regulations 2011), please contact the Gibraltar competent authority for further advice.

A Gibraltar competent authority licence does not compel a person to make a payment. If the designated person does not wish to pay you, you may need to take legal action to enforce the debt. Instituting legal action is not prohibited by sanctions. However, you need a Gibraltar competent authority licence to enforce any judgement or settlement agreement.



### 3.1.5 I owe a designated person money. How can I pay it and still comply with sanctions?

You can make a payment due as a result of obligations arising prior to the person being designated, as long as the payment is into a frozen account where there is an exemption to the asset freeze. If the debt occurred after the designated person was listed, and in the absence of a Gibraltar competent authority licence, you should contact Gibraltar competent authority for advice.

### 3.1.6 A designated person is suing me for non-completion of a contract. How can I respond to the claim and still comply with sanctions?

How sanctions apply to your situation will depend on the exact circumstances of the claim and you should consider taking independent legal advice. You can make a payment to the designated person, in respect of obligations which arose under a contract prior to them being designated, where there is an exemption to the asset freeze. A Gibraltar competent authority licence granted in respect of the contract will also enable you to complete on the contract. If you do not want to complete on the contract or are in dispute about whether you have completed the contract, it won't be a breach of sanctions for the designated person to bring a claim against you. However, they will need a Gibraltar competent authority licence to enforce any judgement in their favour. If the designated person is subject to an asset freeze imposed by EU regulations, you can't incur liability for failing to undertake an action, if financial sanctions prevent you from undertaking that action. This protection will not apply where a Gibraltar competent authority licence is available to allow you to undertake that action.

### 3.1.7 A designated person owes me money. Can I write it off?

You would probably need a Gibraltar competent authority licence to write off a debt.

### 3.1.8 A designated person owes me money and I owe them money. Can I exercise the right to set off the debts?

You will need a Gibraltar competent authority licence to set off a debt.

### 3.1.9 Can I provide goods or services to a designated person?

You will generally need a Gibraltar competent authority licence to make goods available to a designated person. However, if the goods are of low value and purely for personal consumption, such as food, water, or electricity or gas for domestic use, you may provide these goods without a Gibraltar competent authority licence.

However, if you are regularly providing such goods to a designated person, you require a Gibraltar competent authority licence. In all cases, the designated person needs a licence to pay you for goods. The provision of services, except in the case of certain financial services, e.g. under the Terrorist Asset Freezing Regulations 2011, are not prohibited by sanctions. However, where you provide services on credit, you are creating a debt and will need a Gibraltar competent authority licence to do so. In all cases, the designated person will need a licence to pay you for services.

### 3.1.10 Can I issue vouchers, coupons or reward points to a designated person?

You need a Gibraltar competent authority licence to issue or allow the redemption of vouchers, coupons or reward points.





### 3.1.11 I've made a mistake in how I charged a designated person or realised I gave them poor service. Can I fix the accounting mistake, reimburse my over-charging or give them a refund?

You need a Gibraltar competent authority licence to correct the mistake, reimburse or provide a refund to a designated person. However, if such actions were expressly permitted under obligations which arose prior to the person's designation and the payment is into a frozen account, a Gibraltar competent authority licence is not required. This is provided the legislation which imposes the asset freeze has the relevant exemption.

### 3.1.12 I have an existing contract with a designated person. Can the contract be amended or extended?

Whether you may or may not amend a contract will depend on whether the relevant prohibitions would be infringed. We encourage you to seek independent legal advice if you wish to re-consider your contractual position with a designated person. You may need a Gibraltar competent authority licence to amend or extend an existing contract with a designated person but this may not be possible in all circumstances. While the contract may not be an economic resource, the amendment or extension of the contract, or the actions it permits, are likely to involve dealing in funds or economic resources. If the original contract specifically permitted the amendment or extension requested, it may be possible to issue a licence under a prior contract licensing ground. In all other cases, an alternative licensing ground will need to be identified for the amendment or extension to take place.

### 3.1.13 Can I employ a designated person?

Yes, but you may need a Gibraltar competent authority licence to pay their salary or related expenses. This depends on the terms of their employment and when it began. We encourage you to seek independent legal advice or contact the relevant Gibraltar competent authority if you are unclear about needing a licence.

### 3.1.14 I jointly own a business with a designated person. Is the whole business subject to sanctions?

You are likely to need a Gibraltar competent authority licence to continue to operate the business. This is because, while the assets of a non-designated person are not frozen, all assets owned, held or controlled by a designated person are frozen. Therefore, in practice, jointly-held assets may be frozen. Prohibitions also operate to prevent funds or economic resources being made available, directly or indirectly, to the designated person without an exemption or a Gibraltar competent authority licence, which is something that businesses might do. The extent to which you can operate your business under the asset freeze is more restricted than prior to your co-owners' designation. We encourage you to seek independent legal advice, or to contact Gibraltar competent authority, if you are unclear about needing a licence.

### 3.1.15 I jointly own a business with a designated person. Can I sell my share?

You are likely to be able to legally sell your share to another person. However, given the complexities of jointly holding assets with a designated person, you should:

- consider taking independent legal advice and
- consult with Gibraltar competent authority prior to entering into any agreement to dispose of your share Gibraltar competent authority considers that existing licensing grounds, under asset freezes imposed by EU regulations, are unlikely to permit the sale of your share to the designated person or to a third party who has agreed to hold it for the benefit of the designated person.

For domestic asset freezes, e.g. under the Terrorist Asset Freezing Regulations 2011, an application for a licence would be considered on a case-by-case basis.

### 3.1.16 A designated person owns shares in the business. Can we sell the business?

You should take independent legal advice given the complexities of assets being part-owned by a designated person. This will depend on the specific ownership structure of the business and the facts of the case. Generally, any action, which makes funds or economic resources available – directly or indirectly – to or for the benefit of a designated person, is prohibited. If the sale would make funds or economic resources available to a designated person, the Gibraltar competent authority would likely consider that existing licensing grounds, under asset freezes imposed by EU regulations, are unlikely to permit such a sale. For domestic asset freezes imposed by UK law, an application for a licence would be considered on a case-by-case basis.

### 3.1.17 I have a licence but my bank will not process the payment. What can I do?

A Gibraltar competent authority licence does not compel any party to make a payment. If the bank has not seen your licence, it may help if you show it to them. When you are doing business with designated persons, you should talk to your bank about the business they are willing to transact through your accounts under a Gibraltar competent authority licence.

### 3.1.18 What are my reporting requirements?

When a person is designated by the EU, the EU measure will impose a requirement to immediately supply information that would facilitate compliance with the measure. The requirement applies to all persons, and not just the designated person. In respect of financial sanctions, you must provide information to Gibraltar competent authority, including information about the funds and economic resources that have been frozen. UK regulations, which enforce EU regulations, set out specific reporting obligations for a ‘relevant institution’ and a ‘relevant business or profession’. See Chapter 5 of the guide for more information. The Gibraltar competent authority may request information from you to:

- establish the extent of funds and assets belonging to a designated person
  - monitor compliance and detect evasion
  - obtain evidence of the commission of an offence
- More information on reporting requirements can be found in Chapter 5 of this guide.

Specific reporting requirements will often be included in licences. Failure to comply with a Gibraltar competent authority request for information may result in a criminal prosecution or a monetary penalty. If you are unclear on what you need to provide to the Gibraltar competent authority please seek independent legal advice.

## 3.2 Financial sector

### 3.2.1 What is the role of the Gibraltar Financial Services Commission (GFSC) in financial sanctions compliance?

The GFSC, as part of its objective of enhancing the integrity of the Gibraltar financial system, requires firms to protect themselves from being misused for financial crime. This includes compliance with financial sanctions applicable in Gibraltar.

### 3.2.2 Can I close or transfer the accounts of a designated person?

You may need a Gibraltar competent authority licence to close or transfer an account of a designated person. The existing licensing grounds, imposed by EU regulations, to permit such an action are limited. Whether they can be used will depend on the specific circumstances of the case. Applications for licences in relation to asset freezes, imposed by UK law, will need to demonstrate that such activity is in line with the licensing policy for the regime.

### 3.2.3 Can I credit payments from third parties to a frozen account?

Generally, you will be permitted to apply payments from a third party to a frozen account – where it involves a contract, obligation or court order made prior to the person’s designation –

without a Gibraltar competent authority licence, provided the asset freeze has the relevant exemption.

You will generally be permitted to apply social security payments to an account, even when they are for the benefit of a person designated under an asset freeze imposed by the Terrorist Asset-Freezing Regulations 2011. You must advise the Gibraltar competent authority of any of the above transactions immediately. You may credit other payments to a frozen account in accordance with a Gibraltar competent authority licence.

### **3.2.4 Can I apply interest to the account of a designated person?**

You can credit interest without a Gibraltar competent authority licence, where the legislation imposing the asset freeze has the relevant exemption. You can't apply negative interest rates to the account of a designated person without a Gibraltar competent authority licence.

### **3.2.5 Can I correct errors in accounts?**

If the account was opened prior to designation, and the terms and conditions of operating the account permit you to correct errors, you can make corrections without a Gibraltar competent authority licence. This is provided that the legislation imposing the asset freeze contains the relevant exemption. Otherwise, you will need a Gibraltar competent authority licence. You must advise the Gibraltar competent authority of the transaction immediately.

### **3.2.6 Can I give a designated person a credit or debit card? You must freeze existing accounts and the credit cards of a designated person.**

A Gibraltar competent authority licence is required to provide access to a new credit card or use any credit card. You are not prevented from providing a designated person with a debit card but a Gibraltar competent authority licence is required for its use. If you decide to provide debt or credit cards to a designated person, you should have systems and controls in place to enable you to satisfy yourself that the use of the card(s) is restricted to what is permitted by the Gibraltar competent authority licence. If you decide to provide debt or credit cards to a designated person, you need a Gibraltar competent authority licence to use a credit or debit card.

### **3.2.7 How do I treat funds being transferred from a designated person, based outside the EU, to a non-designated person in Gibraltar?**

Funds arriving in Gibraltar which have come from or via a designated person based outside the EU, should be frozen on arrival.

Funds would only be released if a Gibraltar competent authority licence is obtained.

### **3.2.8 How do sanctions apply to a safety deposit box?**

You must freeze safety deposit boxes or secure storage facilities owned, controlled or held by a designated person. This is because a safety deposit box or secure storage facilities may be an economic resource of, or be used to hold funds or economic resources belonging to, a designated person. You should notify the Gibraltar competent authority that you hold such a safety deposit box or secure storage facility for the designated person. Where the contents are not known, the report to the Gibraltar competent authority should make that clear. Boxes do not need to be opened or searched before a report is made. Furthermore, you must not let the designated person access their safety deposit box or secure storage facilities without a Gibraltar competent authority licence.

## **3.3 Insurance sector**

An asset freeze imposed by EU regulations does not generally ban the provision of insurance. However, insurance payments to and from designated persons require a Gibraltar competent authority licence.

There may be certain restrictions on the provision of insurance:

- To certain Syrian entities in specific circumstances
- For specific trade transactions

Payments of claims and the receipt of premiums require a Gibraltar competent authority licence.

## Syria

You are required to discontinue insurance in the circumstances set out under the Syrian sanctions regime. For further information, see Council Regulation (EU) 36/2012:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1501504331770&uri=CELEX:32012R0036>

There are currently no licensing grounds available in relation to prohibited insurance under the Syria financial sanctions regime.

## Trade sanctions

For information on restrictions on providing insurance and reinsurance where trade sanctions apply, please seek independent legal advice

### 3.3.1 Who is responsible for sanctions compliance in an insurance chain?

Each business to whom sanctions apply is responsible for its own compliance with financial sanctions and the financial related aspects of trade sanctions.

## Insurers, re-insurers and underwriters

You should undertake reasonable enquiries to identify whether the underlying clients or claimants may be designated persons.

You should also consider your arrangements with introducers and other parties to:

- maximise the level of information provided when providing cover
- make appropriate use of that identifying information in designing your sanctions compliance systems and controls

Where insurance is provided through an agent, broker, introducer, delegated authority or bordereau arrangement, you should satisfy yourself that the third party's systems and controls are sufficient to mitigate sanctions risks.

This could include:

- making specific reference to sanctions compliance in their terms of business with introducers
- reviewing sanctions compliance policies
- requiring positive affirmation from their introducers on their financial sanctions systems and controls Where detailed information cannot be obtained, it may be appropriate for you to screen the partial information you hold on a more targeted basis.

For example, this could involve screening:

- Gibraltar-focused businesses against designated persons resident in Gibraltar only
- non-Gibraltar businesses against entries that correspond to the jurisdiction where the underlying client or claimant is suspected to reside

## Agents and brokers

Given that you usually deal directly with clients, you should be well placed to obtain sufficient information to conduct appropriate sanctions checks against clients and insurance beneficiaries when cover is issued. The specific requirements that an insurer or underwriter applies to you in respect of sanctions compliance are a matter for the parties to contract.



### 3.3.2 I provide pensions and related products to an employer so may not know who the relevant employees are. How can I comply with sanctions?

Depending on the precise arrangements, it is likely that the contract is with the employer and the employer will provide the benefits to the employees in line with their contracts of employment.

You should initially focus on the employer when conducting your sanctions checks. Where specific employees are drawn to your attention – for example, for special underwriting or the direct payment of benefits – the Gibraltar competent authority would expect you to conduct sanctions checks on the employee details.

### 3.3.3 What should I do if a person becomes designated after I've agreed to insure them?

An asset freeze imposed by EU regulations does not:

- void any insurance cover that the designated person had at the time of their designation
- require you to discontinue the provision of insurance

In addition, you won't be required to discontinue insurance issued to a designated person where:

- a general licence permits the insurance to continue
- a specific Gibraltar competent authority licence is issued for the policy If you are making an assessment on whether to discontinue cover to a designated person, you should take into account the potential social harm that might be caused if you terminate a contract that is:
  - not subject to any restriction
  - permitted under a general licence

### 3.3.4 Can I make payments to or on behalf of a designated person?

You require a Gibraltar competent authority licence. This applies whether you:

- insure the designated person
- are paying out a claim in favour of the designated person on behalf of a third party that you insure

### 3.3.5 Can I provide temporary access to assets, such as accommodation or vehicles, in response to a claim?

If the provision is to a person designated under the Terrorist Asset-Freezing Regulations 2011, a general licence may apply.

For all other asset freezes, Gibraltar competent authority's view is that the following don't involve making an economic resource available to a designated person if the provision of the asset is:

- of limited duration, e.g. less than one week
- for personal consumption, e.g. personal use of the vehicle rather than business use of the vehicle If you are providing the asset beyond that timeframe or for business use, you need a Gibraltar competent authority licence. You should mark the application as urgent and Gibraltar competent authority will endeavour to provide an indication on approach within one working day.

## 3.4 Legal sector

### 3.4.1 Can I provide legal advice or act for a designated person?

Yes, you can provide legal advice to or act for a designated person but you cannot receive any payment for that advice without obtaining a licence from the Gibraltar competent authority. Payment of legal fees or expenses by a designated person using frozen funds or by a third party on behalf of the designated person is prohibited as this involves dealing with frozen funds or making funds available indirectly to, or for the benefit of a designated person.

Without a licence the payment would be in breach of financial sanctions and constitute a criminal offence or else could result in a monetary penalty being imposed. The Gibraltar competent authority can only authorise payment of reasonable legal fees for legal services provided to a designated person.

We therefore strongly encourage you to apply for a licence in advance of providing substantive legal services in order for you to have early certainty as to the fees that will be recoverable whilst the designated person(s) remains listed.

You must obtain a licence from the Gibraltar competent authority to allow any prohibited activity to take place without breaching financial sanctions. Although a licence is not required to provide legal advice to a designated person nor for the provision of legal services in general, a licence is needed to allow for the payment of legal fees and expenses to be lawfully made. Certain legal services, such as the provision of company formation services, may constitute the provision of 'financial services' prohibited under Part 3 of the Terrorist Asset-Freezing Regulations 2011. Also, where sanctions prohibit specific actions, e.g. restructuring of finance, you need to carefully consider whether your advice and support for the client is helping them comply with sanctions or is participating in or facilitating a breach. For example, if it is prohibited to raise capital on EU markets, providing advice on how this affects a business will be permitted. However, preparing documents to raise such capital may amount to an attempt to circumvent sanctions.

### 3.4.2 How quickly must I apply for a licence?

If you are providing legal advice to a person designated under the following, you may use the general licences to allow for payments of legal aid or for payments by third parties:

- EU Council Regulation (EC) No 2580/2001
- EU Council Regulation (EC) No 881/2002

In relation to other regimes, a licence must be applied for in advance of payment of the fees. No funds should be taken on account or disbursements paid until a licence is granted. Financial sanctions legislation would likely permit the Gibraltar competent authority to issue licences for the payment of reasonable professional legal fees or the reimbursements of legal services expenses. You should not assume that a licence will be granted permitting payment of the fees and expenses you propose to charge as Gibraltar competent authority will only authorise the payment of reasonable legal fees.

Fees that are not determined to be reasonable or to relate to actual legal fees will not be licensable under the legal fees licensing ground. To mitigate this risk and manage your expectations around payment we strongly recommend that a licence is applied for before the legal work commences or as early as possible once you have started to act for the client. Licence applications for payment of legal fees or expenses (both estimated and incurred) are carefully scrutinised to ensure that the proposed amounts are reasonable. The applicant has the opportunity throughout the application process to justify that the requested fees are reasonable in relation to the nature, volume and complexity of the work.

### 3.4.3 Do I have to freeze the client's money?

You must freeze any funds or economic resources owned, held or controlled by the client which are in your possession. If you hold money on account for a person who is designated

after you are instructed by them, you may move the funds from a pooled client account to a designated client account in the UK to freeze the funds. You can do this without a Gibraltar competent authority licence but you should alert Gibraltar competent authority as soon as you have done so. Interest may be credited to the account in accordance with the Solicitors' Accounts Rules. This is provided that the credited interest is also frozen and that the legislation contains the relevant exemption.

#### **3.4.4 Do I need a licence if the legal services for the designated person are being paid for by a non-designated person?**

There is a general licence which is likely to apply to such payments if the designated person is subject to an asset freeze imposed by the following pieces of legislation (among others): •

- EU Council Regulation (EC) No 2580/2001
- EU Council Regulation (EC) No 881/2002

For asset freezes imposed by other legislation, you need a Gibraltar competent authority licence.

You should carefully consider how you establish the retainer, and in whose name you hold the funds, as this will have a bearing on whether any excess funds on account can be returned to the payer at the end of the retainer.

#### **3.4.5 What fees and disbursements can be licenced?**

Under an asset freeze imposed by EU regulations Gibraltar competent authority is only permitted to licence the release of frozen funds for the payment of reasonable legal fees and disbursements related to the provision of legal services. (See 3.2.8 re. safety deposit boxes).

The licensing ground does not permit payments for any other services, even if these have been paid for by a law firm. These restrictions apply even if a third party is paying for the legal fees.

#### **3.4.6 What are considered 'reasonable' legal fees and disbursements?**

It is for you to demonstrate to the Gibraltar competent authority that the legal fees and disbursements are reasonable. You should as a minimum:

- provide an estimate of the likely fees
- break down how these will be charged in the application
- identify significant disbursements, such as payments for counsel and expert witnesses

Court cost guides or the sums that could be expected to be recouped if costs were awarded, would likely provide a useful starting point for the Gibraltar competent authorities for assessing the reasonableness of legal fees and disbursements. If you are seeking fees of a level significantly in excess of those, you need to demonstrate why those increased fees are reasonable in the given case.

#### **3.4.7 How many law firms can I instruct?**

Licensing fees for one law firm (and one set of counsel where appropriate) is reasonable for a given action or piece of advice. You should provide a detailed case if the designated person is seeking to be represented by more than one law firm or set of counsel. The Gibraltar competent authority would consider each application on its merits.

#### **3.4.8 Can court fees be licenced?**

Court fees and payments into court, for security for costs, can be licenced under the reasonable legal fees licensing ground. However, a separate licensing ground needs to be identified to pay security for damages into court, depending on the specific circumstances of the case.



### 3.4.9 What should I take into account when monitoring compliance with licences?

You, your employees and your clients need to be clear about the specific permissions contained in the licence as they must be strictly complied with. You should be clear with your client that they can only pay the legal fees permitted by the licence and via the payment route specified in the licence. You should also ensure that your accounts staff are aware that any funds must remain frozen and that any receipts or payments must be strictly in accordance with the licence.

### 3.4.10 What should I do if a court order conflicts with sanctions obligations?

You probably cannot comply with a court order that conflicts with sanctions obligations because to do so would likely be a breach of EU and UK legislation. You should consider whether:

- a Gibraltar competent authority licence is available to allow you to comply with the court order
- the court should be made aware of the financial sanctions
- you should ask for the order to be amended

The bringing of a claim, either on behalf of or against a designated person, is not prohibited by sanctions. Nor is it a breach of sanctions for a court or arbitrator to adjudicate on the claim. However, the claim can only be settled or the court judgement/arbitration order enforced, where there is a licensing ground to allow this to happen. Whether there is a licensing ground available depends on the specific facts of the case and the sanctions regime under which the asset freeze applies. If a court has ordered a judgement in favour of a person subject to an asset freeze, under EU regulations, and there are no licensing grounds to allow the payment to be made, the third party cannot be made subject to any further liability (such as accruing interest) for their non-payment while the sanctions continue to apply.

### 3.4.11 Can I return funds to a designated person?

If the obligation to return or pay funds to a designated person arose prior to their designation, you may pay them into a frozen account, where the legislation imposing the asset freeze has the relevant exemption. In other instances, there are very limited licensing grounds on which to allow the funds to be returned. They may have to remain frozen by the law firm until such time as the designated person is no longer subject to sanctions.

### 3.4.12 How does legal professional privilege apply to my reporting obligations?

The general reporting obligations are set out in Chapter 5. You are not required to provide information that is subject to legal professional privilege. The Gibraltar competent authorities would expect legal professionals to approach their disclosure obligations with rigour and carefully consider where legal professional privilege applies, and to what information. The Gibraltar competent authority will challenge any blanket claims of privilege where we are not satisfied that such careful consideration has been made. You should proactively engage with your client about the need to provide information to meet the reporting requirements in licences.

## 3.5 Import/export sector

### 3.5.1 I have an export control licence. Is that all I need?

Export control licences only provide permissions for trade sanctions and embargoes. If the goods are going to a designated person or the funds are transferring through a designated person, you need to apply separately for a Gibraltar competent authority licence. Just because an export control licence has been granted, it is not guaranteed that a Gibraltar competent authority licence will be granted.





### 3.5.2 My product is not subject to trade controls. Do financial sanctions still apply to me?

You still need to consider financial sanctions if goods are being made available – directly or indirectly – to, or for the benefit of, a designated person. Equally, if payments are coming from or through a designated person, such as a designated bank, and there is no relevant exemption, a Gibraltar competent authority licence will be required.

### 3.5.3 Does it make a difference if my goods are for humanitarian, medical or diplomatic purposes?

You need to consider carefully the restrictions in place against the designated person. For example, if a person is subject to sanctions under the Syrian regime, you need to look at the legislation imposing that regime. Some regimes have specific exemptions or licensing grounds for the provision of goods or funds for humanitarian, medical or diplomatic purposes, which may expand the options from the normal licensing grounds. The Gibraltar competent authorities would seek to prioritise applications for licences in these cases.

## 4 Compliance for nongovernmental organisations/non-profit organisation (e.g. charities) sector

The Gibraltar competent authority recognises the important humanitarian work that NGOs and charities do internationally and that financial sanctions regimes are in force in many areas where NGOs and charities operate. To facilitate the passage of humanitarian goods and funds, the international community creates sanctions measures with humanitarian provisions, i.e. exemptions or licensing grounds to allow goods to be provided and payments made. The Gibraltar competent authorities would treat such licence requests as a priority. However, financial sanctions may still apply to certain payments even if they relate to humanitarian activity.