



Virgin Islands Office of the Governor



VIRGIN ISLANDS FINANCIAL SANCTIONS GUIDELINES

This Financial Sanctions Guidance is issued by the Governor's Office as the Competent Authority responsible for the implementation of financial sanctions in the Virgin Islands. It has been compiled with the assistance of the agencies that support the Governor in the discharge of his duties under the Sanctions regimes.

The purpose of these guidelines is to assist persons in meeting their compliance obligations under financial sanctions, including consideration for how licensing and compliance issues should be addressed.

Sanctions measures are subject to constant change. You should, therefore, refer to the relevant sanctions orders and legislation, as well as any other relevant guidance issued from time to time by the relevant competent authorities. At all times you should have regard to your business risk, the overall risk assessment of your clients and any other specified risk.

It should be noted that these guidelines do not serve as legal representation. Independent legal advice should be sought if you are unsure of your obligations in any given case.

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HM Treasury's
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Virgin Islands Council of Competent Authorities

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I. INTRODUCTION

In order to ensure an effective financial sanctions regime in relation to terrorist financing and proliferation financing, and general or targeted sanctions against countries, regimes, persons, groups or entities, the Virgin Islands (VI) (the Territory) embraces international standards and best-practice standards to promote international cooperation and international security in accordance with international agreements. This includes the implementation of measures to ensure that it meets its obligations to combat money laundering, the financing of terrorism and proliferation financing as embodied under the Financial Action Task Force's¹ *Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation* ("the FATF Recommendations").

Specifically, Recommendations 6 and 7 of the FATF Recommendations require countries to implement targeted financial sanctions regimes which comply with United Nations Security Council Resolutions (UNSCRs) relating to the prevention, suppression and disruption of terrorism, terrorist financing and proliferation financing. More broadly, sanctions are used as a foreign policy tool as part of political or diplomatic strategy to achieve a desired outcome from a target country or regime. They are generally agreed and coordinated at an international level by the United Nations Security Council and the European Union (EU), and include travel, arms, financial and trade restrictions against the individuals and entities that are subject to the restrictions.

As a member of the Caribbean Financial Action Task Force (CFATF), the VI is required to fully comply with the requirements of the FATF Recommendations.

As a British Overseas Territory, the VI is committed to ensuring its role in the maintenance of international peace and security, and therefore implements the international sanctions obligations extended through the United Kingdom (UK) in the form of Orders in Council. The Governor of the Virgin Islands is the Competent Authority with responsibility for enforcing Orders-in-Council relative to international sanctions.

It is through Orders in Council that the UNSCRs, which have been adopted by the EU and the UK, and are implemented in the UK, are subsequently extended to the Virgin Islands. These may be country specific or may be targeted at specific groups or activity. For example, under the Terrorism (United Nations Measures) (Overseas Territories) Order 2001, The Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order) 2011, the VI implements financial sanctions regimes pursuant to UNSCR 1373, which requires countries to freeze the assets of terrorists and take measures to ensure that their nationals cannot make funds and any related financial services available directly or indirectly to or for the benefit of terrorists or terrorism. In addition, under The Isil (Da'esh) and Al-Qaida (Sanctions) (Overseas Territories) Order 2016 and the Afghanistan (United Nations Measures) (Overseas Territories) Order 2012, the VI also implements UNSCR 1267 in relation to targeted financial sanctions against individuals and entities associated directly or indirectly with ISIL and Al Qaida which requires the freezing of assets of designated persons.

In the VI, targeted financial sanctions relating to terrorist financing and proliferation financing are applicable to persons/entities designated by the United Nations Security Council (UNSC) and their

¹ The FATF is the inter-governmental body established by the G7 in 1989, which sets global standards to promote effective implementation of measures to combat money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a "policy-making body" which developed a series of **Recommendations** that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction.

relevant committees and the European Union (EU) Council. Adherence to these targeted financial sanctions designations are applicable to relevant businesses, entities, professionals and regulated persons in the VI, such as Designated Non-Financial Businesses and Professions, Financial Institutions and Non-Profit Organisations.

Under the Withdrawal Agreement between the European Union and the UK, the UK entered a 'transition period' after it left the EU on 31 January 2020. This will end on 31 December 2020. During the transition period, the UK will continue to be bound by EU sanctions. In this regard, the UN and EU sanctions will continue to be implemented in the UK through EU law during this time.

1. Financial Sanctions Overview

WHAT ARE SANCTIONS?

1. Sanctions are restrictive measures that are put in place by the UN Security Council, EU Council, the United Kingdom (UK) or international community to achieve a specific foreign policy or national security objective. Such restrictions may:
 - limit the provision of certain financial services;
 - restrict access to financial markets, funds, economic resources, trade and exports.
2. Under Chapter VII of the United Nations Charter, sanctions are restrictive measures, which deal with threats to international peace and security. UN sanctions are key foreign policy tools used to coerce those targeted by sanctions measures in order to influence and promote changes in unacceptable behavior by States, individuals and entities.
3. The primary objective of all UN sanctions as set out in Chapter VII of the UN Charter, is to implement decisions by the UN Security Council for maintaining international peace and security. Under Article 2.2 of the UN Charter, all UN Members States are required to comply with UN sanctions.²
4. For Common Foreign and Security Policy (CFSP) objectives, the European Union (EU) also imposes specific sanctions including the following categories of sanctions:
 - a. Proliferation financing;
 - b. Terrorism/Terrorist Financing; and
 - c. General sanctions against countries
5. Sanctions come in many forms and are developed in response to a particular circumstance. Some examples of the most common types of sanctions imposed include:
 - **Economic sanctions** - the withdrawal of customary trade and financial relations for foreign and security policy purposes. Sanctions may be comprehensive, prohibiting commercial activity with regard to an entire country, (i.e. U.S. embargo of Cuba), or they may be targeted, blocking transactions by and with particular businesses, groups, or individuals³.
 - **Diplomatic sanctions** – the reduction or removal of diplomatic ties which may include limitations or cancellations of high-level government visits or expelling or withdrawing diplomatic missions or staff.

² UN sanctions should not be confused with unilateral sanctions that are imposed by individual countries in furtherance of their strategic interests.

³ Council on Foreign Relations “*What are Economic Sanctions?*”- Backgrounder by Jonathan Masters, *Last Updated August 12, 2019.*

- **Trade sanctions**⁴ are restrictions which encompass:- arms embargoes: restrictions on the use of weapons; and restrictions on dual-use items⁵
 - Trade restrictions place controls on
 - the import, export and movement of goods and technology
 - the provision and supply of services
 - the involvement of UK citizens in these activities
 - **Financial sanctions**⁶ are restrictive measures imposed by the government which prohibit a firm from carrying out transactions with or providing financial services to a person or organisation (known as the target). These measures can vary and may include the freezing of funds and economic resources to a sanctioned country, government, organization, individual or entity who may be resident in the UK or abroad.
- **Immigration sanctions**, known as travel bans: are restrictions on specific people, banning entry into, or transit through, the UK. Such restrictions also extend to the Virgin Islands as British Overseas Territory⁷.

WHY FINANCIAL SANCTIONS ARE IMPOSED

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

⁴ Trade Sanctions - The Department for International Trade implements and enforces trade sanctions and other trade restrictions. <https://www.gov.uk/guidance/uk-sanctions>

⁵ Dual use goods are products and technologies normally used for civilian purposes but which may have military applications. EU Commission on Trade – Import and Export Rules - <https://ec.europa.eu/trade/import-and-export-rules/export-from-eu/dual-use-controls/>

⁶ “Financial Sanctions” - Financial Conduct Authority - <https://www.fca.org.uk/firms/financial-crime/financial-sanctions>

⁷ Art. 9 of the Sanctions (Overseas Territories) Order.

7. The ultimate objective of a financial sanction is to influence and promote change in unacceptable behaviour of the target country's regimes, individuals and entities.

HOW SANCTIONS ARE IMPOSED

8. The United Nations (UN) imposes financial sanctions through the UN Security Council Resolutions (UNSCRs) and requires member states to implement these UNSCRs. UNSCRs are adopted under Chapter VII of the United Nations Charter. UNSCRs are legally binding on the United Kingdom (UK) under international law. However, they do not have automatic application in UK law and have to be implemented by a combination of UK domestic legislation and EU instruments.
9. At the EU level, sanctions measures are contained in EU Council Decisions. Whilst the EU invariably replicates sanctions measures set out in a UNSCR, it may also act in the absence of a UNSCR, or go further than a UNSCR to impose its own financial sanctions, sometimes referred to as 'EU autonomous' sanctions. The EU imposes sanctions measures within the framework of the specific CFSP objectives set out in the Treaty on European Union (Article 11). EU specific sanctions may relate to a specific country that is a U.N. Member country and may target governments of third countries, or non-state entities and individuals (such as terrorist groups and terrorists). They may comprise arms embargoes, other specific or general trade restrictions (import and export bans), financial restrictions, restrictions on admission (visa or travel bans), or other measures, as appropriate.
10. These are also implemented through EU Regulations that have direct effect in all member states. EU Council decisions are binding on the UK⁸. Where EU sanctions measures provided for in a Council Decision fall within EU competence (e.g. trade sanctions, asset freezes, bans on the export of equipment for internal repression), they are implemented by means of an EU Council Regulation, which is directly applicable in the UK (i.e. they are automatically a part of UK domestic law). Where they fall outside EU competence, they are implemented nationally.
11. The UK makes statutory instruments (UK Regulations) to impose penalties for any breach of EU regulations and to obtain, provide and use information relating to the operation of these regulations.

⁸ Under Brexit, the UK left the EU on 31 January 2020. Under the UK-EU withdrawal agreement, a transition period will end on 31 December 2020 unless extended, during which time the UK will be treated for most purposes as if it were still an EU member state, and most EU law (including as amended or supplemented) will continue to apply to the UK

12. In special circumstances, the UK can impose its own financial sanctions and restrictions under the following legislation (collectively the ‘domestic regime’):
- Sanctions and Anti-Money Laundering Act 2018 (SAMLA 2018)
 - Terrorist Asset-Freezing etc. Act 2010⁹
 - Counter Terrorism Act 2008
 - Anti-Terrorism, Crime and Security Act 2001 (ATCSA 2001)¹⁰

2. The Role of the Competent Authorities in Relation to Sanctions

The Governor’s Office

13. The Governor of the Virgin Islands is the competent authority for implementation of financial sanctions measures and under each Order in Council responsibilities and duties include, *inter alia*, the power to grant, vary and revoke licences (which permit the conduct of specified activities otherwise not permitted under the relevant Orders-in-Council); the duty to publish certain lists; and power to delegate any of the Governor’s functions.

Obligations on the Governor

14. Sanctions Orders generally require the Governor to adhere to the following:

- A requirement to cooperate with an international investigation related to funds of designated persons etc.; and
- A requirement to publish a list of designated persons and a list of restricted goods, and ensure that the list is kept up to date. In addition, restrictive measures imposed by the EU against persons are enforced in the Territory through the GO.

Powers of the Governor

15. Under each of the Orders, the Governor has certain powers and duties in relation to the administration of financial sanctions measures. These include the following¹¹:
- Power to grant, vary or revoke licences, subject to the consent of the Foreign Secretary;
 - Power to authorise persons to exercise various enforcement and evidence gathering powers;
 - Power to delegate his or her function;
 - Power to disclose information in the exercise of its powers under this section to relevant persons (law enforcement or other relevant competent authority) for the purposes of giving assistance for cooperation to the relevant Security Council’s resolutions under the UN or EU council¹².

⁹ This Act has been extended to the Virgin Islands under Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order, 2011

¹⁰ Office of Financial Sanctions Implementation, Financial Sanctions Guidance page 25

¹¹ Foreign & Commonwealth Office- Internal Organizations Department –Guidance on Implementation of Sanctions in the Overseas Territories, page 7

¹² Article 23(1) Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order 2011

- Power to direct by notice that funds are not to be made available to any person (suspected of participating or facilitating in an act of terrorism), except under the authority of a licence granted.
16. These Orders generally provide that “any person who, except under the authority of a licence granted by the Governor, makes any funds or financial (or related) services available directly or indirectly to or for the benefit of -(a) a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism, (b) a person controlled or owned directly or indirectly by a person in (a), or (c) a person acting on behalf, or at the direction, of a person in (a), is guilty of an offence.
17. Whilst the Governor has a mandate to deal with breaches of Sanctions Orders, he or she is also empowered to delegate by an Order, that its functions be carried out (for example) by the Financial Investigation Agency (FIA) or other law enforcement agency. A law enforcement agency will only act on matters involving sanctions where the Governor has delegated such powers by an Order. Where such matters have been delegated, then the agency will follow the procedures as laid out in the Order.
18. It should be noted that the Virgin Islands does not have the power to designate an individual entity. However, through the Governor’s Office, where a person meets the criteria for designation, they are reported to the FCO for onward transmission to the relevant Secretary of State to be dealt with.

Sanction Orders in Force

19. There are currently a number of regimes that are subject to financial sanctions, and which are in force in the Virgin Islands. The list of applicable financial sanctions regimes currently in force in the Virgin Islands is appended to these Guidelines as Annex ____.
20. The Governor’s Office submits this list of ***Sanction Orders in Force*** (and its relevant amendments) to the Official gazette for publication
<https://eservices.gov.vg/gazette/>
21. The GO also disseminated the list of Sanctions Orders to the Financial Investigation Agency and Financial Services Commission for publication on their websites:
<https://www.fiabvi.vg/International-Sanctions>
<https://www.bvifsc.vg/international-sanctions/about-sanctions>

Attorney General’s Chambers (AGC)

22. The Attorney General’s Chambers is an office created under the Constitution of the British Virgin Islands and the Attorney General is the principal legal advisor to the Government of the Virgin Islands.
23. The AGC is responsible for drafting any legislation that may be required in relation to these sanctions lists to give them effect. With respect to cases where licences are required for entities affiliated with designated persons, the AGC supports the Governor’s Office, by ensuring that

the request meets the requirements of applicable legislation, and drafting the relevant licence for the approval and signature of the Governor.

24. With regard to freezing assets of designated persons, upon the Governor's instructions, and confirmation that the requisite legislative requirements have been met, the AGC is responsible for making an application with supporting documents to the court for a freezing order.

Financial Investigation Agency (FIA)

25. The Financial Investigation Agency (FIA) is the reporting authority of the Virgin Islands with responsibility for receiving, obtaining, investigating, analysing and disseminating information which relates, or may relate, to the proceeds of a financial offence and request for legal assistance from a relevant authority in a foreign jurisdiction¹³.
26. Under Section 2 of the FIA Act, the FIA is also designated as the receiver of all disclosures of information which are required to be made pursuant to any financial services legislation relevant to its functions. This includes suspicious transactions reports and disclosures from foreign authorities. Upon receipt of a request, (whether through the Governor, Attorney General, Financial Services Commission or others) from a foreign financial investigation authority or a law enforcement authority including the Commissioner of Police, the FIA may also:
- order in writing any person to refrain from completing any transaction for a period not exceeding seventy-two (72) hours; and/or
 - order any person to freeze a person's bank account for a period not exceeding five (5) days if satisfied that the request relates to the proceedings of a financial offence.
27. The FIA is the supervisory body for Designated Non-Financial Businesses and Professions (DNFBPs) and Non-Profit Organizations (NPOs). The DNFBPs are designated as relevant businesses under the Anti-Money Laundering Regulations (AMLR) and supervised for AML/CFT compliance under both the AMLR and Anti-Money laundering and Terrorist Financing Code of Practice (AMLTF COP); the NPOs are registered under the Non-Profit Organisations Act, 2012 and supervised for AML/CFT compliance pursuant to powers granted under that Act, the AMLR and AMLTF COP.
28. Compliance under the AMLTF COP encompasses the requirement to ensure compliance with the Sanctions Orders under the sanctions regime. For example, requisite customer due diligence requires that NPOs determine whether a donor which seeks to contribute to an NPO is not a person/entity placed on any UN, EU or other similar institution's list of persons who are linked to terrorist financing or against whom a ban, sanction or embargo subsists.
29. The compliance framework also requires the FIA to provide the necessary guidance by ensuring that for example, DNFBPs conduct risk based assessments to determine whether the origin of funds or source of wealth relates to a jurisdiction on which there is currently an embargo or a UN/EU or other sanction (i.e. U.S.). This will require enhanced due diligence measures to be undertaken and a report filed with the FIA, who will liaise with the GO to determine the scope

¹³ The Financial Investigation Agency Act S. 4(1) Sets out the functions of the Agency

of the embargo, sanction or restriction, which may or may not necessarily relate to financial prohibition.

30. The FIA has a responsibility for ensuring that persons or entities under its supervision are made aware of all applicable international targeted financial sanctions and any other local designations or directions that are in force, as well as their responsibilities for sanctions screening and reporting. In addition, the FIA is responsible for publishing on its website, the record of *Overseas Territories Sanctions Orders in Force* and its relevant amendments. These Orders are disseminated to the Agency from the GO, and may be found on:
 - <http://www.fiabvi.vg/Sanction-Orders>.
31. All relevant businesses, entities and professions should also conduct regular checks of the BVI Gazette, the FIA or FSC websites to note any new lists on the UN and EU sanctions and embargo regimes, including any modifications thereto.
32. Whilst the Governor's Office has a mandate to deal with breaches of Sanctions Orders, there are instances where the Governor would delegate such powers by an Order to the FIA. Where such matters have been delegated to the FIA, the procedures which have been laid out in the Order will be followed by the FIA in the handling of the matter.

The Financial Services Commission (FSC)

33. Established under the Financial Services Commission Act, in 2001 ("the FSC Act"), the Financial Services Commission (FSC) is an autonomous regulatory authority responsible for the regulation, supervision and inspection of all financial services¹⁴ in and from within the Virgin Islands. The FSC has regulatory oversight for the Banking Division, Fiduciary Division, Insurance Division, Investment Business Division (i.e. mutual funds, arranging deals), Trust and Corporate Services Providers and Trustee Business, Financing and Money Services Business Providers and Insolvency Practitioners.
34. The functions of the FSC are set out in section 4 of the FSC Act and include the requirement to monitor compliance by regulated entities (and by such other persons who are subject to them) with the Anti-Money laundering and Terrorist Financing Code of Practice (AMLTF COP), the Anti-Money Laundering Regulations (AMLR), The Terrorism (United Nations and Other Measures) (Overseas Territories) Order 2001, The Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 and with such other Acts, Orders in Council, regulations, codes, sanctions or guidelines relating to money laundering or the financing of terrorism, proliferation financing as may be prescribed.
35. The FSC may also, where it holds a suspicion in relation to a transaction or activity, file a report with the FIA. The filing of such a report would require the FIA to perform its own analysis and investigation of the matter and, where there is a suspicion of a breach of a financial sanctions order, make a referral to the GO if sufficient information exists to warrant such a course of action.
36. As with the FIA, compliance under the relevant Sanctions legislation encompasses the requirement to ensure that relevant entities comply with all applicable international targeted

¹⁴ Insurance, banking, money services business, trustee business, insolvency practitioners, company management, investment business (mutual funds etc.), and registration of companies, limited partnerships and intellectual property.

financial sanctions and any other local designations or directions that are in force, as well as of their responsibilities for sanctions screening and reporting.

37. The FSC must therefore ensure that relevant entities maintain (among others) adequate:
- policies and procedures in relation to sanctions compliance;
 - systems and internal controls for sanctions screening, monitoring and reporting; and
 - systems for ongoing staff training.
38. The FSC has responsibility for publishing on its website, the list of *Overseas Territories Sanctions Orders in Force* and its relevant Amendments. These Orders are disseminated to the Commission from the Governor's Office and may be found at:
- <https://www.bvifsc.vg/international-sanctions/about-sanctions>
39. A relevant business, entity or professional is also required to conduct regular checks of the BVI Gazette, the FIA or FSC websites to note any new lists on the UN and EU sanctions and embargo regimes, including modifications thereto).

3. Financial Sanctions in Force in the Virgin Islands

40. In general, the Virgin Islands are subject to the same international sanctions obligations that are applicable in the UK and which are in force in the Virgin Islands. As a British Overseas Territory (OT), the Virgin Islands must implement all international sanctions that are extended to it through legislative action by the UK government. This is typically effected by means of an Order in Council (the details of which are below provided), and is reliant upon EU and UK framework for implementing sanctions from the UNSC and the EU.
41. Once the Order has been made by the Privy Council it is laid before the UK Parliament before it takes legal effect in the Virgin Islands.

Legislative changes in 2017 provide swift implementation of UN listing

The UK implemented legislation that enables all new UN listings for existing UN sanctions regimes to have direct effect in the Overseas Territories, including the Virgin Islands, as soon as they are made by the UN for 120 days, or until the Order in Council implementing the relevant UN Financial Sanctions Resolution enters into force in the Territory, whichever is sooner (Article 9 of The Policing and Crime Act (Financial Sanctions) (Overseas Territories) Order 2017. The Policing and Crime Act came into force in the UK on 1 April 2017, and the Policing and Crime Act (Financial Sanctions) (Overseas Territories) Order came into force in the Virgin Islands on 2 November 2017.

HM Treasury's Office of Financial Sanctions Implementation¹⁵ has indicated that where listings have been made under a new UN Security Council Resolution, the Linking Regulations will be amended to include the new Resolution within 48 hours. As soon as they have been amended, the listing will have direct effect in the Virgin Islands as noted above.

The Policing and Crime Act (Financial Sanctions) (Overseas Territories) Order 2017 also enables HM Treasury to create and extend to the Territory, temporary sanctions regulations where the UN makes a new listing and there is no corresponding EU sanctions regulation in place to implement it. The temporary regime lasts for 120 days in the Virgin Islands or until the Order in Council implementing the relevant UN financial Sanctions Resolution enters into force in the Territory, whichever is sooner (Article 7 of the Policing and Crime Act (Financial Sanctions) (Overseas Territories) Order 2017

42. In the context of the Territory, there are various legislative instruments through which the VI implements targeted financial sanctions pursuant to:

- a) UNSCRs 1267/1988 and 1989 and EU Regulations 881/2002 and 753/2011, among which include the following:
 - Afghanistan (United Nations Measures)(Overseas Territories) Order, 2012; and
 - ISIL (Da'esh) and Al-Qaida (Sanctions) (Overseas Territories) Order 2016.
- b) UNSCRs 1718 and 2231; and EU Regulations 2017/1509 and 267/2012:
 - The Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2012; and
 - The Iran (Sanctions) (Overseas Territories) Order 2016.

43. Additional relevant legislation through which the VI implements targeted financial sanctions are as follows:

- The Terrorism (United Nations Measures) (Overseas Territories) Order, 2001;
- The Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002 (AT(FOM)(OT)O);
- The Terrorist Asset-Freezing etc. Act 2010;
- The Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order 2011;
- Terrorist Asset Freezing etc. Act 2010 (Overseas Territories) (Amendment) Order 2017;
- The Policing and Crime Act (Financial Sanctions) (Overseas Territories) Order, 2017
- Chemical Weapons (Overseas Territories) Order, 2005;
- Chemical Weapons (Sanctions) (Overseas Territories) Order, 2018;
- Anti-money Laundering Regulations, 2008 (AMLR);
- Anti-money Laundering and Terrorist Financing Code of Practice, 2008 (AMLCFTCOP); and
- The Sanctions (Overseas Territories) Order 2020.

44. The above legislation may be respectively found on the Sanctions webpages of the FIA and FSC websites as follows:

<https://www.fiabvi.vg/International-Sanctions;>

¹⁵ The Office of Financial Sanctions Implementation (OFSI) is a part of HM Treasury. Their role is to help to ensure that financial sanctions are properly understood, implemented and enforced in the UK.

45. The VI also criminalises the financing of terrorism through these instruments. Section 6 of the AT(FOM)(OT)O prohibits persons from providing money or other property for the purposes of terrorism and defines “person” to include “*any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons*”. Thus, financing of terrorist organisations and the financing of individual terrorists is covered by this broad definition.

46. Overview of the Roles of Relevant Agencies and Competent Authorities with respect to the Sanctions Framework:

Entity	Role
Foreign Commonwealth Office (FCO)	<ul style="list-style-type: none"> ▪ Negotiates all international sanctions for the Virgin Islands; and ▪ Is involved at the Secretary of State level in approving licenses and securing any international agreement(s) required
The Governor	<p>The Competent Authority for the implementation of financial sanctions measures and under each Order in Council responsibilities and duties include, <i>inter alia</i>:</p> <ul style="list-style-type: none"> ▪ the power to grant vary and revoke licences (which permit the conduct of specified activities otherwise not permitted under the relevant Orders-in-Council; ▪ the duty to publish certain lists; and ▪ power to delegate any of the Governor’s functions.
Attorney General’s Chambers (AGC)	<ul style="list-style-type: none"> ▪ drafts any legislation that may be required in relation to the sanctions lists to give them effect. ▪ Provides support to the Governor’s Office i.e. by ensuring that licensing requests meet the legislative requirements, drafting the relevant licence for the approval and signature of the Governor; and ▪ making an application with supporting documents to the court for a freezing order.
Financial Investigation Agency (FIA)	<ul style="list-style-type: none"> ▪ the reporting authority of the Virgin Islands with responsibility for receiving, obtaining, investigating, analysing and disseminating information which relates/ may relate, to the proceeds of a financial offence and request for legal assistance from a relevant authority in a foreign jurisdiction¹⁶. ▪ supervisor for Designated Non-Financial Businesses and Professions (DNFBPs) and Non-Profit Organizations (NPOs)

¹⁶ The Financial Investigation Agency Act S. 4(1) Sets out the functions of the Agency

	<ul style="list-style-type: none"> ▪ monitors compliance by its supervised entities (and by such other persons who are subject to them) with the relevant legislation¹⁷; and ▪ May order the freezing of a person's bank account; ▪ responsible for publishing on its website, the record of <i>Overseas Territories Sanctions Orders in Force</i> and its relevant amendments, which may be found on: http://www.fiabvi.vg/Sanction-Orders.
Financial Services Commission (FSC)	<ul style="list-style-type: none"> ▪ an autonomous regulatory authority responsible for the regulation, supervision and inspection of all financial services¹⁸ in and from within the Virgin Islands; ▪ monitor compliance by regulated entities (and by such other persons who are subject to them) with the relevant legislation.; ▪ responsible for publishing on its website, the list of <i>Overseas Territories Sanctions Orders in Force</i> and its relevant Amendments which may be found at: https://www.bvifsc.vg/international-sanctions/about-sanctions
Financial Crimes Unit (FCU) of the Royal Virgin Islands Police Force (RVIPF)	<ul style="list-style-type: none"> ▪ investigates all financial crimes with links to the Territory including: money laundering, terrorist financing and breaches of financial sanctions associated with terrorist financing and proliferation financing. ▪ conducts parallel investigations with other units of the RVIPF, FIA, Interpol and other regional and international law enforcement authorities, as it relates to financial offences that may occur from within the territory; and ▪ coordinates intelligence sharing with the Financial Investigation Agency (FIA) with respect to certain investigations.

What do Financial Sanctions Measures Involve?

47. Financial sanctions may take many forms in accordance with how they are to be used in response to a given situation. The most common types of financial sanctions include:

- **Targeted asset freezes** – these apply to named individuals, entities and organisations, and restrict access to funds and economic resources. An individual or entity subject to an asset freeze, or a designated person will be listed on the following consolidated list :

¹⁷ Relevant Legislation includes the Anti-Money laundering and Terrorist Financing Code of Practice (AMLTFCOP), the Anti-Money Laundering Regulations (AMLR), The Terrorism (United Nations and Other Measures (Overseas Territories) Order 2001, The Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 and with such other Acts, Orders in Council, regulations, codes, sanctions or guidelines relating to money laundering or the financing of terrorism, proliferation financing as may be prescribed

¹⁸ Insurance, banking, money services business, trustee business, insolvency practitioners, company management, investment business (mutual funds etc.), and registration of companies, limited partnerships and intellectual property.

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

- **Restrictions on a wide variety of financial markets and services** – these can apply to named individuals, entities and bodies, specified groups and also entire sectors. Such restrictions 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; and
 - restrictions on the provision of financial, insurance, brokering or advisory services or other financial assistance.
- **Directions to cease all business** - these measures specify the type of business and can apply to a specific person, group, sector or country.

Complying with Financial Sanctions

48. Financial sanctions are far reaching and apply beyond the persons to whom they are subject. The following provides a synopsis of where financial sanctions apply and who must 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 and territorial waters of the UK and to all UK persons, wherever they are in the world.

49. In the Virgin Islands, UN, EU and UK financial sanctions apply to:

- Any person in the Virgin Islands;
- Any person who is a British citizen, a British Overseas Territories citizen, a British subject, a British National (Overseas) or a British protected person who is ordinarily resident in the Virgin Islands even if the sanction has not yet been extended to the Territory;
- A body incorporated or constituted under the law of the Territory; and
- any person onboard a ship or aircraft that is registered in the Territory¹⁹.

¹⁹ Temporary Regulations applications - S. 8(a)(b)- The Policing and Crime Act (Financial Sanctions) (Overseas Territories) Order, 2017.

4. Financial Sanctions Obligations and Restrictions

Who is Subject to Financial Sanctions?

The Consolidated List

50. HM Treasury's Office of Financial Sanctions Implementation (OFSI) publishes a list of persons, organisations and businesses that are subject to financial sanctions and are described as designated persons. A consolidated sanctions list of the most up to date designations for financial sanctions, sanctioned entities and sanctioned regimes may be found on the following website:

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

51. The UK's consolidated list does not contain listings imposed by non-EU countries or those imposed at the national level by other EU member states. The Consolidated sanctions list contains a range of information to aid in identifying designated persons and includes (for individuals) their name, aliases, date of birth, passport details, nationality, national identification number, last known address, employment information or government role, the date when the designated person was added to the list, when the information was last updated and a Group ID#.

How to Use the Consolidated List

52. When searching the consolidated list, there may be a name of an individual or entity that matches the individual or entity for which due diligence is being conducted. This is known as a ***name match***. This does not necessarily mean that the individual or entity on the list is the same as the one being searched. Where a relevant entity is satisfied that the individual or entity being subjected to due diligence is *not* the same as the individual or entity on the consolidated list, then no further action is required.
53. Where an individual or entity being subjected to due diligence is a **target match**²⁰ with the information on the consolidated list, or there is ***reasonable cause to suspect*** that an applicant for business or a customer who wishes to form a business relationship is a designated person then a report should be filed with the GO, the FIA or the FSC (as applicable) and the steps outlined under Paragraph _____ "What You Must Report" below should be undertaken.

How to get "Consolidated List" updates?

OFSI Updates

54. The OFSI publishes Notices describing changes to financial sanctions on GOV.UK:

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

²⁰ A Target Match – is a situation where the person you are dealing with matches the details of a designated person on the consolidated list.

55. You can subscribe to OFSI to receive email updates whenever a new Notice is published by utilizing the below link:

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

Financial Sanctions Notice Updates:

56. When the GO, FIA and FSC receive a notice from OFSI advising of a change to a financial sanction's regime:

- The FIA updates its Sanctions webpages to reflect the changes to the sanctions regime
<https://www.fiabvi.vg/International-Sanctions>
 - Sends an email notification to the relevant businesses, entities and professions under their supervision (i.e. DNFBPs and NPOs) that contains: the relevant updated information; and sets out obligations the supervised entities must follow to comply with the sanctions notice
- The FSC updates its Sanctions webpages to reflect the changes to the sanctions regime:

<https://www.bvifsc.vg/international-sanctions/about-sanctions>

- Sends an email notification to the relevant businesses, entities and professions under their regulatory supervision (i.e. registered agents, financial institutions etc.) that contains the relevant updated information; and sets out obligations the supervised entities must follow to comply with the sanctions notice.

What you are required to do

57. You are **prohibited** from carrying out certain activities; including making any funds or other assets, economic resources, or financial or other related services, available, directly or indirectly, wholly or jointly, for the benefit of designated persons²¹ or entities; or behaving in a certain way if financial sanctions apply.

58. If you know or have “**reasonable cause to suspect**”²² that you are in possession or control of, or are otherwise dealing with funds or economic resources owned, held or controlled by a designated person you must:

- freeze the funds or economic resources; and
- not deal with them or make them available to, or for the benefit of, the designated persons, unless:
 - there is an exemption in the legislation
 - they have been issued a licence from the Governor's Office
- Report them to the Governor's Office

²¹ A Designated person – is a person subject to financial sanctions.

²² **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 a suspicion.

What Does an Asset Freeze Do?

59. Where a financial sanction takes the form of an asset freeze, it generally prohibits:
- dealing with the frozen funds or economic resources belonging to or owned, held or controlled by a designated person;
 - making funds or economic resources available, directly or indirectly, to, or for the benefit of, a designated person; and
 - engaging in actions that, directly or indirectly, circumvent the financial sanctions prohibitions.

Asset Freezing Terminology to Know

60. **Funds** are defined as 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 relevant institutions or other persons, 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 derivative products;
 - interest, dividends and other income on or value accruing from or generated by assets;
 - credit, rights of set-off, guarantees, performance bonds and other financial commitments;
 - letters of credit, bills of lading and bills of sale;
 - documents providing evidence of an interest in funds or financial resources; and
 - any other instrument of export financing.
61. **Economic resources** means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.
62. **Goods** include items, materials and equipment.
63. **Dealing with funds** includes to move, transfer, alter, use, allow access to, or deal with in any way that would result in any change in the funds' volume, amount, location, ownership, possession, character, destination, or any other change that would enable use, including portfolio management, i.e. the management of securities (shares, bonds, etc) and other assets.
64. **Dealing with economic resources** means using the economic resources to obtain funds, goods, or services in any way, including, but not limited to, by selling, hiring or mortgaging the resources. It is not prohibited for a designated person to use their own economic resource for normal personal consumption (e.g. using their car to do the shopping). However a designated person could not sell or use the resource to generate funds (e.g. by selling the car or using it for a taxi or courier business) without a licence.
65. **Making available funds or economic resources, directly or indirectly, to a designated person** – if a person makes funds 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 by the designated person, this is a criminal offence.
66. **Making available funds or economic resources for the benefit of a designated person** – if funds or economic resource are made available for the benefit of a designated person and they obtain, or are able to obtain, a “significant financial benefit” from the funds or economic

resources, this is an offence. In this instance financial benefit includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

67. Financial services means any service of a financial nature, including (but not limited to)

- (a) insurance-related services consisting of:
 - i. direct life assurance;
 - ii. direct insurance other than life assurance;
 - iii. reinsurance and retrocession;
 - iv. insurance intermediation, such as brokerage and agency;
 - v. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

- (b) banking and other financial services consisting of:
 - i. accepting deposits and other repayable funds;
 - ii. lending (including consumer credit, mortgage credit, factoring and financing of commercial transactions);
 - iii. financial leasing;
 - iv. payment and money transmission services (including credit, charge and debit cards, travelers' cheques and bankers' drafts);
 - v. providing guarantees or commitments;
 - vi. financial trading (as defined in subsection (2) below);
 - vii. participating in issues of any kind of securities (including underwriting and placement as an agent, whether publicly or privately) and providing services related to such issues;
 - viii. money brokering;
 - ix. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - x. settlement and clearing services for financial assets (including securities, derivative products and other negotiable instruments);
 - xi. providing or transferring financial information, and financial data processing or related software (but only by suppliers of other financial services);
 - xii. providing advisory and other auxiliary financial services in respect of any activity listed in sub-paragraphs (i) to (xi) (including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy).

68. In subsection (b) (vi) above, “**financial trading**” means trading for own account or for account of customers, whether on an investment exchange, in an over-the counter market or otherwise, in—

- (a) money market instruments (including cheques, bills and certificates of deposit)
- (b) foreign exchange;
- (c) derivative products (including futures and options);
- (d) exchange rate and interest rate instruments (including products such as swaps and forward rate agreements);
- (e) transferable securities; and
- (f) other negotiable instruments and financial assets (including bullion).

5. Ownership, Minority Interest and Control

Clarity around the ownership and accountability of the risk

69. The names of designated persons are recorded on the consolidated sanctions list. Nevertheless, an asset freeze and some financial services restrictions may also be applicable to entities that are owned or controlled directly or indirectly by a designated person.
70. Entities who may not be designated in their own right and whose name may not appear on the consolidated list are similarly subject to financial sanctions.

Ownership

71. Pursuant to EU Guidance, the key criteria 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 or majority interest in another entity or legal person. Where this criteria is met, and the owner is also a designated person, then financial sanctions will apply to the entity that is owned by the designated person.
72. “Owned” is interpreted to include both direct and indirect ownership. Where the beneficial ownership of an entity rests with a designated person (e.g. they own a corporate body which owns another corporate body), then the view will be taken that all entities that are part of the ownership chain are subject to financial sanctions.

Minority Interest

73. A legal person or entity in which a designated person has a minority interest may not necessarily be subject to financial sanctions based on the designated person’s minority interest in the said entity.
74. Nevertheless, there must be ongoing monitoring to determine whether there have been any changes to the interest held by a designated person where it has increased to 50% or more, (or a majority interest is held) at which point financial sanctions will also apply to that legal person or entity.
75. Consideration must also be given to whether a designated person has control of another legal person or entity. In such instance, financial sanctions will also apply even where a designated person may only own minority interest.

Control

76. Pursuant to EU Guidance, where one or more of the following criteria is met, it 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 third party:
 - Having the right or exercising the power to appoint or remove a majority of 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 the 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 and Articles of Association, where the law governing that legal person or entity allows for it to be subject to such provision or agreement;
- Having the power to exercise the right to exert a dominant influence referred to in the above point, without being the holder of that right (including by means of a front company).²³

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

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

78. EU guidance is broadly interpreted with respect to 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.

79. It is possible that a designated person may have control or use of another person's bank accounts or economic resources and may be using them to circumvent financial sanctions.

80. 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.

81. Such actions may constitute a breach of the prohibitions or circumvention of financial sanctions and may result in a criminal prosecution or monetary penalty.

6. EXEMPTIONS AND LICENSING

Licences under Sanctions Orders

82. A licence is a written authorisation from issued by a named licensing authority to allow an activity or transaction which would otherwise be prohibited. In the Virgin Islands, the licensing authority is the Governor. A licence may only be issued where the criteria for the licence meets the specific conditions and relevant licensing grounds which enable a licence to be issued.

83. The legal basis under which a licence may be issued depends on the legislation which underpins each particular financial sanctions regime. Such legal basis is usually set out in the relevant Overseas Territory Order that established the sanctions regime in question. The following are

²³ Office of Financial Sanctions Implementation - pages 15-16

some common grounds for issuing a licence under an Order²⁴, which include the provision of funds:

- for basic needs (for a designated person or their family member(s));
- for legal fees and disbursements;
- for fees and services charges for routine holding or maintenance of frozen funds or economic resources;
- to satisfy prior court judgements or arbitration decisions against a designated person or entity; and
- to satisfy prior contractual obligation of the designated person.

84. Although the Governor is the licensing authority in the Virgin Islands, the consent of the UK Secretary of State is required prior to the grant of any licence under the Order.

Applying for a Licence

85. If an individual or institution wishes to make an application to release funds from frozen accounts, or to make funds, economic resources or financial services available to, or for the benefit of a designated person they must contact the Governor's Office in the first instance. Before they do so, they should seek independent legal advice on whether they have just cause to apply. It is not for the Governor's Office to advise whether or not a licence is needed.

86. In applying for a licence the requesting individual or institution should complete the form appended as *Annex A: Model Licence Application Form (Asset Freeze)* and submit the completed application to the Governor's Office. This form requires the provision of the following information:

- Applicant's name, contact details and role in the transaction;
- The legislation under which the application is made;
- The name of the designated person/parties to whom the licence would be granted (their contact details and role in the transaction);
 - In respect of an asset freeze, details of the proposed transaction including:
 - Amount of funds/value and nature of any economic resource;
 - Name of financial institution(s) involved;
 - Payer/transferor (name and account details);
 - Payee/transferee (name and account details);
 - Payment Route;
 - Reason for the transaction(s); and
 - Proposed date of the transaction.
 - Any other relevant information.

87. A *Sample Asset Freezing Licence* is appended as Annex B and provides an example of a request for the transfer of funds from the frozen bank account of a designated person²⁵.

²⁴ The general basis under which the Governor, with the consent of the relevant Secretary of State may grant a licence is set out in Part 3, Art. 11 of The ISIL (Da'esh) and Al-Qaida (Sanctions) Overseas Territories) Order 2016. This is similarly included in all other Overseas Territories Sanctions Orders.

²⁵ FCO International Organisations Department – Guidance on the Implementation of Sanctions in the Overseas Territories - page 11

Overall Licensing Procedures

Issuing a Licence:

88. Upon receipt of the completed application for a licence, the Governor's Office will liaise with the Attorney General's Chambers (AGC) and advise that a request has been received and will send them the completed form. The AGC will review the application to determine that it includes all necessary information. If the AGC is satisfied that the application meets requirements under the applicable Overseas Territory Order, they will draft the licence.
89. The Governor's Office will also liaise with the FCO to advise them that a request has been received and to seek approval from the Secretary of State when the AGC has completed drafting the licence.
90. Subject to the consent of the Secretary of State, the licence is executed by the Governor and a copy sent to the requesting person/institution, reminding them of the requirement to comply with any notification provisions (i.e. reporting conditions, restrictions etc.) in the particular Order under which the licence was granted.
91. The timeframe for processing a licence will vary according to the scope of completed information received by the Governor's office that will enable a decision to be made about whether there is a legal basis on which to grant a licence.
92. Any conduct outside the terms of the licence (i.e. the use of a different payment route, or payments in excess of the approved payment cap etc.) is a breach of financial sanctions and is a criminal offense. Failure to comply with reporting conditions on a licence is a criminal offense and may result in revocation, suspension, termination or further restriction being added to the licence.

Amending a Licence

93. Where an individual or institution wishes to make an amendment, variation or extension to a licence, they must contact the Governor's Office for approval and provide the relevant full and supporting information for the request.

Refusal of a Licence

94. Where the Governor has refused to issue a licence, the reason(s) for such refusal will be provided in writing. In the event that a licence has been refused, any proposed transactions or activity will not be lawful.
95. The Governor may refuse to issue a licence on the basis that a licence may not be required for a proposed transaction or activity (i.e. crediting a frozen account where interest or earnings are being paid on the account or payments due to a designated person under contracts were concluded or arose before the date that the person became sanctioned).
96. Where a licence has been refused, an applicant seeking the licence has the following options:
 - Request that the Governor review the decision;
 - Re-apply with new or additional supporting evidence; and
 - Seek further legal advice

7.YOUR REPORTING RESPONSIBILITIES

General Reporting Obligations

97. Sanctions obligations under the Overseas Territories Orders require natural and legal persons, entities and bodies to supply the GO with any information that would ‘facilitate compliance’ with the regulations through which the VI implements targeted financial sanctions²⁶.
98. Any information provided will only be used for the purposes for which it was provided or received

Who Must Report?

99. The sanctions legislation which enforces both EU and UK regulations sets out specific reporting obligations for a “**relevant institution**”, a “**relevant business or profession**” and any other person required to report under any enactment relating to AML/CFT matters.
100. The requirement to comply with the reporting obligations applies to the relevant institution, business or profession that is:
- A body registered, incorporated or constituted under the laws of the Virgin Islands or any part of the Territory and regulated by the Financial Services Commission;
 - A body registered, or constituted under the laws of the Virgin Islands or any part of the Territory and supervised by the Financial Investigation Agency; and
 - any person onboard a ship or aircraft that is registered in the Territory.
101. A “**relevant business**” or profession is defined under the Anti-Money Laundering Regulations, 2008 and may be found in the Glossary.
102. “**Relevant business or profession**” includes:
- (a) banking business or trust business within the meaning of the Banks and Trust Companies Act, 1990 (as amended);
 - (b) insurance business within the meaning of the Insurance Act, 2008 (as amended);
 - (c) the business of company management within the meaning of the Company Management Act, 1990 (as amended);
 - (d) business as a mutual fund or providing services as manager or administrator of a mutual fund within the meaning of the Mutual Funds Act, 1996 (as amended);
 - (e) a person that carries on investment activity within the meaning of Section 3 and Schedule 2 of the Securities and Investment Business Act, 2010 (as amended).
 - (f) the business of acting as a trust or company service provider for the purpose of providing specific services to a third party as specified by regulation 2(e) of the AML Regulations;

²⁶ Refer to page 19, Paragraph ____

- (g) money services business within the meaning of the Financing and Money Services Act, 2009 (as amended);
- (h) an auditor;
- (i) dealer in precious metal or stones;
- (j) a legal practitioner, notary public or external accountant²⁷; and
- (k) real estate agent.

103. Accordingly, such entities have a responsibility to ensure that they have in place appropriate risk based mechanisms, policies and procedures to assess applicants for business, customers and business relationships to determine whether they are under any sanctions imposed by the UN and EU which are extended to the Territory as Sanctions Orders by the UK through Orders in Council.

Responsibilities of the Relevant Institution, Business or Profession

Risk Assessment/Sanctions Screening/Monitoring

104. A relevant business, entity or professional should:

- have written policies and procedures in place to stay updated with the various resolutions passed by the UNSC, in particular, the list of countries and persons designated under the relevant UNSCR published on the aforementioned websites (i.e. FIA and FSC), and when there are new or subsequent decisions by the relevant UNSC Sanctions Committee; and
- develop a risk profile and undertake risk assessments with respect to (among others) customer risk and country/geographic risk to determine the potential risk that an applicant for business or a customer poses and the best way to manage and mitigate any identified risks in relation to that assessment.

105. In order to develop a strategy to effectively manage the potential risks against sanctioned persons or entities, consideration should include the following risk factors:

- **Country/Geographic Risk:** whether the country of origin is under any established sanction, embargo or other restriction or whether any such sanction, embargo or restriction is specifically imposed on the customer. Countries are considered high risk countries where they are subject to sanctions, embargos or similar restrictive measures imposed by the UN, EU or other regional and international organisations to which the Virgin Islands is a member or associate member; or of which the UK is a member and the sanctions, embargos or similar measures have been extended to the Virgin Islands by an Order in Council or through the exercise of any Royal Prerogative²⁸. The scope

²⁷ A legal practitioner, notary public or accountant are considered ‘relevant business’ if they are engaged in any of the following activities:

- a. buying and selling of real estate;
- b. managing of client money, securities, or other assets;
- c. management of bank, savings or securities accounts;
- d. organization of contributions for the creation, operation or management of companies; and
- e. creation, operation or management of legal persons or arrangements, or buying and selling of business entities.

²⁸ Anti-Money Laundering Terrorism Financing Code of Practice page 6 – definition “high risk countries”

of the embargo, sanction or other restriction may not necessarily relate to financial prohibitions²⁹.

- **Customer Risk and Products/Services risks:** where the origins of funds or source of wealth relates to a jurisdiction on which there is currently an embargo, sanction or restriction imposed by the UN, EU or UK:
 - a. as part of a comprehensive risk assessment, the relevant business or professional should have a clear understanding of the financial sanctions regime and where breaches may be most likely to occur. This may cover risks which may be posed by clients, transactions, services, products, different lines of business, sales and distribution channels, customer types, country or geographic location and charities and other non-profit organisations that engage in cross-border activities which may *not* be subject to adequate or effective sanctions screening measures;
 - b. customer due diligence (CDD) is one of the most important mechanisms used to screen for identity verification (of customer or underlying beneficial owner), verification on the purpose and intended nature of the business relationship, understanding the circumstances of the business (source of wealth, nature size and volume of business and anticipated levels of transactions). CDD measures also require ongoing monitoring and screening of a relevant entity and business relationship commensurate with its risk profile in order to ensure that such entities are clearly identified where they are in breach of UN/EU sanctions.

106. There should be ongoing checks and monitoring of the Consolidated List, the FIA website or FSC websites to note any new listing on the UN and EU sanctions and embargo regimes, including modifications thereto.

Sanctions Screening

107. Relevant entities should take adequate measures to ensure effective sanctions screening which should require them to:

- before engaging in a business relationship (i.e. client take-on, providing any services or undertaking any customer transactions), to screen the names of customers, (including beneficial owners and directors of corporate customers) or applicants for business against the Consolidated List of Sanctioned entities. This may be found on the FIA website, FSC website, BVI Gazette, UK Government website or the UK Office of Financial Sanctions Implementation (OFSI) website for the most up to date sanctions list to ensure that such customers, clients, or applicants for businesses are not designated persons;
- Transaction screening should also be used to identify transactions which may involve designated persons or entities.

108. Sanctions screening should also be undertaken for existing customers and business relationships on an ongoing basis whenever the Consolidated List is updated, and according to its risk profile. Relevant entities should consider the use of automated screening software to identify whether the name of an applicant for business, existing customer, client, or business relationship matches a designated name on the consolidated list.

²⁹ Anti-Money Laundering Terrorism Financing Code of Practice page 44 – Country/Geographic Risk.

All Sanctions screening should be:

- **Risk based:** appropriate to the nature, size and risk of the business with consistent sanctions filtering rules and procedures: consider the extent to which a designated person/entity may have controlling interest in a legal person or entity and the nature of the agreement which governs such relationship (refer to Appendix II);
- **Applicable to new customers (persons or entities) and payments (including wire payments):** to screen for the possibility that a designated person may have control or the use of another person's bank account;
- **Applicable to existing customers and when new designations are published:** vigilance must be maintained to establish whether existing customers, or business relationships may have been listed (either directly or indirectly) as a designated person;
- **Timely:** the names of new and existing customers/entities should be checked or cross referenced against the Targeted Financial Sanctions Consolidated List when and as changes to the list occur. Any changes to the Consolidated List will be reflected in the form of a Financial Sanctions Designations Notices which are posted on the OFSI, FIA and FSC websites. (i.e. These Designations Notices may be posted as often as daily);
- **Capable of satisfying the BVI obligations:** from a targeted sanctions and AML/CFT perspective;
- **Capable of satisfying the EU and UK obligations** - it is the policy of the UK Government to ensure that its Overseas Territories are legally and essentially enabled to implement the sanctions agreed at the UN and in the EU, in an effort to ensure compliance with the UK's international obligations and policy commitments.
- **Taking into consideration the potential impact of other foreign sanctions regimes³⁰.**

OFAC/US Sanctions

109. The BVI does not provide guidance on compliance with foreign sanctions. Since there is no legislative basis, they are not applicable here. Notwithstanding, some foreign sanctions have far-reaching extra-territorial effect:

110. US obligations have reputational implications for the BVI.³¹ For example the US has implemented regulations which apply extraterritorial jurisdiction to the activities of foreign financial institutions that participate in certain transactions that involve sanctioned countries,

³⁰ s20 of the AMLCFTCOP requires ECDD measures to be taken with respect to high risk business relationships. s20(4)(c) specifies: "a person who is located in a country that is either considered or identified as a high risk country or that has international sanctions, embargos or other restrictions imposed on it"

³¹ US sanctions are administered by two agencies, the Office of Foreign Assets Control (OFAC) which handles licensing and oversight of the economic sanctions, and the Bureau of Industry and Security (BIS) which handles licensing of certain exports and re-exports of US-origin technology and goods, or foreign manufactured goods using US technology.

and any party, either foreign or domestic, that provides goods or services to any Specially Designated Nationals (SDN) listed on the OFAC list. *The effect of the US regulations is that an overseas company which supplies any person on the OFAC SDN List may itself be added to that list.*

Example of OFAC/US Sanctions:

111. Even if an institution is not operating, incorporated or constituted in the United States, OFAC sanctions may still be applicable. Institutions should be particularly mindful of OFAC sanctions if they:
- a. employ United States citizens or permanent aliens;
 - b. transact in US dollars or pass through a US payments transfer chain;
 - c. enter into transactions involving United States operations or accounts; or
 - d. have United States offices, subsidiaries, branches or agencies or a relationship with a United States firm.

Ongoing Monitoring

112. The written policies and procedures of a relevant business, entity or professional should clearly define **when** ongoing monitoring should take place. As a general principle, (as stated above) sanctions screening should take place when establishing a new relationship to ensure that such a relationship is permissible.
113. Thereafter, sanctions monitoring should be routine and occur at frequent regular intervals, either:
- upon a trigger event;
 - as customer/entity information changes (i.e. changes to the business relationship, directors, beneficial ownership interests, intermediaries, customer risks, product services etc.);
 - As information on the Consolidated List changes, to validate that the relationships remain permissible.
114. Where either internal or external data sets change frequently, periodic screening may be as often as daily, but longer intervals between periodic rescreening may be acceptable in situations where change is less frequent or the risk of a potential sanctions exposure is low.
115. Elements of an Effective Sanctions Regime
- Ongoing monitoring and testing should routinely be conducted on a regular and frequent basis throughout the year:
 - Conduct regular checks of the Targeted Financial Sanctions Consolidated List on the FIA or FSC websites or the Official Gazette to note any new lists on the UN and EU sanctions and embargo regimes, including updates.
 - Where applicable, automated screening systems should be calibrated in accordance with client or business risk profile, rather than settings suggested by external software

providers, and be calibrated to include “fuzzmatching”³² and flags on systems prominently and clearly identified³³.

- Ensure that there are controls which require referral to senior management of target matches and to address the issue of flagged individuals or entities.³⁴
- Relevant Entities are expected to understand their obligations:
 - Screening of client databases within a reasonable timeframe following updates to the Consolidated List and ensuring that client data used for ongoing screening is up to date. A reasonable timeframe would be considered within twenty-four hours after a Designations Notice has been posted on the FIA or FSC websites.
- Relevant Entities are expected to assess the effectiveness of their procedures:
 - Ongoing screening processes should include (where applicable) direct and indirect customers, relevant thirds parties, changes to corporate customer data (e.g. when new directors are appointed or if there are changes to beneficial owners)

Clear and Demonstrable Understanding of Sanctions

116. Develop appropriate internal training for key staff:

- A training programme should be implemented on sanctions compliance and the application of sanctions screening to guide key staff in identifying high risk business relationships, identifying red flags in relation to customers and business relationships and understanding what matters should be advanced to senior management for decision;
- Establish correct on-boarding policies and alert staff responsible for onboarding a customer or entity when a wire transfer has been blocked or a report filed with the FIA or FSC as applicable;
- The compliance program should train in how to detect false positives(in relation to a name that *potentially* matches that of a person/entity designated on the Sanctions List), when to block a transaction, and when to file a report to the Governor’s Office, FIA or FSC;
- Internal training should also encompass the implementation of appropriate record keeping measures to ensure that relevant data and clear documentation with regard to sanctions are consistently recorded, readily accessible and easily retrievable (Refer to Paragraph ___ below on Documentation of Decisions taken with regards to sanctions).

³² When an exact match cannot be found in elements of data (i.e. business name, personal name or address information), a fuzzy match is an algorithmic process (fuzzy logic) implemented to detect and evaluate near matches, rather than exact matches. This enables an option to search for a match that is less than exact where the algorithm sets the threshold of the fuzzy match to a percentage value less than 100%, and the database will then return any matches in its memory corresponding to that percentage.

³³ Ibid

³⁴ Financial Conduct Authority- “Financial Crime: A Guide for Firms” Part 2, page 33 –“Ongoing Screening Examples of Good Practice”

- Sanctions training should take into consideration customers and business relationships and how such customers and business relationships may be abused. For example, it is possible that a designated person may have control or the use of another person's bank accounts and may be using them to circumvent financial sanctions. Such actions may constitute a breach of the prohibitions or circumvention of financial sanctions and may result in a criminal prosecution or monetary penalty³⁵
- Training should be undertaken on a periodic basis (and at a minimum, annually) and tested to ensure that staff have a good understanding of financial sanctions, risks and procedures; and
- There should be ongoing monitoring to ensure that staff understand the financial sanctions procedures and are adhering to them.
- Ensure that the consolidated sanctions list are reviewed on a regular basis by relevant staff.

YOUR REPORTING OBLIGATIONS

What You Must Report

117. If you are a relevant business, entity or profession, and have reasonable cause to suspect that a legal person or entity; an applicant for business; an existing customer or a customer who wishes to form a business relationship; or a person engaging in a one-off transaction where a business relationship is not established is:

- a designated person; or
- has committed an offence under the legislation;

118. then the following steps must be undertaken:

- (i) Without delay - Immediately freeze all funds or economic resources whether directly or indirectly to or for the benefit of the designated person, except under the authority of a licence granted by the Governor;
- (ii) Do not enter into any financial transactions or provide financial services, financial assistance or make economic resources available directly or indirectly to or for the benefit of the designated person or any third party except under the authority of a licence granted by the Governor;
- (iii) Undertake enhanced customer due diligence measures for any confirmed or potential matches; and
- (iv) Complete the Compliance Reporting Form (See Annex II)

³⁵ Office of Financial Sanctions Implementation, Financial Sanctions Guidance - page 16

119. Where you have reasonable cause to suspect that you are dealing with a designated person or an entity that has breached the sanctions legislation, then you are required to report this information to the Governor’s Office, and in your reporting must include:

- information on which the knowledge or suspicion is based (including any potential or confirmed matches);
- any information you hold about the person by which the person can be identified;
- details of any funds, economic resources which have been frozen, or actions or attempted transactions undertaken;
- details of activities taken to circumvent an asset freeze; and
- breaches of licensing conditions.

120. Where the person is a customer of a relevant institution, then the institution must also state the nature and amount or quantity of any funds or economic resources held by it for the customer at the time when it first had the knowledge or suspicion;

121. Where there have been credits to frozen accounts, the report should contain:

- i. details of any frozen account(s) which have been credited, or funds transferred into an account of a designated person or a legal person/entity acting on behalf of a designated person where a licence has not been issued by the Governor;
- ii. details, where applicable, of any frozen account(s) which have been credited with interest or other earnings on the account;
- iii. details, where applicable, of any frozen account(s) which have been credited with payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account.

How to Report

122. A Compliance Reporting Form (CRF) must be completed when making a report to the Governor’s Office (Annex II). The CRF should be used when reporting suspected designated persons, any assets which have been frozen, and suspected breaches of financial sanctions and should be e-mailed to: Govoffice.tortola@fco.gov.uk or posted to the Governor’s Office³⁶.

³⁶ Governor’s Office, Waterfront Drive, Road Town, Tortola, British Virgin Islands

123. The CRF may also be found on the FIA and FSC websites respectively:

<https://www.fiabvi.vg/International-Sanctions/Guidance-and-Forms>
<https://www.bvifsc.vg/international-sanctions/about-sanctions>

Other Reporting Obligations

124. In addition to reporting suspected breaches to the Governor’s Office, a relevant business, entity or profession is obligated to report suspicious activities (i.e. a sanctions breach) to the Financial Services Commission and/or the FIA³⁷ of any actions it has taken in respect of a suspected breach of sanctions by a designated person/entity (including any assets which have been frozen) or actions taken in respect of a de-listed person/entity, (including details of any assets which have been unfrozen). In this regard, relevant entities are required to maintain their requisite reporting obligations and/or to also submit Suspicious Activity/Transaction Reports (SARs/STRs) to the Financial Investigation Agency. (Refer to “Compliance and Enforcement”).
125. For avoidance of doubt, all relevant entities are subject to the requirements under the AML regime³⁸, including the obligation to ensure that there are established internal control procedures and reporting mechanisms. In addition to the general reporting obligations to which relevant entities are subject, and where there is reasonable cause for suspicion, all relevant entities are required to report any suspected breaches in relation to targeted UN, EU or UK financial sanctions to the Governor.
126. Save for information that comes to the attention of a professional legal adviser in privileged circumstances, failure to comply with the reporting obligations set out in the relevant legislation constitutes an offence which may result in criminal prosecution. Such reporting obligations are *in addition to* any other non-financial sanctions reporting obligations to which the relevant entity/institution may be subject (i.e. the filing of suspicious activity/transaction reports to the FIA, etc.).
127. If you are unsure of your reporting obligations, you should seek independent legal advice.

False Positives

128. A false positive occurs when a transaction or potential transaction associated with a person or entity is blocked because the name potentially matches that of a person/entity designated on the Sanctions List. Even with the use of sanctions screening and filtering software, false positives can present challenges when determining whether or not a person/entity is a match from the designated Sanctions List. Circumstances do occur where the funds of a person/entity that was not the intended target of sanction measures have had their accounts frozen due to false positive matches.
129. A person or entity that has had their funds or economic resources frozen because they have been inadvertently targeted, should:

³⁷ The Anti-Money Laundering Terrorist Financing Code of Practice –Section 13; Section 17; and Section 18

³⁸ The AML/TF regime comprises the Anti-Money Laundering Terrorist Financing Code of Practice, The Proceeds of Criminal Conduct Act, 1997 as amended, Financial Investigation Agency Act, 2003, The Terrorism (United Nations and Other Measures (Overseas Territories) Order 2001 (“the 2001 Order”), The Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 (“the 2002 Order”) and Anti-Money Laundering Regulations, 2008 (AMLR).

- contact the relevant institution where the assets have been frozen and request an explanation, including clarification for why the person/entity is believed to be a target match on the Consolidated Sanctions List;
- provide to the institution documentation which evidences the identity of the person/entity and a detailed explanation which sets out precisely why they are not the person/entity designated on the consolidated sanctions list; and
- Where this issue of whether or not the person/entity is in fact the designated person/entity, cannot be resolved, then the FIA should be informed.

130. The FIA will examine the evidence provided and the relevant circumstances surrounding the issue to determine the way forward. The possible scenarios and respective outcomes are as follows:

- Where the FIA has determined that the person/entity concerned *is not* the designated person/entity from the sanctions list, they will inform the relevant institution and person/entity of their findings. The relevant institution should take the steps necessary to unfreeze the funds or economic resources of the person/entity and thereafter inform the FIA of the action undertaken.
- Where the FIA has determined that the person/entity concerned *is* the designated person/entity from the sanctions list, they will inform the relevant institution and person/entity of their findings and the asset freeze will remain in effect.
- Where the FIA is unable to make a determination as to whether the person/entity concerned correctly matches the designated person/entity from the sanctions list, they will inform the Governor's Office of the circumstances and indeterminate findings with respect to the relevant institution and person/entity. If the claim is found to have merit, the Governor's Office will liaise with the FCO to request an authoritative finding in relation to the identity of the person/entity. Upon receipt of a response from the Governor's Office, the FIA will inform the relevant institution and person/entity of the results.

Record Keeping

131. You are responsible for retaining records of any potential matches to names and sanctions lists, irrespective of whether the match is a true match or a false positive. Records should be maintained for a period of at least five years from the date the business relationship ended or the transaction was completed in respect of any match including:

- the information or other grounds which triggered the match (i.e. activities of customers and transactions³⁹) on which sanctions are imposed;
- any further checks or enquiries undertaken;
- the relevant applicable Sanctions Regime;
- the person(s) involved, including any members of compliance or senior management who authorised treatment of the match as a false positive;
- the nature of the relationship with the person or entity involved, including attempted or refused transactions;

³⁹ Anti-Money Laundering Terrorism Financing Code Of Practice – Section 45(1)(f), (g) and (h)

- subsequent action taken (i.e. freezing accounts)
- if you consulted with, or filed a report with the Governor’s Office;
- the outcome of the reporting (i.e. whether an investigation was undertaken, whether a licence authorised by the Governor was issued and in what capacity etc.)

8. COMPLIANCE AND ENFORCEMENT

Sanctions Orders in Force

- 132.** The Sanctions Orders in force provide for and enable the relevant authorities to take the necessary action to (among others) freeze the funds of designated persons and entities. Failure to comply with restrictions and prohibitions in relation to sanctions imposed under the relevant UK Orders in Council applicable to the VI constitutes an offence which may result in the imposition of penalties or imprisonment when a conviction is secured.
- 133.** In the VI the GO has overarching responsibility for the enforcement of Sanctions Orders and to ensure compliance by relevant entities.
- 134.** Under the AMLTFCOP, the FIA and FSC (as Supervisory Authorities) are responsible for monitoring the compliance measures of the entities under their supervision relating to anti-terrorism and the various targeted financial sanctions regimes. The POCCA gives the FSC and the FIA the power to impose administrative penalties for non-compliance of the provisions of the AMLTFCOP including breach of targeted financial sanctions, and/or failure to submit a report in the proper form.
- 135.** The approach used by the FSC and FIA in addressing financial sanctions compliance determine how breaches are assessed. Such approaches will cover the whole lifecycle of compliance in respect of financial sanctions. The FSC and FIA endeavor to take a holistic approach to support those seeking to comply and to raise the level of financial compliance awareness.
- 136.** This is effected by way of:
- promoting compliance, publicising financial sanctions, and engaging with the private sector;
 - enabling compliance by making it easier to comply, and providing customers with guidance and alerts to help them fulfil their own compliance responsibilities; and
 - responding to non-compliance, by intervening to disrupt attempted breaches and by tackling breaches effectively.
- 137.** Such actions are taken to change behaviour, directly preventing future noncompliance by the individual and more widely through the impact of compliance and enforcement actions.
- 138.** While a decision to pursue a criminal prosecution for breaches of financial sanctions ultimately rests with the FCU and the ODPP, the FIA and FSC will 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; and

- any action being taken to improve future compliance.

139. It is important to ensure that sanctions breaches are reported in a timely manner in order to assist the GO, FIA, FSC and FCU in preventing further breaches, and protecting the integrity of the sanctions regime, as well as assisting law enforcement in tackling serious crime.

Power to Require Information

140. Where there is a failure to comply with reporting requirements in relation to a breach of Sanctions Orders, an authorized officer has the power to request that information and relevant documentation be provided for the purpose of:

- securing compliance or identifying evasion;
- obtaining evidence of the commission of an offense;
- establishing the extent to which funds or economic resources belong or are under the control of or are being used on behalf of a designated person;
- establishing the nature of any financial transactions entered into by a designated person; or
- cooperating with any international investigation.

141. Person(s)/relevant entities subject to a request for information from the authorized officer, are required to comply within the form and timeframe as specified in the request. Reporting requirements, however, should not apply to client-privileged information. Failure to comply with a request for information (i.e. including timely responses, false documentation, and obstruction in the exercise of powers under the Order) is an offence and may result in criminal prosecution.

Reporting a Suspected Breach of Financial Sanctions

142. Reporting obligations are provided in Section ___ of this Guide under “*Your Reporting Responsibilities*”. Where you know or have reasonable cause to suspect that a breach has occurred, this must be reported to the Governor’s Office as soon as practicable.

143. The Compliance Reporting Form is also available to report suspected breaches to the Governor’s Office and may be found on the following websites:

<https://www.fiabvi.vg/International-Sanctions/Guidance-and-Forms>
<https://www.bvifsc.vg/international-sanctions/about-sanctions>

Offences

144. The offences related to sanctions breaches will depend on the particular OT Orders and relevant sanctions legislation. While this list is not exhaustive, such offences may include:

- making funds or economic resources available to a designated person (except where an exemption applies or under licence);
- dealing with funds or economic resources that must be frozen (except where an exemption applies or under licence);
- failing to comply with reporting obligations;

- activities that circumvent an asset freeze; and
- breaches of licensing conditions.

Penalties for Breaches of Financial Sanctions

- 145.** Breaches of financial sanctions are considered to be a serious criminal offence. Under the Overseas Territories Orders, breaches of UN/EU financial sanctions carry a maximum penalty of up to seven years imprisonment on indictment and on summary conviction to imprisonment for a term not exceeding six months or a maximum fine of UK £5,000 or its equivalent in US Dollars⁴⁰.
- 146.** Under s. 27 (4) of the Proceeds of Criminal Conduct (Amendment) Act, 2012, a person who contravenes a provision under the AML/CFT Code of Practice commits an offence and is liable on summary conviction to a fine not exceeding USD \$150,000 or a term of imprisonment of two years or both. Additionally, the FSC and FIA also have the power to impose administrative penalties not exceeding USD \$100,000 per breach for non-compliance with the provisions of Code of Practice on those entities under their respective supervisory remit⁴¹.
- 147.** Schedule 4 of the Code of Practice provides a list of offences and corresponding administrative penalties. For example, where an entity or individual fails to make a report where there has been a breach of targeted financial sanctions, or fails to submit a report in the proper form, the penalty imposed may be up to USD\$ 50,000. Further, where an individual fails to comply with reporting requirements or fails to report a SAR/STR, such an offence attracts a penalty of USD\$70,000.
- 148.** The FIA has the power to impose administrative penalties for breaches of AML/CFT regulations with respect to DNFBPs and NPOs that fail to comply with reporting requirements or fail to report a SAR/STR. Under Schedule 4, such a penalty may be up to USD\$ 70,000.

9. Designations

- 149.** The Foreign and Commonwealth Office negotiates all international sanctions for the UK and its Overseas Territories, including the Virgin Islands. The Governor of the Virgin Islands is the Competent Authority with responsibility for proposing persons or entities for designations under existing sanctions regimes including Virgin Islands domestic sanctions regime, and at the request of another country.

Proposing Designations under UNSCRs 1267/1989

- 150.** Under existing regimes the Governor has the power to propose a designation by way of complying with the requirements of the specific regime as outlined by the relevant UNSCR

⁴⁰ These penalties are also applicable under the Policing and Crime Act (Financial Sanctions)(Overseas Territories) Order, 2017

⁴¹ Section 27(7) of the Proceeds of Criminal Conduct (Amendment) Act, 2017.

committee. The Governor carries out his powers through coordination with relevant domestic partners, such as the FIA, FSC and the FCO.

- 151.** When a target for proposal has been identified, a Designation Impact Assessment (DIA) form is prepared (see Annex IV). The DIA records the reason for the proposed designation and the relevant substantiating evidence. The evidence provided for a designation proposal must satisfy the standard of proof, which is *'reasonable suspicion'* of association with the specified terrorist organisation.
- 152.** After review and consideration by the relevant domestic partners, a proposal for designation is made to the Governor. If the Governor agrees with the proposal for designation, then the FCO will be contacted. After a policy and legal assessment, the FCO of the UK, as the Member State to the UN, will decide whether to take the designation forward to the relevant UN Sanctions Committee or the Security Council.

Domestic designations –under UNSCR 1373

- 153.** In relation to the national designations process, the Governor is the Competent Authority for making final designations under section 2 of the Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order 2011 (TAFOTO). Notwithstanding, before making a final designation the Governor must consult with the Secretary of State.
- 154.** The process for domestic designation can also be used by the Governor to make designations at the request of other countries, provided that the statutory test in TAFOTO is met.
- 155.** The provisions under TAFOTO provide that the Governor may make a final designation where he believes:
- that the person is or has been involved in terrorist activity;
 - that the person is owned or controlled directly or indirectly by a person involved in terrorist activity;
 - that the person is acting on behalf of or at the direction of a person involved in terrorist activity; and
 - that it is necessary for purposes connected with protecting members of the public from terrorism that financial restrictions should be applied in relation to the person.
- 156.** Involvement in terrorist activity includes conduct that facilitates the commission, preparation or instigation of such acts or that is intended to do so.

Request for designation by another country

- 157.** Designation is not automatic upon receipt of a request. The requesting country would have to complete a DIA Form, which will record the reasons for proposing financial sanctions against the person as well as the evidence to support the designation. The completed DIA Form should be sent to the Governor's Office, where it will be vetted to ensure it is complete and provides the completed package of information for the Governor to progress.

158. Requesting countries are strongly advised to provide as much **open source information** as possible in the DIA form. Applicants should consider the relevant legislation in its entirety when making an application to ensure the statutory test in TAFOTO is met.

159. The Governor’s Office will liaise with the FCO as needed during this process. The FCO Sanctions team will assess the DIA information from both a legal and policy standpoint in deciding whether to pursue the proposed measures.

Notification of Domestic Designation

160. Where the statutory test is met and the Governor designates an individual or entity, they are added to the “Virgin Islands Consolidated List of Domestic Designated Persons” on the FIA and FSC sanctions webpages and the target and supervisory authorities are notified in the manner prescribed previously on pages XX - XX under “Financial Sanctions Notices Updates” (see Chapter 2).

10. DELISTING

Delisting of Designated Persons (Challenging Designations)

161. Delisting is the process by which the name of a designated person or entity is removed from the sanctions list. Delisting is appropriate in circumstances where the criteria for the listing of a person or entity are no longer met. It may also be appropriate where there is evidence of a mistaken listing, subsequent changes in the facts, and emergence of further evidence, death of a listed person or the liquidation of a listed entity.

162. In relation to challenging UN Sanctions designations, relevant persons/entities⁴² may petition the Governor to submit a delisting request to the UN for a designated person, entity (or relevant third party). This may include such designations pursuant to UNSCRs 1267/1988, 1989, 1718, 2231 and 2368; and designations pursuant to UNSCR 1373.

163. Delisting requests should contain the following information:

- i. Explanation as to why the designation does not or no longer meets the criteria for listing (through countering the reasons for listing as stated in the list entry for that particular individual or entity);
- ii. The designee’s current occupation and/or activities, and any other relevant information, such as information on assets; and
- iii. Any documentation supporting the request can be referred to and/or attached together with the explanation of its relevance, where appropriate.

164. Where the Governor assesses the details of a petition for designations pursuant to UNSCRs 1267/1988, 1989, 1718, 2231 and 2368 and agrees with the delisting request, the petition will be passed onto the FCO Sanctions Unit for further legal and policy assessment.

⁴² A relevant person or entity is: a) Any person in the Virgin Islands b) Any person elsewhere who is a British citizen, a British Overseas Territories citizen, a British subject, a British National (Overseas) or a British protected person who is ordinarily resident in the Virgin Islands and c) A body incorporated or constituted under the laws of the Virgin Islands d) any person on board a ship or aircraft that is registered in the Territory

The FCO will make a determination as to whether to carry the delisting request forward to the relevant UNSC Sanctions Committee for consideration. The Financial sanctions listing will continue to remain in place while the request is being considered.

165. A designated person (or someone acting on their behalf) may submit a petition for delisting to the Governor. Where the Governor assesses the details of a petition for designations pursuant to UNSCRs 1373, and agrees with the delisting request, he may confer with the Secretary of State in determining whether or not to revoke the designation. Where the delisting petition is declined by the Governor, the designated person may appeal such decision to the Supreme Court.

166. Alternatively, requests which seek to challenge or remove a designation from a UN listing under the ISIL (Da'esh) & Al-Qaida Sanctions List can be made directly by submitting a delisting petition to the UN Office of the Ombudsperson to the ISIL (Da'esh) & Al-Qaida (1267/1989/2253/2368) Sanctions Committee⁴³.

167. The contact details for the Office of the Ombudsperson are as follows:

Office of the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee
Room DC2-2206
United Nations
New York, NY 10017
United States of America
Tel: +1 212 963 8226
E-mail: ombudsperson@un.org

168. Information about the Office of the Ombudsperson and the particulars for delisting procedures may be found on the UN's website:

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

169. With the exception of the sanctions issued under ISIL (Da'esh) & Al-Qaida (1267/1989/2253/2368) Sanctions List and with respect to all other UN listings, a request may be sent to the **UN Focal Point for Delisting**. More information about the focal point is available on the UN's website as follows:

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

<https://www.un.org/sc/suborg/en/sanctions/delisting/delisting-requests>

EU Sanctions Listings:⁴⁴

170. In order to challenge a listing under the EU Sanctions, a request should be sent directly to the EU as follows:

⁴³ "Procedures for Delisting" – UN Security Council Subsidiary Organs – Security Council Committee Pursuant to Resolutions (1267(1999)1989 (2011) and 2253 (2015) Concerning ISIL (Da'esh) & Al-Qaida and Associated Individual Groups, Undertakings and Entities - https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/procedures-for-delisting

⁴⁴ Office of Financial Sanctions Implementations – Financial Sanctions Guidelines- "Challenging Designations" UN /EU Listings page 35

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

UK Listings⁴⁵

171. In order to challenge a listing under the UK 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 12342 Kingsway

Unfreezing Assets for Delisted Persons/Entities

172. The obligation to freeze funds or assets no longer exist in circumstances where the Sanctions Committee for UNSCRs 1267/1988, 1989, 1718 has taken the decision to delist a particular person/entity pursuant to UNSCR 2231 or UNSCR 1373.

173. In this regard, where a Sanctions Order has been issued, which confirms that a person/entity has been removed from the Consolidated List, then the following measures must be undertaken:

- a) determine whether any of the assets held on account are the assets of any person/entity which has been removed from the Consolidated List and ensure that they are no longer subject to an asset freeze;
- b) *remove* the name of the person/entity from the institution's list of persons/entities subject to financial sanction;
- c) *unfreeze* the assets of the person/entity (as applicable) and re-activate all relevant accounts;
- d) *notify* the person/entity that the assets are no longer subject to an asset freeze; and
- e) *immediately* notify the FIA and the FSC of the actions which have been undertaken upon completion.

⁴⁵ Office of Financial Sanctions Implementations – Financial Sanctions Guidelines- “Challenging Designations” UK Listings page 36

11. National AML/CFT Governance

172. The Territory's AML/CFT framework also includes several co-ordinating and domestic advisory bodies whose mandates vary, but which all play an important role in the Territory's AML/CFT architecture. Collectively, these bodies are very important policy development institutions in the Territory's efforts in reviewing and reforming its AML/CFT policies and activities in order to provide appropriate responses to ML/TF risks.

National AML/CFT Coordinating Council (NAMLCC)

174. The National Anti-Money Laundering (AML)/ Countering the Financing of Terrorism (CFT) Coordinating Council (NAMLCC) was approved by the Cabinet of the Virgin Islands in 2016 and serves as the Territory's national coordinating body on AML/CFT issues in accordance with Recommendation 2 of the FATF recommendations, in addition to providing policy guidance on all AML/CFT issues relating to or affecting the Territory. NAMLCC is a high-level institution chaired by the Hon. Premier which ensures the highest political commitment to the implementation process and the remediation of vulnerabilities and weaknesses found as a consequence. It is responsible for driving the national AML/CFT architecture by developing and coordinating strategies to ensure that the Virgin Islands responds to money laundering and terrorist financing threats and other issues in an effective manner and ensuring compliance with all relevant standards.

175. The overall structure of the NAMLCC consist of other bodies whose work feeds into the Coordinating Council. These bodies include:

i. Joint Anti-Money Laundering and Terrorist Financing Advisory Committee –

176. The Joint Anti-Money Laundering and Terrorist Financing Advisory Committee (JALTFAC) is a statutory body established under section 27A of the Proceeds of Criminal Conduct Act and has responsibility for advising the Financial Services Commission on “initiatives for the prevention and detection of money laundering and terrorist financing”.⁴⁶ The Commission is required to encourage dialogue with the private sector with a view to establishing a broad-based understanding and awareness of issues concerning ML/TF as well as promoting the exchange of information on ML/TF matters.⁴⁷ In order to discharge its functions, JALTFAC is required to meet to discuss pertinent AML/CFT issues, especially current and emerging international developments and, with its mixed composition of public and private sector representatives, it is a key institution in the Territory's overall AML/CFT strategy for effectively combating ML/TF.

ii. Inter-Governmental Committee (IGC) on AML/CFT Matters –

177. The Inter-Governmental Committee (IGC) is established pursuant to the powers granted to the FSC and FIA under the AMLTFCOP⁴⁸ and serves as a mechanism for “creating, enhancing and promoting public awareness of issues relating to money laundering and terrorist

⁴⁶ See section 27A (1) of the PCCA.

⁴⁷ Section 51 of the AMLTFCOP

⁴⁸ See section 50 (1) of the AMLTFCOP.

financing” and fostering cooperation between key public bodies involved in the fight against, or that have some nexus to, ML/TF activities, through a system of dialogue and the sharing of information amongst its members. This system of dialogue includes the promotion of cooperation and information exchange between agencies in order to detect and prevent ML/TF; the rendering of necessary assistance to each other in respect of each other’s law enforcement or regulatory functions; and the promotion of cooperation with foreign regulatory, administrative and law enforcement officials in relation to any ML or TF matter.⁴⁹

The Council of Competent Authorities

178. The Council of Competent Authorities (CCA) was established by Cabinet on 8th March 2017. It is comprised of the Heads of the Territory’s 5 Competent Authorities (CAs), namely the Attorney General’s Chambers (AGC); the Financial Investigation Agency (FIA), the Financial Services Commission (FSC); the International Tax Authority (ITA) and the Office of the Governor (GO). Each CA has a statutory responsibility for ensuring cooperation in specific areas – the AGC and FIA on law enforcement issues, the FIA and the FSC on regulatory and supervisory issues and the ITA on tax matters.

179. The role of the CCA is to facilitate coordination between the Territory’s CAs relative to the execution of domestic and international cooperation matters and other relevant AML/CFT issues relating to or affecting the Territory.

180. The role of the CCA includes:

- (i) The development of policies and guidelines to advise the Cabinet on current and emerging developments on international cooperation matters, including making recommendations for necessary reforms;
- (ii) Coordinate domestic and international cooperation matters and other relevant AML/CFT issues which relate to or affect the Territory;
- (iii) Acts as a sanctions coordinating body and a facilitator for training and outreach;
- (iv) Ensures that all stakeholders are aware of their inter-agency obligations as well as international cooperation matters and other relevant AML/CFT issues which relate to or affect the Territory;
- (v) Taking steps to ensure that financial institutions and relevant entities in the VI are compliant with AML/CFT measures established locally, regionally and internationally

The Committee of Law Enforcement Agencies

181. The Committee of Law Enforcement Agencies (CLEA) was established by Cabinet on 8th March 2017. It is comprised of the Heads of the Territory’s Law Enforcement Agencies, namely, the Financial Investigation Agency (FIA), the Royal Virgin Islands Police Force (RVIPF), the Office of the Director of Public Prosecutions (ODPP), Her Majesty’s Customs (HMC) and the Department of Immigration.

⁴⁹ Section 50 (2) of the AMLTFCOP

182. The CLEA was established to ensure greater coordination and collaboration in the fight against money laundering (ML), terrorist financing (TF) and other organized crime through intelligence sharing the joint pursuit and apprehension of criminals and the disruption of criminal activity. Its establishment is an important measure in avoiding loopholes in the fight against ML, TF and PF.

Financial Crimes Unit (Royal Virgin Islands Police Force)

183. The Financial Crimes Unit (FCU) is the unit within the Royal Virgin Islands Police Force (RVIPF) with responsibility for investigating all financial crimes with links to the Territory. This includes money laundering investigations, terrorist financing investigations and breaches of financial sanctions associated with terrorist financing and proliferation financing. The FCU also conducts parallel investigations with other units of the RVIPF, FIA, Interpol and other regional and international law enforcement authorities, as it relates to financial offences that may occur from within the territory. In addition, it coordinates intelligence sharing with the Financial Investigation Agency (FIA) with respect to certain investigations.

12. GLOSSARY - DEFINITIONS

- “Asset Freeze”** Is a type of financial sanction. Under an asset freeze it is generally prohibited to:
- Deal with 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
- “authorised officer”** means, in relation to the Territory—
- (i) a police or customs officer of that territory,
 - (ii) an investigating officer of the Financial Investigation Agency,
 - (iii) a person or agency authorised by the Governor for the purposes of exercising any power conferred under any Order, whether generally or in a particular case, or
 - (iv) any person acting under the authority of a person falling within sub-paragraph (i) to (iii);
- “Consolidated List”** A list that is comprised of all designated persons subject to financial sanctions under the EU or UK legislation, as well as those subject to UN sanctions which are implemented through the EU regulations
- “Designated Person(s)”**
- (i) A natural or legal person, group or entity subject to specific UN, EU or UK financial sanctions, restrictive measures, ban or embargo directed against certain persons and entities with a view to combating terrorism;
 - (ii) In reference to ISIL (Da’esh) & Al-Qaida Sanctions Regimes refers to individuals, groups, undertakings and entities as designated by the Committee of the Security Council established pursuant to UNSCR 1267 (1999) and 1989 (2011) as being individuals associated with Al-Qaida, or entities and other groups or undertakings associated with Al-Qaida;
 - (iii) Individuals, groups, undertakings and entities as designated by the Committee of the Security Council established pursuant to UNSCR 1988 (2011) as being Taliban, as well as other individuals, groups, undertakings and entities as being associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan;
 - (iv) refers to any natural or legal person or entity designated by countries or supra-national jurisdiction pursuant to UNSCR 1373(2001)
 - (v) refers to any individual, natural or legal person or entity designated for the application of targeted financial sanctions pursuant to UNSCR 1718 (2006) (The Democratic People’s Republic of Korea -Sanctions) - or by the Security Council established pursuant to resolution 1718 (2006) and any future successor resolutions.
 - (vi) refers to any natural or legal person or entity designated for the application of targeted financial sanctions pursuant to UNSCR 2231(2015) – (Iran - Ballistic missile-related transfers and activities) and any future successor resolutions by the UN Security Council.

“Designation” Refers to the identification of a person, individual or entity that is subject to targeted financial sanctions pursuant to:

- United Nations Security Council Resolution 1267 (1999) and its successor resolutions;
- United Nations Security Council Resolution 1373 (2001), including the determination that the relevant sanctions will be applied to the person or entity and publicly communicating that determination;
- United Nations Security Council Resolution 1718 (2006) and any future successor resolutions;
- United Nations Security Council Resolution 2231(2015) and any future successor resolutions; and
- Any future Security Council Resolutions which impose targeted financial sanctions in the context of the financing of proliferation of weapons of mass destruction.

“high risk countries” means countries which are subject to sanctions, embargos or similar restrictive measures imposed by the United Nations European Union, or other regional or international organisation of which the Virgin Islands is a member or associate member, or of which the United Kingdom is a member and the sanctions, embargos or similar measures have been extended to the Virgin Islands by an Order in Council or through the exercise of any Royal Prerogative.

“Non-Profit Organisation” has the meaning assigned to it under section 2 of the Non-Profit Organisation Act.

“professional” means a person, not otherwise functioning as a body corporate, partnership or other similar body, who engages in a relevant business within the meaning of regulation 2 (1) of the Anti-money Laundering Regulations, 2008 or engages in a business that is designated as a non-financial business by the Commission in the Non-financial Business (Designation) Notice, 2008;

“regulated person” means a person who is licensed or registered to carry on a relevant business;

“relevant business” means

- (a) banking business or trust business within the meaning of the Banks and Trust Companies Act, 1990;
- (b) insurance business within the meaning of the Insurance Act, 2008;
- (c) the business of company management within the meaning of the Company Management Act, 1990;
- (d) business as a mutual fund or providing services as manager or administrator of a mutual fund within the meaning of the Mutual Funds Act, 1996;
- (e) without prejudice to paragraphs (a) and (c), the business of acting as a trust or company service provider for the purpose of providing any of the following services to a third party:
 - (i) acting as a formation agent of legal persons;
 - (ii) acting (or arranging for another person to act) as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

- (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, partnership or any other legal person or arrangement;
 - (iv) acting (or arranging for another person to act) as a trustee of a trust; and
 - (v) acting (or arranging for another person to act) as a nominee shareholder for another person.
- (f) the business of providing remittance service of Telegraphic Money Order under the Post Office (Telegraph Money Order) Rules, 1934;
 - (g) the business of providing money transmission services or cheque encashment, whether pursuant to an enactment or otherwise;
 - (h) the business of
 - (i) providing advice on capital structure, industrial strategy and related matters, and advice and services relating to mergers and the purchase of undertakings;
 - (ii) money broking;
 - (iii) the safe keeping and administration of securities; or
 - (iv) lending or financial leasing;
 - (i) the provision of services to clients by legal practitioners, notaries public or accountants which involve transactions concerning any of the following activities
 - (i) buying and selling of real estate;
 - (ii) managing of client money, securities or other assets;
 - (iii) management of bank, savings or securities accounts;
 - (iv) organization of contributions for the creation, operation or management of companies; and
 - (v) creation, operation or management of legal persons or arrangements, or buying and selling of business entities.
 - (j) the business of acting as a real estate agent when engaged in a transaction for a client concerning the buying and selling of real estate;
 - (k) the business of dealing in precious metals or precious stones when such transaction involves accepting a cash payment of fifteen thousand dollars or more or the equivalent in any other currency; and
 - (l) the business of operating a casino (where permitted by law) when a transaction involves accepting a cash payment of three thousand dollars or more or the equivalent in any other currency.

“Entity”

- (a) a person that is engaged in a relevant business within the meaning of regulation 2 (1) of the Anti-money Laundering Regulations, 2008 and, for the avoidance of doubt, it includes a person that is regulated by the Financial Services Commission by virtue of any regulatory legislation provided in Part 1 of Schedule 2 of the Financial Services Commission Act, 2001;
- (b) a non-financial business designated by the Commission in the Nonfinancial Business (Designation) Notice, 2008;
- (c) A **relevant entity** may also apply to:
 - (i) Any person in the Virgin Islands;
 - (ii) Any person elsewhere who is a British citizen, a British Overseas Territories citizen, a British subject, a British National (Overseas) or a British protected person who is ordinarily resident in the Virgin Islands;

- (iii) A body incorporated or constituted under the laws of the Virgin Islands; or
- (iv) Any person onboard a ship or aircraft that is registered in the Territory.

“relevant person” means a person carrying on relevant business.

“terrorist” refers to a person who: –
(a) commits or attempts to commit, a terrorist act by any means directly or indirectly, unlawfully and wilfully; (b) participates as an accomplice in terrorist acts or the financing of terrorism; (c) organises or directs others to commit terrorist acts or the financing of terrorism; or (d) contributes to the commission of terrorists acts or the financing of terrorism by an individual or a group of persons acting with a common purpose where the contribution is made intentionally: – (i) with the aim of furthering the terrorist acts or the financing of terrorism; or (ii) with the knowledge of the intention of the individual or group of persons to commit the terrorist act or the financing of terrorism.

“Terrorist act” A terrorist act is where a person: -
a) with the intent to induce terror in a civilian population, compels or forces a Government or an international organisation to do or abstain from doing any act or intimidates the public or a section of the public, for the purpose of advancing a political, ideological or a religious cause, does any act which he intends to cause, creates the likelihood of causing, or is likely to cause: –
i. loss of human life or serious bodily harm to one or more persons;
ii. a serious risk to the health or safety of the public or a section of the public;
iii. destruction of, or serious damage to, property of great value or importance, or major economic loss, or major environmental damage;
iv. the intentional or reckless introduction or release of a disease-bearing organism; or
v. prejudice to national security or serious disruption of public safety including disruption in the provision of emergency services, to any computer or electronic system or to the provision of services directly related to banking communications, infrastructure, financial services, public utilities, transportation or other essential infrastructure.
Threatens to commit a terrorist act;
b) takes any preparatory steps for the purpose of committing a terrorist act; or
c) coerces, encourages, entices, or incites another person to commit a terrorist or terrorist related offence.

“Terrorist financing” The financing of terrorist acts, and of terrorists and terrorist organizations.

“Without Delay” The phrase *without delay* means, ideally, *within a matter of hours* of a designation by the United Nations Security Council or its relevant Sanctions Committee (e.g. the 1267 Committee, the 1988 Committee, the 1718 Sanctions Committee or the 1737 Sanctions Committee). For the purposes of S/RES/1373(2001), The phrase *without delay* means upon having reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, one who finances terrorism or a terrorist organisation. In both cases, the phrase *without delay* should be interpreted in the context of the need to prevent the flight or dissipation of funds or other assets which are linked to

terrorists, terrorist organisations, those who finance terrorism, and to the financing of proliferation of weapons of mass destruction, and the need for global, concerted action to interdict and disrupt their flow swiftly.

APPENDIX I

Office of the Governor

Licence Application Form

This form should be used by individuals or entities seeking a licence from the **Governor of the Virgin Islands** to allow an activity or transaction to take place that would otherwise be prohibited under asset freezing measures implemented by way of the UK Overseas Territories Orders. The Government Gazette website lists all of the United Nations (UN) and European Union (EU) sanctions regime-related Overseas Territories Orders in force in Virgin Islands.

This form should **not** be used for export control licence applications or other non-asset-freeze matters.

Licence applications can be legally and/or commercially complex, and in certain circumstances require clearance or prior notification internationally (e.g. UN level). There is a requirement for the Governor to seek consent from the Secretary of State prior to the issue of any licence under the Order. This is to enable the Foreign and Commonwealth Office to complete any approval or notification process at the international level prior to consenting to the issue of the licence by the Governor, thereby **complying with the UK's international obligations**.

The time it will take for the Foreign Secretary to decide on whether to consent to the licence will vary according to the international exemption procedure to be followed. Accordingly you should apply at least four weeks before a licence is needed and preferably even further in advance if practicable. It is not for the Governor to decide on whether a licence is required. You may wish to consider taking independent legal advice before applying for a licence.

The Governor can only issue a licence where there are grounds to do so. These grounds will be set out in the relevant legislation. In each application consideration should be given to the grounds on which the licence is sought and reference should be made to the relevant licensing ground as set out in the relevant legislation. Applications which do not do so will be returned with a request that a suitable licensing ground be added.

Ongoing Monitoring and Reporting

Licences issued by the Governor's Office may be unconditional or may come with conditions that require information to be reported within a specific time frame. These will likely include reporting every time a transaction is made under the licence.

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.

The completed form should be submitted via e-mail to: govoffice.tortola@fco.gov.uk. Please forward a copy to:

Governor's Office
Waterfront Drive,
Road Town, Tortola
British Virgin Islands

Please read the notes before completing the form.

PART 1 –UNDER WHICH REGIME IS THE LICENCE IS SOUGHT

<p>The Order under which the application is made /Name of regime in respect of which a licence is sought (Egypt, Libya, etc.)</p>	
<p>URGENCY Please provide any details that may help us determine the urgency of the case (e.g. deadlines, impact on your business if a licence cannot be granted by a given date).</p>	

PART 2 – DETAILS OF THE LICENCE APPLICANT

<p>Date of application</p>	
<p>Name of applicant (to whom the Licence will be granted) (Individual / Company Name etc.)</p>	
<p>Are you/is your company a “designated person” (that is, subject to an asset freeze), or owned or controlled by a designated person? <i>If so, please provide details</i></p>	<p>YES / NO</p>
<p>Nature of business</p>	
<p>Address</p>	
<p>Contact Name</p>	
<p>Telephone number</p>	
<p>Email address</p>	

PART 3 – ABOUT THE LICENCE SOUGHT

Name of Designated Person		
<p>Licence required to release frozen funds or economic resources, or make them available, directly or indirectly, to or for the benefit of a designated person, to meet:-</p> <p>PLEASE TICK WHICHEVER APPLIES</p> <p>Note: Those grounds marked * are licensing grounds only relating to the release of frozen funds. Funds or economic resources cannot be made available to listed persons under those licensing grounds.</p>	Basic expenses of the designated person or his or her dependent family members	
	Legal Fees: Reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services	
	Routine maintenance of funds/assets: payments of fees or service charges for the maintenance of frozen funds or economic resources	
	Extraordinary expenses	
	*Obligations due under a contract or agreement entered into, or an obligation which arose prior to the designation of the person or entity in question	
	*Obligations arising in connection with certain judicial, administrative or arbitral liens, decisions or judgments	
	Other (please specify, including relevant legislation reference)	
Specify the legal basis for licensing – see note 4 (i.e. the relevant Overseas Territories Order, article and paragraph).		
Please give the licence number(s) of any licence(s) already received by the applicant, (if applicable).		

PART 4 – OVERVIEW

Briefly outline the transaction and your role in it. What is the prohibited act that the licence is for?	
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PART 5 – DETAILS OF THE TRANSACTION(S) CONCERNED

Date of the intended transaction(s).		
Description of funds, goods or services to be supplied or obtained.		
Are the goods or services for humanitarian purposes (e.g. delivering or facilitating the delivery of assistance, including medical supplies, food, the provision of electricity, or other humanitarian purposes)?	YES / NO (If 'Yes' please explain the humanitarian purpose fully)	
Value of the goods or services to be supplied or obtained.		
Names of the parties to the contract.	Seller / supplier	
	Buyer / customer	
	Agent / broker / other intermediary	
Is the end user different to the contract customer?	YES / NO If "Yes", please provide details of the end user (if known)	
Is the end user owned or controlled by a designated person?	YES / NO If "Yes", please provide details of the ownership or control	
Do you know or have reasonable suspicion that the funds, goods or services will be used by a designated person, or by a person acting on their behalf or at their direction, or by entities owned or controlled by them?	YES / NO If "Yes" who is the individual or entity?	
Dates of any transactions / shipments / payments already made.		
Dates of any future transactions / shipments/ payments.		

PART 6 – BANKING DETAILS

Method of payment (e.g. cash, cheque, bank transfer, confirmed or unconfirmed letter of credit, or other method).		
The banks (including correspondent, intermediary and confirming banks, if applicable) through which payment will be made. Please provide a/c numbers if they are available.	Correspondent bank	
	Intermediary bank	
	Confirming or advisory bank	
Are payment instructions/funds available for this transaction?	YES / NO	

PART 7 – Further details

Please provide any additional background information or explanation that would be helpful for the Governor to have.	
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You may wish to submit copies of documents that support your application or help us to understand it. Please indicate below if additional documentation has been provided and list attachments.

YES / NO	
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PART 8 – Confirmation of information

I confirm that the above information is true to the best of my knowledge and belief. I will inform the Governor of the Virgin Islands if there are any changes to this information.

Signed..... Dated.....

1. This form is designed to be used for all financial sanctions regimes.
2. Licences can only be issued where there is a legal basis to do so. The legal basis will usually be set out in the relevant Overseas Territory Order that established the sanctions regime in question.
3. The form has been developed with commercial arrangements in mind (i.e. sales of goods or services etc.). It should be adapted and used (for example) for gifts or humanitarian transactions where funds, goods or services are donated. Whatever the nature of the arrangements please provide a full explanation of what is happening and how much and who is involved.

1. The form is in **EIGHT** parts:

- a. **Part 1** asks for the name of the regime under which the licence is sought – this will be the regime under which sanctions otherwise apply. You should refer to any special factors effecting the urgency of your application here.
- b. **Part 2** asks for the details of the person on whose behalf the licence is sought and of a person to contact (who should be familiar with the transaction involved).
- c. **Part 3** is about the licence sought – the type of licence sought. Please note that the Governor can only issue a licence if there is a legal basis to do so. The grounds for issuing a licence are found in the EU Regulation imposing sanctions.
- d. **Parts 4 and 5** are about the transaction involved. Please make it clear if a transaction is a one-off or if it will be repeated. If regular or repeat payments are involved, please explain how often those payments will be made.
- e. **Part 6** is about the banking details of the transaction.
- f. **Part 7** provides the applicant with an opportunity to add any additional background. You should also attach and list any additional documents you are sending that will make it easier for the Governor to understand the application. For example, where a licence is sought on the basis that a contract was entered into before sanctions were imposed it is essential to provide a copy of that contract.
- g. **Part 8** requires the applicant to confirm that the information being submitted is true to the best of his/her knowledge and belief; and will inform the Governor if there have been any changes.

COMPLIANCE REPORTING FORM FOR SUSPECTED SANCTIONS BREACHES

- (a) This form should be used to report all compliance-related information to the Governor's Office including information regarding suspected designated persons (Part B); assets you have frozen (Part C); and suspected breaches of financial sanctions (Part D).
- (b) Please note that the information you provide may be shared for the purpose of facilitating or ensuring compliance with financial sanctions regulations.
- (c) Annexes 2 and 3 to this form provide key terms and information to assist you in completing your report.
- (d) Your financial sanctions reporting and compliance obligations are described in the Financial Sanctions Guidance. You should consult this guidance prior to completing this form. You should note that for some businesses there is a legal obligation to report, and that not doing so is a criminal offence.
- (e) Please ensure that when you complete this form, you believe that the facts and information provided in this form are accurate and true to the best of your knowledge.
- (f) You should note that a criminal offence may be committed if you contravene any of the prohibitions in respect of the financial sanctions regime(s) detailed in part 12 below, or you intentionally participate in activities knowing that the object or effect of them is to circumvent any of those prohibitions or enables or facilitates the contravention of any of those prohibitions.
- (g) Please email completed forms, including any associated documents to: Govoffice.tortola@fco.gov.uk with "SUSPECTED DESIGNATED PERSON", "FROZEN ASSETS", or "SUSPECTED BREACH" as applicable in the subject line.
- (h) Alternatively, completed forms can be posted to:

Governor's Office
Waterfront Drive,
Road Town, Tortola
British Virgin Islands

If you are unsure of your compliance or reporting obligations under financial sanctions, you should seek independent legal advice.

PART A: GENERAL INFORMATION

Please complete this part of the form and indicate what you are reporting on.

1. Person submitting this report	
a. Name (Inc. title)	
b. Job title	
c. Company / organisation	
d. Address	
e. Contact number(s)	
f. Email address	

2. Date submitted
[DD – MM – YYYY]

3. Are you submitting this form on behalf of a third party? (Tick box) e.g. you are a law firm, agent or guardian representing someone	Yes	
	No	
If yes, please provide the third party's contact details, including their Group ID if they are a designated person.		

4. What are you reporting? (Tick all applicable)	
Suspected designated person <i>[please complete Part B of this form]</i>	
Frozen assets <i>[please complete Part C of this form]</i>	
Suspected breach <i>[please complete Part D of this form]</i>	

PART B: REPORTING A SUSPECTED DESIGNATED PERSON

This part should be used to report your knowledge or suspicion that an individual, business or organisation is a designated person and therefore subject to financial sanctions. Please complete a separate form for each designated person on whom you are reporting.

Your report should include information by which a designated person can be identified. For example, aliases or alternative identities that could be used to evade sanctions.

If you are also reporting that you have frozen the assets of a designated person, please complete Part C of this form. If you are also reporting a suspected breach of financial sanctions, please complete Part D of this form.

5. Suspected designated person (including persons owned or controlled by them)	
a. Group ID from the consolidated list	
b. Name of the designated person as given on the consolidated list	
c. Name of the person/entity if owned/controlled by a designated person	

6. Information on which your knowledge or suspicion is based	
a. What has caused you to know or suspect that the person you are reporting on is a designated person (or is owned/controlled by one)?	<i>Please provide as much detail as possible, including your relationship with the person, what information you hold and how it came to you.</i>
b. Please provide any information not already on the consolidated list by which the designated person can be identified	<i>e.g. new aliases, dates of birth, addresses, passport numbers, additional trading names, etc.</i>

PART C: INFORMATION ON FROZEN ASSETS

This part should be used to report that you have frozen the assets of a designated person. Please complete a separate form for each designated person whose assets you have frozen.

If you know or suspect that a person is a designated person, please complete Part B of this form. If you are also reporting a breach of financial sanctions, please complete Part D of this form.

7. Designated person (DP)	
a. Group ID from the consolidated list	
b. Name of the designated person as given on the consolidated list	
c. Name of the person/entity if owned/controlled by a designated person	

8. Please provide information on <u>all</u> funds and economic resources you have frozen (For definitions and guidance on what to include please see Annexes A & B.)

Part D: INFORMATION ABOUT A SUSPECTED BREACH

This part should be used to report any suspected or known breach of financial sanctions. Please complete one form for each overarching activity. Multiple transactions/transfers relating to an overarching activity may be listed in one form.

Your report should include all known details in relation to the suspected breach activity. Additional supporting material should be attached to your submission and noted in section 22. Where information is not known or not applicable, please state.

9. Who do you suspect has committed, or has attempted to commit, the suspected breach? Please provide details

--

10. Summary of facts

Including the date(s) the suspected breach (or breaches) was discovered, how it was discovered, and the series of actions that led to a suspected breach taking place (where known).

--

11. Does this information relate to a suspected completed, or suspected attempted, breach? Tick box	
Completed	
Attempted (<i>including blocked or rejected activity</i>)	

12. Financial sanctions regime(s) under which the suspected breach has occurred
The list of all financial sanctions regimes in effect in the UK can be found on OFSI's on GOV.UK:
<https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>

Additionally, the list of all financial sanctions regimes in effect in the Virgin Islands can be found on the following:
Financial Investigation Agency:
<https://www.fiabvi.vg/International-Sanctions/Sanctions-Orders-in-Force>

Financial Services Commission:
<https://www.bvifsc.vg/international-sanctions/about-sanctions>

a. Financial sanctions regime(s)	
b. Act/Regulation(s) (<i>if known</i>)	
c. Relevant section(s), article(s), regulation(s) suspected of having been breached (<i>if known</i>)	

DETAILS OF SUSPECTED BREACH

See Annex A for a description of what can constitute funds, economic resources, and financial services.

13. What does the suspected breach involve: (Tick all applicable boxes).

Funds		<input type="checkbox"/>
Describe, in full, the type(s) of funds involved.		
Economic resource(s)		<input type="checkbox"/>
Describe, in full, the economic resource(s) involved.		
Financial Services		<input type="checkbox"/>
Describe, in full, what the financial services are, including how and when they were provided.		
Licence conditions		<input type="checkbox"/>
Give the licence condition(s) and describe, in full, how you suspect it has been breached. Please include the licence no.		
Reporting obligations		<input type="checkbox"/>
Give the reporting obligation and describe, in full, how you suspect it has been breached. Please include the licence no. where relevant.		

14. Total value of the suspected breach (actual or estimated)

Please provide this information in the currency that was used at the time of the transfer (or provide an estimated value in USD if unknown).

--

15. Method(s) of payment and/or transfer

e.g. bank transfer, cash, cheque, money order, internet/electronic, or physical asset transfer – road, rail, air, sea, etc..

--

16. Remitter/sender information

Please provide full information on the remitter/sender of the funds and/or economic resources, including: dates, goods involved, amount(s), currencies, account names, account numbers and sort codes, bank details, and nationalities of payers, dates of birth, where known.

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If more space is required, please complete Annex 1 (A1), or attach supporting documents with your submission.

17. Intermediary information

Please provide any information you have on intermediaries involved in the activity, including: role in transfer, name(s), date of birth, company registration information, country of operation/nationality, address/location, account name, account number and sort code and bank details, where known.

If more space is required, please complete Annex 1 (A2), or attach supporting documents with your submission.

18. Ultimate beneficiary information

Please provide information on the ultimate beneficiaries of the funds and/or economic resources, including: name, account name, account number and sort code, bank details, residential/company address, date of birth and nationality, where known.

If more space is required, please complete Annex 1 (A3) or attach supporting document(s) with your submission.

19. Please list all external parties who have been made aware that this information is being passed to OFSI, including any designated persons

--

**20. Has this matter been reported to any other authority?
If so, please provide their contact details.**

--

21. Other relevant information

Please provide any other information you think will help us understand what has happened.

--

22. Are you providing any supporting documents?

Please include any documents that support the information provided, such as bank statements, transaction reports, copies of licences, paperwork, contracts, etc. including those from other jurisdictions.

Yes

--

No

--

Please list the supporting documents you are providing.

--

Annex 1

Additional remittances *(for Section 15 Remitting information)*

A1. Additional remittance information

Additional intermediaries involved *(for Section 16 Intermediary information)*

A2. Additional intermediaries

Additional beneficiaries involved *(for Section 17 Ultimate beneficiary/beneficiaries information)*

A3. Additional beneficiaries

Annex A

This Annex describes some of the common terms used in financial sanctions legislation.

DESIGNATED PERSONS

A designated person is an individual, entity or body, listed under EU or UK legislation as being subject to financial sanctions.

The list of designated persons can be found on OFSI's consolidated list of asset freeze targets here:

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

Note that the financial sanctions also apply to persons and entities that are owned or controlled, directly or indirectly, by a designated person. Those persons or entities may not be designated in their own right, so their name may not appear on the consolidated list. However, those persons or entities are similarly the subject of the financial sanctions. For more information on ownership and control see OFSI's Guide to Financial Sanctions.

FUNDS

Funds mean 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;
- loans and mortgages;
- 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 evidencing an interest in funds or financial resources;
- any other instrument of export-financing.

ECONOMIC RESOURCES

Economic resources mean assets of every kind, whether tangible or intangible, movable or immovable, (such as goods, property, or rights) which are not funds themselves but which can be used to obtain funds, goods or services.

GROUP ID

All reports to OFSI 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.

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

FINANCIAL SERVICES

Financial services mean any service of a financial nature, including, but not limited to:

- insurance-related services consisting of:
 - direct life assurance;
 - direct insurance other than life assurance;
 - reinsurance and retrocession;
 - insurance intermediation, such as brokerage and agency;
 - services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
- banking and other financial services consisting of:
 - accepting deposits and other repayable funds;
 - lending (including consumer credit, mortgage credit, factoring and financing of commercial transactions);
 - financial leasing;
 - payment and money transmission services (including credit, charge and debit cards, travellers' cheques and bankers' drafts);
 - providing guarantees or commitments;
 - financial trading (as defined below);
 - participating in issues of any kind of securities (including underwriting and placement as an agent, whether publicly or privately) and providing services related to such issues;
 - money brokering;
 - asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - settlement and clearing services for financial assets (including securities, derivative products and other negotiable instruments);
 - providing or transferring financial information, and financial data processing or related software (but only by suppliers of other financial services);
 - providing advisory and other auxiliary financial services in respect of any activity listed in sub-paragraphs (i) to (xi) (including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy).
- **“Financial trading”** means trading for own account or for account of customers, whether on an investment exchange, in an over-the-counter market or otherwise, in:
 - money market instruments (including cheques, bills and certificates of deposit);
 - foreign exchange;
 - derivative products (including futures and options);
 - exchange rate and interest rate instruments (including products such as swaps and forward rate agreements);
 - transferable securities;
 - other negotiable instruments and financial assets (including bullion).

Annex B

Frozen accounts

All reports of frozen accounts should include the following information:

- Name of financial institution holding the account
- Account name
- Details of the account holder
- Date account frozen
- Type of account
- Account number
- Sort code (where relevant)
- Credit balance
- Debit balance
- Currency
- Date account opened
- Any other relevant information relevant to the freezing of the account

Frozen payments / transactions

All reports of frozen payments or transactions should include the following information:

- Details of the institution/person who has frozen the transaction
- Details of their role in the transaction
- Date of transaction (Inc. amount and currency)
- Date transaction frozen
- All relevant account details (originator, intermediaries, beneficiary)
- Details of the originator of the transaction (name, address, etc.)
- Details of the originating financial institution (name, address, etc.)
- Details of any intermediary financial institutions (name, address, etc.)
- Details of the beneficiary of the transaction (name, address, etc.)
- Details of the beneficiary financial institution (name, address, etc.)
- Any additional information found in the originator-to-beneficiary or bank-to-bank information
- Any other additional information relevant to the freezing of the transaction, including the payment instruction where available

DESIGNATION IMPACT ASSESSMENT (DIA)

This form must be completed for all listing proposals of individuals or entities, under existing sanctions regimes (also use for listing requests from other countries. For guidance on completing this form, please liaise with the FCO Sanctions team (sanctions@fco.gov.uk). The form should be signed off by the Governor of the Overseas Territory, Head of FCO Sanctions team and FCO Legal Directorate.

Proposal

The answers given to the five questions below should be used as the basis for formally proposing designations to the EU or UN (eg. through the COREU service for EU)

Any information given in the below five questions could be disclosed to other EU and UN Security Council Member States.

	<p>Name of sanctions regime</p>
	<p>Full name of the individual or entity to be listed (including aliases) and any identifying information</p> <p><i>Enter as much accurate identifying (biometric or otherwise) information as possible to ensure effective implementation of the measures. Policy officers should be aware that incorrect information may lead to unintended consequences and an increase in the legal risk.</i></p> <p>Example: Russian National Commercial Bank, also known as RNBC Plc. – Registered in Russia and Crimea, Last known address: Apartment 1A, ABC Street, Crimea</p>
	<p>Cut and paste the relevant listing criteria from UN Secretary Council Resolution/EU Council Decision here.</p> <p><i>This should be the criteria that you are using to capture this proposed individual or entity named above.</i></p> <p>Example: Council Regulation 269/2014 “On 17 March 2014, the Council adopted Decision 2014/145/CFSP providing for travel restrictions and for the freezing of funds and economic resources of certain persons responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, including actions on the future status of any part of the territory which are contrary to the Ukrainian Constitution, and natural or legal persons, entities or bodies associated with them. Those natural or legal persons, entities and bodies are listed in the Annex to that Decision.”</p>

Links/ references to evidence (including data of information collected, do not use hyperlink, copy and paste the URL)

Provide the evidence that substantiates the reasons for listing. It is important that policy officers keep a record of evidence, including screenshots of websites in case they are removed. A newspaper article from a reputable outlet will be seen as more robust than one from an unfamiliar website. Evidence that is in a different language must be translated. A machine translation is sufficient to inform the decision-making but in the event of a legal challenge a translation from a reputable source would be required.

If the evidence is classified, you will need to provide adequate unclassified evidence to support the classified evidence and this proposal.

Example: Guardian article on Russian aggression, invasion in Ukraine – 11/05/2014

<http://www.guardian.co.uk/articleonukraine>

Date document cleared and approved with FCO Sanctions Section and Legal Directorate

Impact Assessment

Any information given below will not be shared with EU/UN Councils

1	<p>How will this listing contribute to the UK’s overall country (or Terrorist) strategy?</p> <p><i>Describe how this listing ties with the UK or OTs overarching objectives for the country in question. You may want to mention some of the non-sanction, UK diplomatic measures that compliment this listing.</i></p>
2	<p>How will you measure the listings effectiveness at meeting the objectives of the sanctions regime? When and how should these individuals/entities be delisted</p> <p><i>Describe the indicators that you will monitor and your delisting criteria.</i> Policy officers must review all UK proposals as stipulated in the UNSCR/Council Decision/Regulation – this is typically an annual process, but can be triggered should there be adequate evidence to suggest the individual/entity should no longer be listed.</p>
3	<p>What consultation have you undertaken in relation to this proposal?</p> <p><i>Stakeholder consultation is crucial.</i></p> <p><i>Consider all the teams, posts, departments across the UK (where relevant OTs) Government that may be affected as a result of this listing.</i></p> <p><i>The UK HM Treasury should be consulted on proposed financial sanctions.</i> <i>The UK Department for International Trade (DIT) for proposed trade sanctions.</i></p> <p><i>Information from NGOs can also help but be careful to avoid disclosing sensitive information about possible sanctions targets while negotiations are still ongoing.</i> <i>(Sanctions Section, Legal Advisors, BE Moscow, HM Treasury, Defence Intelligence etc.)</i></p>
4	<p>Briefly describe how you can confirm that there is sufficient information to provide a reasonable and credible basis for the listing?</p> <p>The standard of proof applied is whether there is “reasonable suspicion” that the individual or group meets the criteria for designation at this present time. What other evidence in addition to that stated in the above Proposed section (but that which you may not wish to share with the UN or EU Council), is available to support the reasons you have outlined for this listing.</p>