



BERMUDA

Ministry of Legal Affairs  
Financial Sanctions Implementation Unit

# Financial Sanctions

## FAQs

# Frequently Asked Questions (FAQs)

September 2018

The below FAQs set out the FSIU's approach to common questions, taking into account the range of sanctions in place at the time of publication. They do not contain specific guidance for every situation. They should not be used as a substitute for legal advice.

The FAQs should be read alongside the Financial Sanctions Guidance published by the FSIU. You should also review the up-to-date legislation that applies to your particular circumstances. Consider taking independent legal advice if you are unsure of your obligations.

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

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

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# Table of Contents

<b>Part A – Designated Persons and Entities</b> .....	<b>4</b>
<b>1. COMPLIANCE FOR DESIGNATED PERSONS</b> .....	<b>4</b>
1.1 Can I be paid interest on my bank account/savings? .....	4
1.2 Can someone pay a cheque, or transfer funds, into my frozen account?.....	4
1.3 Can I take out insurance? .....	4
1.4 Can I have a debit card? .....	4
1.5 Can I have a credit card? .....	5
1.6 Can I have a prepaid card? .....	5
1.7 Can I invest my funds? .....	5
1.8 Can someone give/lend me money? .....	5
1.9 I am a joint signatory on an account. Will that be frozen too?.....	5
1.10 Can I let someone pay a bill for me? .....	6
1.11 Can someone give my spouse/partner money? .....	6
1.12 Can I accept a gift? .....	6
1.13 I jointly own an asset. Can I transfer my ownership?.....	6
1.14 Can I avoid paying my debts?.....	6
1.15 Can I take employment? .....	7
1.16 What reporting obligations apply to me? .....	7
<b>Part B – Industry Sectors</b> .....	<b>8</b>
<b>2. GENERAL COMMERCIAL ISSUES</b> .....	<b>8</b>
2.1 Can I make payments to a designated person? .....	8
2.2 A designated person owes my business money. Can I write off the debt?.....	8
2.3 A designated person owes my business money. Do I need a licence to pursue the debt?.....	8
2.4 I’ve got an Order nisi/absolute against a designated person. Can the FSIU provide me with details of frozen accounts? .....	9
2.5 Is a licence required to exercise a right of set off?.....	9
2.6 How can sanctions affect my ability to export goods? .....	9
<b>3. BANKING</b> .....	<b>11</b>
3.1 I have a designated person as a customer – what should I do?.....	11

3.2	Do I need a licence to close a frozen account and transfer any balance to the customer?.....	11
3.3	Can I apply interest to an overdrawn, loan or mortgage frozen account?.....	11
3.4	Are financial institutions expected to know if a credit received for a frozen account relates to a prior contract? What obligation is there on the bank to investigate the source of credits to frozen accounts? .....	11
3.5	Can firms lend money or provide credit to a designated person? .....	12
3.6	Can I credit funds received from a designated person to their frozen account? ....	12
<b>4.</b>	<b>INSURANCE .....</b>	<b>13</b>
4.1	What is the general effect of sanctions on insurance businesses? .....	13
4.2	What should an insurer do if an existing customer becomes a designated person after the inception of cover? .....	13
4.3	What is the position if a policy holder names a designated person as a beneficiary? .....	14
4.4	As an insurer I may not know the identity of every beneficiary of the cover I provide, because the business is managed under a delegated authority or bordereau arrangement. What should I do?.....	14
4.5	As an insurer, I may only receive partial information from third parties. What should I do? .....	15
4.6	I provide pensions or other products to an employer, and may not know who the relevant employees are. What should I do? .....	15
4.7	I am a reinsurer. What do sanctions mean for me? .....	15
4.8	I am an insurance agent or broker. What do sanctions mean for me? .....	16
4.9	The Syrian and Iranian insurance bans refers to “compulsory or third party insurance”. What does the term ‘compulsory’ mean in this regard? .....	16
<b>5.</b>	<b>LEGAL SERVICES .....</b>	<b>17</b>
5.1	We are a firm of lawyers acting for a designated person. Do we need a licence? ..	17

# Part A – Designated Persons and Entities

## 1. COMPLIANCE FOR DESIGNATED PERSONS

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

Yes, generally you can be paid interest on your bank account or savings. The prohibitions are not contravened by a financial services provider crediting a frozen account with (a) interest or other earnings due on the account, or (b) payments due under contracts, agreements or obligations that were concluded or arose before the account was frozen. This is because of exceptions in the legislation for these specific transactions. A designated person is not permitted to move their account to one paying a higher rate of interest without a licence from the FSIU.

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

A person can generally pay a cheque into your frozen account if the payment is made as a result of a contract or obligation which arose before you were designated. Otherwise, a license is needed from the FSIU.

### 1.3 Can I take out insurance?

Yes, generally you can take out insurance. If you are designated under the TAFSA Order 2011, there is a general licence provision in place to allow insurance to be provided to you. Also, the payment of claims is permitted where the payment is exempt or an FSIU licence has been granted.

If you are the subject to any other asset freeze, providing insurance is not prohibited but you need an exemption or to apply for an FSIU licence to pay premiums or receive claim payments.

### 1.4 Can I have a debit card?

You are not prohibited from having debit cards, but they are only permitted if there is a relevant exemption or an FSIU licence. However, it is the financial institution's decision on whether they are willing to give you a debit card or maintain your access to existing debit cards.

## **1.5 Can I have a credit card?**

Any existing credit cards must be frozen. You will need a relevant exemption or an FSIU licence to be given a new credit card, or to use any existing credit cards.

## **1.6 Can I have a prepaid card?**

You will need a licence from the FSIU or a relevant exemption to pay money onto and use a prepaid card.

It is a criminal offence for anyone else to pay funds onto your prepaid card without a licence. Doing so is considered making funds available to a designated person.

## **1.7 Can I invest my funds?**

No you cannot actively invest your funds. You are also unable to move your funds from one account to another in order to get a better interest rate. This would contravene the TAFE Order 2011.

## **1.8 Can someone give/lend me money?**

No, generally you cannot get someone to give or lend you money. Any individual who wants to give or lend you money will need to obtain a licence from the FSIU.

## **1.9 I am a joint signatory on an account. Will that be frozen too?**

Any account to which you are a joint signatory is likely to be frozen as well. This is because, at least in the first instance, all funds owned, held or controlled by you must be frozen.

Any financial institution which holds the account will need to consider the following factors before making any decision regarding another signatory's access the funds:

- Ownership breakdown of the funds;
- The level of control **you** exercise over these funds;
- Whether the funds will be made available to you, or for your benefit, and if so to what degree; and
- Whether there is a licence from the FSIU.

### **1.10 Can I let someone pay a bill for me?**

You will need a licence from the FSIU to let someone else pay a bill for you, where payment of the bill means that you will receive a financial benefit. This includes the benefit of not having to pay the bill.

If you are a designated person under the TAFE Order 2011, and you receive a financial benefit as the result of such payment, you will need an FSIU licence before the payment can be made.

Someone is able to pay for your food without an FSIU licence, however, if there are monthly utility bills that need to be paid, an FSIU licence will need to be obtained.

### **1.11 Can someone give my spouse/partner money?**

Generally speaking, someone can give your spouse/partner money, unless those funds will be of significant financial benefit to you.

### **1.12 Can I accept a gift?**

No you cannot accept any gifts of cash, vouchers, etc. It is an offence for someone to make funds available to a designated person without a licence from the FSIU.

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

No you cannot transfer your ownership without a licence from the FSIU or without a relevant exemption.

### **1.14 Can I avoid paying my debts?**

You can apply for an FSIU licence to make payments that cover your obligations that incurred prior to you becoming a designated person. If a licence is granted, you cannot use the fact that your assets are frozen for not paying your debts.

### **1.15 Can I take up employment?**

You can take up employment. However, you will need a licence from the FSIU in order to be paid any wages, and those wages will need to be paid into a frozen account.

Under the Tafa Order 2011, there is an exemption to the prohibition on making funds or financial services available for the benefit of a designated person. This includes the payment of pension contributions to a non-designated person, whether or not the payment is made in respect of the designated person.

### **1.16 What reporting obligations apply to me?**

The FSIU may ask you information about your assets and financial activities as part of our role in implementing financial sanctions. There may be specific reporting requirements for any licence you are issued.

Any failure by you to comply with reporting requirements on time may result in a criminal prosecution.

# Part B – Industry Sectors

The following paragraphs provide more tailored advice for specific industry sectors. The first section below deals with general commercial issues, such as making payments to a designated person or being paid by a designated person.

## **2. GENERAL COMMERCIAL ISSUES**

### **2.1 Can I make payments to a designated person?**

It may be possible to make payments due under contracts, agreements or obligations, which were concluded or arose prior to the date the person was designated. All such payments must be made into a frozen account. This can take place without the requirement of a licence by the FSIU because this is automatically acceptable under the legislation.

Before making such payments you should take steps to establish the facts, and in particular that the account is frozen as required by the sanctions legislation. Primarily you must seek confirmation from the account-holding institution that the account is indeed frozen. All other payments to a designated person require a licence from the FSIU.

### **2.2 A designated person owes my business money. Can I write off the debt?**

Should you wish to cancel or 'write off' the debt obligations (e.g. credit card balances, overdrawn accounts, mortgage or loan accounts) of designated persons you should submit a licence request to the FSIU setting out full details of the debt in question. The request should include the outstanding balance and what action, if any, you have taken to recover monies.

This requirement arises because writing off a debt owed by a designated person may constitute allowing them to obtain a significant financial benefit, which is a prohibited action.

### **2.3 A designated person owes my business money. Do I need a licence to pursue the debt?**

Pursuing debts owed by designated persons is not prohibited. However, you will need a licence from the FSIU for the repayment of the debt out of frozen funds and

possibly other related activities (e.g. appointing receivers, collecting rental payments or legal costs and other charges properly due from such funds during the course of recovery).

If the freezing of assets relates to a regime implemented at EU level, it is likely that there are established licensing grounds for payments where those obligations to pay arose before the individual was designated.

An FSIU licence does not force a person to pay an outstanding debt. If the designated person does not wish to repay you, you may need to take legal action to enforce any debt owed. A licence from the FSIU is not required to instigate legal proceedings or for other related activities (e.g. to appoint a receiver or to transfer the administration activities). You will however need an FSIU-issued licence before you are able to enforce any settlement agreement or judgement.

#### **2.4 I've got an Order nisi/absolute against a designated person. Can the FSIU provide me with details of frozen accounts?**

No. However, the Minister of Legal Affairs will consider an application for a licence to release funds from an identified frozen account.

#### **2.5 Is a licence required to exercise a right of set off?**

It is very likely that you will need a licence to exercise a right of set off.

A right of set off ensures that the claims that two parties have against each other are satisfied, provide that payment of such claims is due. The exercise of that right, therefore, involves at least two claims between the same parties each of whom owes an amount to the other under separate contract.

The set-off reduces one party's debt by deducting from the amount owed to that party by the other party and so could amount to the provision of a significant financial benefit to the listed party.

#### **2.6 How can sanctions affect my ability to export goods?**

Trading with a designated person is likely to engage the financial sanctions prohibitions relating to funds and economic resources. Specifically financial sanctions prohibit making payments or economic resources available to that person and dealing with any payments they make.

This means that goods, which will have an economic value, cannot be exported to that person. Even if the contract for export was signed before the importer was

named as a designated person, it is not within the Minister of Legal Affairs' power to licence the release of economic resources to a designated person on the basis that they are owned under a prior contract.

## **3. BANKING**

### **3.1 I have a designated person as a customer – what should I do?**

You must freeze (i.e. refrain from dealing with) their assets and report details of the assets to the FSIU using the Compliance Reporting Form.

### **3.2 Do I need a licence to close a frozen account and transfer any balance to the customer?**

Yes, you require a licence from the FSIU to do this if doing so involves transferring frozen funds out of the account, and/or making funds available to the designated person.

If closing an account does not involve dealing with frozen funds or making funds available, it is not illegal and no licence is required.

**Please note that it is not a legal requirement that a designated person's account is closed. The requirement is simply that funds in it are not dealt with unless under the authority of a licence. The FSIU prefers that banks do not close designated persons' accounts as the effect can lead to financial exclusion, and reduces the opportunities to monitor the finances of a designated person.**

### **3.3 Can I apply interest to an overdrawn, loan or mortgage frozen account?**

Interest may continue to be applied to both credit and debit accounts without a licence as this is permitted under the legislation.

### **3.4 Are financial institutions expected to know if a credit received for a frozen account relates to a prior contract? What obligation is there on the bank to investigate the source of credits to frozen accounts?**

Sanctions regimes include a provision that allows financial institutions that receive funds from third parties to credit frozen accounts.

Where crediting of funds is permitted, the institution is required to report details of the credit as soon as possible to the FSIU at [fsiu@gov.bm](mailto:fsiu@gov.bm) (unless the funds

credited are in respect of interest or earnings on the account, in which case no reporting is required).

Full information should be provided when reporting details of credits. If as part of your normal course of business you are aware of the background to the credit then this information should be provided also.

Financial institutions are not, however, required to undertake separate investigations beyond what they could be expected to know as the receiving bank.

### **3.5 Can firms lend money or provide credit to a designated person?**

Loans and other forms of credit must not be made available to designated persons unless a licence is obtained from the FSIU.

### **3.6 Can I credit funds received from a designated person to their frozen account?**

Financial or credit institutions that receive funds transferred by the designated person to their frozen account must hold those funds in suspense and apply for a licence to credit the funds to the frozen account. Where the FSIU receives applications from restricted persons to allow them to pay funds into their frozen account, and license such activity, the licence will also be issued to the relevant financial or credit institution.

Banks and other institutions must report credits to frozen accounts to the FSIU at [fsiu@gov.bm](mailto:fsiu@gov.bm).

## **4. INSURANCE**

### **4.1 What is the general effect of sanctions on insurance businesses?**

Generally, sanctions do not ban the provision of insurance. However, it is prohibited to provide insurance to:

- person designated under TFA Order 2011; and
- certain state entities and persons in Syria and Iran.

Please see the links below for the regime-specific special provision for granting insurance to designated persons –

There is more about the financial restrictions in force in respect of **Iran**, by virtue of their nuclear proliferation activities at:

<https://www.gov.uk/government/publications/financial-sanctions-iran-nuclear-proliferation>

There is more about the financial restrictions in force in respect of **Syria** at:

<https://www.gov.uk/government/publications/financial-sanctions-syria>

Additionally, sanctions prohibit the payment of funds to, or for the benefit of, designated persons. This includes payment by the designated person and other persons of insurance premiums and the payment of claims to a designated person. These activities cannot take place without a licence from the FSIU.

### **4.2 What should an insurer do if an existing customer becomes a designated person after the inception of cover?**

If the designated person is listed under the TFA Order 2011, two types of general licences are available from the FSIU which cover insurance.

General licences allow:

- the provision of insurance to designated persons; and
- the immediate and temporary provision of goods and services in respect of an insurance claim like courtesy cars or emergency hotel accommodation to designated persons.

If someone is listed by the UN or EU under a country sanctions regime, the fact of their designation does not make any insurance cover that they enjoy at the time of their designation, or any cover that might be taken out after that date, illegal.

However, if they are listed under the Syrian or Iran (proliferation) regimes, it may be illegal to provide them with cover regardless of their designation, because of the broad insurance bans referred to above. There is no legal requirement to discontinue cover to designated persons.

Insurers making an assessment of whether they wish to discontinue cover to a designated person will wish to take into account the potential social harm that might be caused if they terminate a contract that is either not subject to any restriction, or is permitted under a general licence.

#### **4.3 What is the position if a policy holder names a designated person as a beneficiary?**

Sanctions prohibit the payment of funds to, or for the benefit of, designated persons. This would, without a licence, prevent the payment of benefits due under a policy to a beneficiary who is a designated person.

#### **4.4 As an insurer I may not know the identity of every beneficiary of the cover I provide, because the business is managed under a delegated authority or bordereau arrangement. What should I do?**

The underwriting insurer should take reasonable measures to establish that any third party, with whom it enters into a delegated authority or bordereau arrangement, understands their obligations to meet the sanctions obligations, including notification to the underwriting insurer of any target matches or frozen accounts.

Whilst Insurers may not have knowledge of the identities of the underlying clients/customers and so are unable, themselves, to identify any potential sanctioned party exposure, the underwriting insurer should satisfy itself that the third party's systems and controls are commensurate with the sanctions obligation as they apply to the delegated activity.

Insurers should consider measures such as making specific reference to sanctions compliance within their Terms of Business and/or from time to time requiring positive affirmation from their third parties of their sanctions systems and controls.

#### **4.5 As an insurer, I may only receive partial information from third parties. What should I do?**

Insurers should undertake reasonable enquiries to identify whether the underlying clients or claimants may be sanctioned parties.

Insurers should consider their arrangements with introducers and other parties to maximise the detail of information provided. Should this information then be sufficient to undertake adequate investigation, then the insurer should assess for a potential target, as it would in any other situation where such information is available.

Where, for valid business reasons, this level of detailed information cannot be obtained, insurers may consider the following approaches:

- for UK focused business, it may be appropriate to compare the partial details received against those details, on the HM Treasury Consolidated List, relating to UK resident sanctioned parties (which would be a far lower number of cases than on the full list);
- similarly, for non-UK business, insurers may focus their investigations in respect of those entries on the HM Treasury Consolidated List that correspond to the jurisdiction where underlying client or claimant is suspected to reside. Where it is impossible to draw a conclusion due to non-availability of additional data the insurer may lack the requisite knowledge or suspicion to fall foul of any of the sanctions prohibitions.

#### **4.6 I provide pensions or other products to an employer, and may not know who the relevant employees are. What should I do?**

Subject to the precise arrangements it is likely that the contract will be with the employer. The employer then provides the benefits to the employees further to their contracts of employment.

Insurers should initially focus on the employer when conducting their sanctions checks. Where specific employees are drawn to the insurers attention (either for special underwriting or for the direct payment of benefits) sanctions checks should be conducted.

#### **4.7 I am a reinsurer. What do sanctions mean for me?**

The insurance bans in the Syrian and Iranian sanctions regimes apply equally to reinsurers.

Reinsurers should satisfy themselves that they are not breaching these measures.

#### **4.8 I am an insurance agent or broker. What do sanctions mean for me?**

Like all businesses, insurance brokers or agents must comply with sanctions because they are subject to the legal requirements of those sanctions to freeze assets of, and not to make funds or economic resources available to, designated persons, or to provide cover to those classes of persons and entities referred to in the Syrian and Iranian insurance prohibitions.

Separately, agents and brokers may find that the underwriters for whom they act make it a contractual requirement that the agent, etc., complies with sanctions, or carries out certain sanctions checks.

Generally, these contractual arrangements will be an issue for the parties to the contract. Insurers themselves may want to undertake enquiries so as to be sure that agents or other intermediaries (to whom they pay commissions, etc.) are not themselves sanctioned entities.

#### **4.9 The Syrian and Iranian insurance bans refers to “compulsory or third party insurance”. What does the term “compulsory” mean in this regard?**

Compulsory insurance includes not only insurance required by statute but also insurance obtained to meet any obligation covered by law (including regulations).

It is the responsibility of the insurer to seek sufficient evidence that the cover sought by a designated entity contributes to satisfying a legal or regulatory requirement, both in terms of the nature of cover and extent of cover sought.

## **5. LEGAL SERVICES**

### **5.1 We are a firm of lawyers acting for a designated person. Do we need a licence?**

The provision of legal services does not require a licence. However, the payment of legal fees using frozen funds held on behalf of a designated person does require a licence because this involves dealing with funds that are required to be treated as frozen.