



Targeted Financial Sanctions related to Terrorism and Terrorist Financing

**GUIDELINES ISSUED BY THE FINANCIAL INTELLIGENCE UNIT UNDER THE
AUTHORITY OF SECTION 9 (4) (e) (iv) OF THE ANTI-MONEY LAUNDERING AND
COUNTERING THE FINANCING OF TERRORISM ACT CAP. 10.11**

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INTRODUCTION

This guideline supplements the Practical Guidance on Targeted Financial Sanctions – Guideline No. 2 of 2015 issued by the FIU in August 2015. It is for Licensed Financial Institutions (LFIs) and Designated Non-Financial Businesses or Professions (DNFBPs) referred to hereinafter collectively as “Reporting Entities” and any other person or entity that might be holding funds or other assets of a designated or specified person or entity.

The aim of this Guide is to provide Reporting Entities and any other person or entity that might be holding funds or other assets of a designated or specified person or entity with general information and guidance on how financial sanctions work in Guyana particularly as they relate to the freezing, unfreezing, and access to frozen funds of a person or entity designated by the United Nations Security Council under UNSCR¹ 1267 or specified by Guyana under section 2(2) of the AMLCFT Act 2009 in accordance with UNSCR 1373.

FINANCIAL SANCTIONS – THE BASICS

What are financial sanctions?

Financial sanctions invariably include asset freezing measures – which mean that funds are frozen by a Reporting Entity (for up to five (5) days in accordance with regulation 6(2) of the AMLCFT Regulations No. 4 of 2015) or by the Courts. Unless authorized by the Minister of Legal Affairs, or by a Court Order a designated or specified person or entity cannot have access to frozen funds or other assets.

Why does Guyana apply financial sanctions?

Recommendation 6 of the FATF International Standards on combating money laundering and the financing of terrorism and proliferation requires countries to implement targeted financial sanctions to comply with the United Nations Security Council Resolutions (UNSCR) that require countries to freeze, without delay, the funds or other assets of a designated person or entity, and to ensure that no funds and other assets are made available to or for the benefit of:

- (i) Any person or entity designated by the UNSCR as required by Security Council resolution 1267 (1999); or
- (ii) Any person or entity specified by a country pursuant to Security Council resolution 1373(2001)

¹ United Nations Security Council Resolution

The following Legislation creates certain obligations for Reporting Entities:

1. The Anti-Money Laundering and Countering the Financing of Terrorism Act 2009 as amended by-
 - The Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act No. 1 of 2015.
 - The Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act No. 1 of 2015.
 - The Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act No. 15 of 2016.
2. The Anti-Money Laundering and Countering the Financing of Terrorism Regulations No. 4 of 2015 as amended by the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Regulations No. 7 of 2015.

FINANCIAL SANCTIONS – ASSET FREEZING AND OTHER MEASURES

What do financial sanctions measures involve?

Financial sanctions include an asset freezing regime. Asset freeze comprises of two elements:

- A prohibition on dealing with the funds or other assets belonging to or owned, held or controlled by a designated or specified person or entity, or making funds or other assets available, directly or indirectly, to, or for the benefit of, a designated or specified person or entity; and
- Freezing by a Court.

What does an asset freeze do?

An asset freeze prohibits the transfer, conversion, disposition or movement of any funds or other assets that are owned or controlled by a designated or specified person or entity on the basis of, and for the duration of the validity of, an action initiated by the Director of the Financial Intelligence Unit in accordance with regulation 6(2) of the AMLCFT Regulations No. 4 of 2015 or a court under a freezing mechanism.

Are frozen funds confiscated by the Financial Intelligence Unit?

Frozen funds are NOT confiscated, sequestered or otherwise held by the Financial Intelligence Unit. This means that the Financial Intelligence Unit cannot pay the liabilities of a designated or specified person or entity using frozen funds.

Making funds or other assets available to a designated person or entity

It is a criminal offence to knowingly make funds or other assets available, directly or indirectly, to a designated or specified person or entity. Making funds or other assets indirectly available to a designated person or entity would involve the funds or other assets being routed via a third party. For example, it would be a criminal offence to give funds to a designated or specified person's family, friend, business partner or attorney-at-law knowing or suspecting that some or all of the funds will be given to the designated or specified person or entity. However, the Minister of Legal Affairs can authorize access to such funds or other assets in accordance with regulation 5 of the AMLCFT (Amendment) Regulations 2015 - No. 7 of 2015.

Making funds or other assets available for the benefit of a designated person

It is a criminal offence for a person to knowingly, or with reasonable cause to suspect they are doing so, make funds or other assets available to a third party in circumstances where a designated or specified person or entity thereby obtains or is able to obtain a significant financial benefit.

The aim of this prohibition is to prevent a designated or specified person or entity from having access to significant additional funds through third parties making payments which the designated or specified person or entity would otherwise make. It is not intended to prohibit all payments to non-designated or specified third parties which may benefit a designated or specified person or entity, but only those where there is a “significant financial benefit”.

How do sanctions affect a Reporting Entity?

It is the responsibility of all Reporting Entities to comply with financial sanctions. Sanctions might affect a Reporting Entity if it is:

- Involved in any financial business with OR making funds or other assets available to or for the benefit of a designated or specified person or entity; or
- Dealing with or have any designated or specified person or entity as customers, suppliers, bankers, financiers or investors.

What does freezing assets mean for a bank that holds funds?

In practical terms, access to accounts or other funds held must be blocked. They can only be dealt with, for example released or paid away by the financial institution (or any other person) that holds them, under an authorization issued by Minister of Legal Affairs or Order of the Court.

FINANCIAL SANCTIONS - UNFREEZING FUNDS OR OTHER ASSETS OF A DESIGNATED PERSON

Unfreezing funds or other assets – when there has been a false positive

Under the Anti-Money Laundering and Countering the Financing of Terrorism Regulations 2015, the court may upon application revoke a freeze order made in relation to the funds or other assets of a designated or specified person or entity. Such application may be made based on verifiable evidence that the person or entity affected is not a designated or specified person or entity and as such was inadvertently affected by the freezing mechanism (i.e. a false positive).

FINANCIAL SANCTIONS – DELISTING

Challenging a specification when listed by Guyana

Under section 2(3) of the Anti-Money Laundering and Countering the Financing of Terrorism Act 2009 a specified person or entity may apply to the Minister of Finance for a revocation of an Order specifying him/her.

Challenging a designation by the UN Security Council

Requests for delisting (where a person or entity is designated by the United Nations) may be sent directly to the Ombudsman of the United Nations Committee by a designated person or entity on his own behalf OR by the Director of the Financial Intelligence Unit on behalf of the designated person or entity.

FINANCIAL SANCTIONS - AUTHORIZATION ACCESS TO FROZEN FUNDS OR OTHER ASSETS

What is an Authorization?

An authorization is a written notice from Minister of Legal Affairs to allow an activity which would otherwise be prohibited. An authorization may include associated reporting requirements or other conditions.

What activities might an authorization cover?

An authorization can be granted for a range of purposes. The permitted purposes are typically set out by the United Nations Security Council Resolution 1452, and may include allowing the release of frozen funds to pay obligations due by the designated or specified person or entity under a contract entered into prior to their listing, to meet bank charges, to cover basic household or business expenses and reasonable legal costs. It should be noted that it is not within the Minister of Legal Affairs remit to authorize a transaction that is not capable of being

authorized under regulation 10 of the Anti-Money Laundering and Countering the Financing of Terrorism Regulations No. 4 of 2015.

What is a basic expense of an individual?

Where an authorization is issued under an exemption for the purpose of meeting basic expenses, “basic expenses” are commonly defined as:

“payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges, or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources”

Basic expenses are therefore considered to cover expenditure which is necessary to maintain basic everyday needs only. In authorizing basic expenses the Minister of Legal Affairs may consider what is reasonable to meet the everyday needs of a person in the position of the designated or specified person or entity, taking account of any specific needs of the individual and their family. However, the Minister of Legal Affairs may not necessarily authorize access to the full amount requested to allow the designated or specified person or entity to continue to lead a lavish lifestyle, particularly where this would defeat the purpose of the designation or specification.

How can one apply for authorized access to frozen funds or other assets?

Applications for authorized access to frozen funds must be made in writing to the Minister of Legal Affairs.

All applications should sets out clearly the grounds on which authorized access is being sought and provide all relevant information, full details of the transaction and supporting documentation.

UNITED NATIONS SANCTIONS LIST – UNSCR 1267

The FIU makes available on its website the Consolidated Sanctions List of the United Nations Security Council.

The Consolidated Sanctions List includes all individuals and entities subject to sanctions measures imposed by the UN Security Council.

Notice of updates to the Consolidated List

Reporting entities are notified by the Financial Intelligence Unit whenever there are new listings of designated persons, when designated persons are de-listed, when listings are changed, or when there are other significant changes to financial sanctions.

How often is the Consolidated List updated?

There is no predetermined timetable for updating the Consolidated List. Updates are dependent on when there are changes (i.e. additions, deletions or amendments) to the list of individuals and entities targeted by the UN.

The FIU issues an email notification at the same time as the publication of financial sanctions notices and as the Consolidated List is updated.

How soon should a reporting entity implement changes to the Consolidated List?

Changes to the individuals and entities subject to financial sanctions are usually announced in notices issued by FIU. The notice will usually explain when the changes are legally effective. Reporting entities need to implement such changes (or put new versions of the Consolidated List into effect) as soon as practical.

SPECIFICATION/LISTING BY GUYANA – UNSCR 1373

The FIU makes available on its website the Orders issued under section 2(2) of the AMLCFT Act 2009.

Notice of updates when an Order is issued

Reporting entities are notified by the FIU whenever there are new Orders/Specifications by the Minister of Finance, when an Order has been revoked, or when there are other significant changes to the status of a specified person or entity.

REPORTING REQUIREMENTS FOR REPORTING ENTITIES

Reporting requirements for reporting entities under the financial sanctions regime are covered specifically in the Anti-Money Laundering and Countering the Financing of Terrorism Regulations No. 4 of 2015.

The general position is that Reporting Entities must inform the FIU immediately if it knows, or has reasonable grounds to believe that a designated or specified person or entity has funds or other assets in Guyana.

PENALTIES FOR COMMITTING AN OFFENCE UNDER FINANCIAL SANCTIONS REGIME

Any person guilty of an offence under section 68A(11) of Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act 2015 shall be liable on summary conviction to a fine of not less than five million dollars nor more than one hundred million dollars or to imprisonment for up to seven years and in the case of a body corporate to a fine of not less than ten million dollars nor more than two hundred million dollars.

Glossary of definitions

These definitions do not constitute legal advice.

Term Used	Interpretation
Authorization	A written authorization provided by the Minister of Legal Affairs which permits a certain transaction or activity which would otherwise be a breach of sanctions law.
Designated Person or Entity	Designated person or entity means any natural or legal person or entity designated by the Committee of the Security Council established pursuant to resolution 1267 (1999).
Funds or Other Assets	The term funds or other assets means any assets, including, but limited to, financial assets, economic resources, property of very kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets.
Specified Person or Entity	Specified person or entity means any natural or legal person or entity specified by the Minister of Finance under section 2(2)(1)(A) of the AMLCFT Act 2009 in accordance with UNSCR 1373