

# **SANCTIONS OUTREACH TO CAYMAN ISLANDS LEGAL PRACTITIONERS OUTREACH (CILPA)**

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**Financial Reporting Authority**

**28 August 2019**



# DISCLAIMER

# Objectives

- ❧ Overview of FRA/SC
- ❧ Sanctions in Cayman
- ❧ TFS related to Terrorism Financing/Immediate Outcome 10 & TFS and Proliferation Financing/Immediate Outcome 11
- ❧ Icebreaker - DPRK
- ❧ Obligations
- ❧ Offences and penalties
- ❧ When should you contact the FRA
- ❧ Take Away – Financial Sanctions Obligations

# FRA /Sanctions Coordinator

- ⌘ Effective November 2017, the Governor delegated the functions of receiving reports to the FRA – UNSCR 1267, 1373, 1718 & 2231 pursuant to:
  - ⌘ (1) Articles 7(2) – 7(4) of The Isil (Da'esh) and Al-Qaida (Sanctions) (Overseas Territories) Order 2016;
  - ⌘ (2) Articles 22(1) – 22(3) of The Afghanistan (United Nations Measures) (Overseas Territories) Order 2012;
  - ⌘ (3) Articles 6(2) – 6(4) of The Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2012;
  - ⌘ (4) Articles 8(2) – 8(4) of The Iran (Sanctions) (Overseas Territories) Order 2016; and
  - ⌘ (5) Paragraph 20 of Schedule 4A of the Terrorism Law (2018 Revision).
- ⌘ The FRA aims to:
  - ⌘ raise awareness of and compliance with financial sanctions in general, with special emphasis on targeted financial sanctions for terrorism financing and proliferation financing.
  - ⌘ provide a professional service to businesses and others affected by financial sanctions.
  - ⌘ maintain the integrity of, and confidence in, the Cayman Islands financial services sector

# Sanctions Coordinator

- ⌘ The SC is responsible for **coordinating** the **implementation** of targeted financial sanctions etc.
- ⌘ Legal framework
- ⌘ Compliance – with TFS by fostering a compliance culture:
  - ⌘ Promote compliance
  - ⌘ Enable compliance
- ⌘ Exemptions
- ⌘ Administration of Assets
- ⌘ Enforcement – CIMA, DCI,GR,CIIPA and CARA are responsible for monitoring compliance and would be able to detect and initiate punishment for breaches.

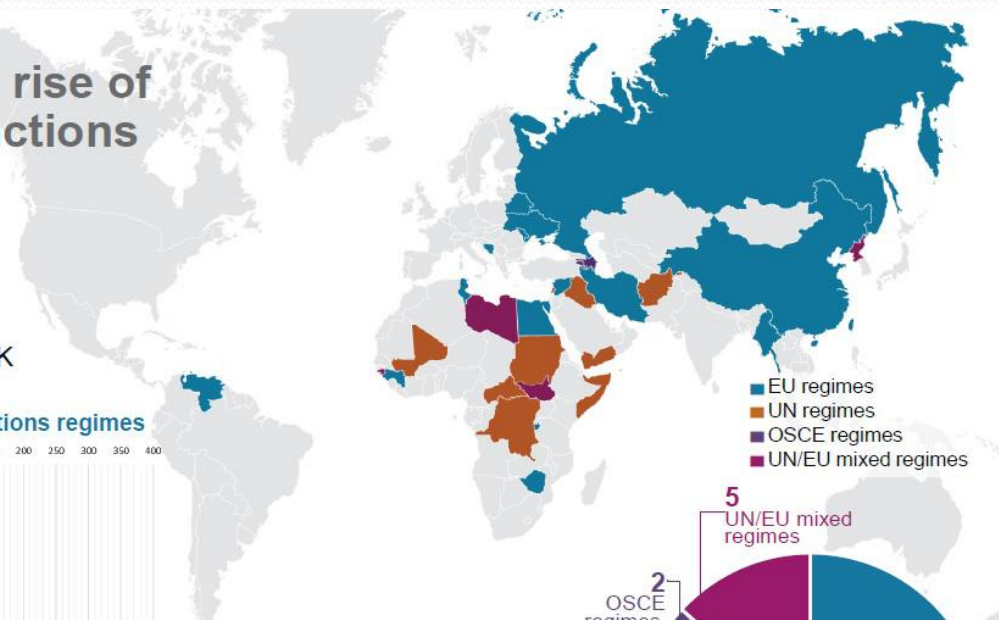
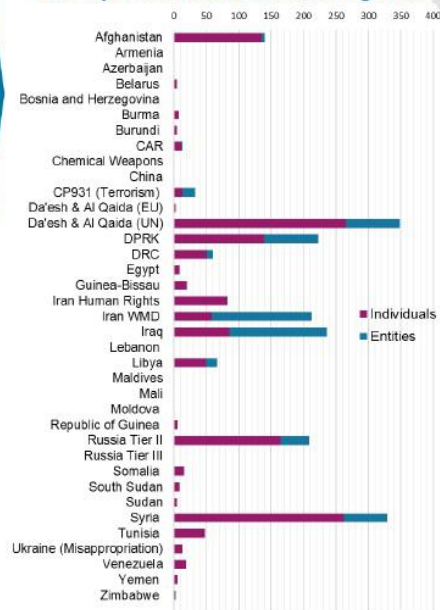
# Who is subject to financial sanctions in UK/Cayman?

## Mapping the rise of targeted sanctions

38 

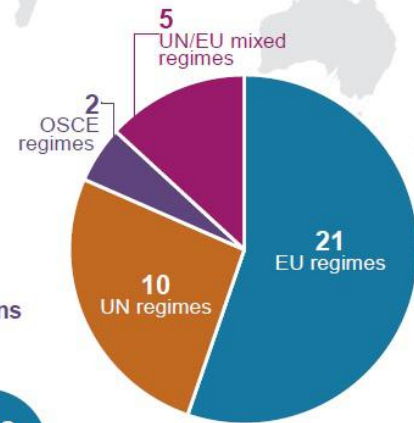
Active multilateral sanctions regimes implemented by the UK

### UK implemented sanctions regimes



■ EU regimes  
■ UN regimes  
■ OSCE regimes  
■ UN/EU mixed regimes

Total subject to UK implemented sanctions



20<sup>th</sup> December 2018

## FATF Recommendation 6 – Targeted financial sanctions related to terrorism and terrorist financing

### What are the relevant laws in respect of Terrorism and Terrorist Financing?

#### ⌘ Isil (Da'esh) and Al-Qaida Regime

- ⌘ UNSCR 1267 (1989)

- ⌘ **Relevant Overseas Order in Council**

- ⌘ The Isil (Da'esh) and Al-Qaida (Sanctions) (Overseas Territories) Order 2016, (SI 2016/1218)

#### ⌘ Taliban and Associates Regime

- ⌘ UNSCR 1267 (1988)

- ⌘ **Relevant Overseas Order in Council**

- ⌘ The Afghanistan (United Nations Measures) (Overseas Territories) Order 2012, (SI 2012/1758)

#### ⌘ Terrorism and Terrorist Financing

- ⌘ UNSCR 1373 (2001)

- ⌘ **EU and UK Legislation**

- ⌘ EU 2580(2001) and TAFA (2010)

- ⌘ **Relevant Domestic Legislation**

- ⌘ Terrorism Law (2018 Revision)

# Cayman Results MER IO10

- The Cayman Islands has mechanisms in place to implement TFS without delay.
- However, the absence of an **effective communication mechanism**, impedes the ability of FIs and DNFBPs to implement freezing actions required in implementing TFS, without delay.
- There is a wide appreciation for the importance of sanctions amongst the private sector but the **frequency of sanctions screening varied** and could be enhanced. The understanding of what steps should be taken in the event targeted persons are identified is limited.
- CIMA has integrated system checks on TFS in their onsite inspection process and ensure that the appropriate policy, procedures and controls are in place to identify and apply sanctions. **Enhanced monitoring of the implementation of TFS is however required.**



## FATF Recommendation 7 – Targeted financial sanctions related to proliferation

### What are the relevant Laws in respect of Proliferation and its financing?

#### ⌘ Democratic People's Republic of Korea (DPRK) Regime

⌘ UNSCR 1718 (2006) and Successors

#### ⌘ Relevant Overseas Order in Council

⌘ The Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2012, SI 2012 No. 3066 and Amendments

#### ⌘ Islamic Republic of Iran (Iran) Regime

⌘ UNSCR 2231 (2015)

#### ⌘ Relevant Overseas Order in Council

⌘ The Iran (Sanctions) (Overseas Territories) Order 2016, SI 2016 No. 371 and Amendments .

#### ⌘ Relevant Domestic Legislation

⌘ Proliferation Financing (Prohibition) Law (2017 Revision)

# Cayman Results MER IO11

- Mechanisms in place to implement TFS without delay.
- However, the absence of an **effective communication mechanism**, impedes the ability of FIs and DNFBPs to implement freezing actions required in implementing TFS, without delay.
- Frequency of **sanctions screening varied** and could be enhanced. The understanding how of what steps should be taken in the event targeted assets are identified is limited.
- To review its co-operation and co-ordination mechanisms to ensure that the authorities can identify potential breaches or violations of TFS related to PF

# ICE Breaker

∞ **COUNCIL REGULATION (EU) 2017/1509 of 30 August 2017 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation (EC) No 329/2007 – OOIC The Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2012 and successors**

## ∞ **Article 10**

∞ 1. It shall be prohibited:

- ∞ (a) to sell, supply, transfer or export, directly or indirectly, luxury goods as listed in Annex VIII, to the DPRK;
- ∞ (b) to import, purchase or transfer from the DPRK, directly or indirectly, luxury goods, as listed in Annex VIII, whether or not originating in the DPRK.

∞ 2. The prohibition referred to in point (b) of paragraph 1 shall not apply to travellers' personal effects or to goods of a non-commercial nature for travellers' personal use contained in their luggage.

# ICE Breaker

∞ Which one is prohibited?

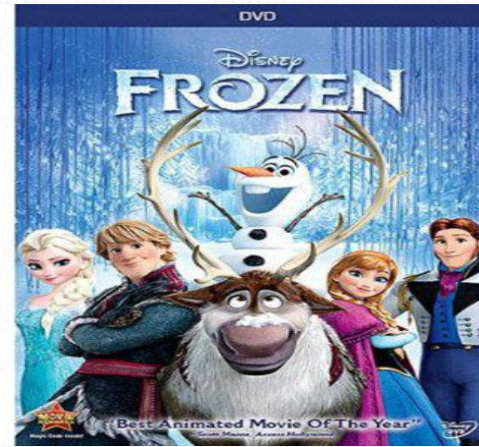
∞ 1. Champagne



∞ 2. Cat biscuits



Disney's Frozen on DVD/Bluray



Cigarettes



# ICE Breaker

∞ Which one is prohibited?

∞ 3. Oysters



False beards



∞ 4. Ski suit



Purebred Horses



# ICE Breaker

∞ Which one is prohibited?

∞ 5. Mens underwear



Sugar tongs



∞ 6 Windscreen wipers



Roller skates



# ICE Breaker

∞ Which one is prohibited?

∞ 7. **Diamonds**



**Bow ties**



∞ 8 **Burglar alarms**



**Butter knife**



# ICE Breaker

∞ Which one is prohibited?

∞ 9. Sunbed



Delivery tricycle



∞ 10 Tennis balls



Ukulele





# Your Obligations as a lawyer

## ∞ Under FATF Recommendation 6 & 7

- ∞ Freeze funds and assets without delay of a designated person and report
- ∞ Prohibition on making funds and assets being available to designated persons

## ∞ Under OOIC

- ∞ **Common asset-freeze prohibitions:** There is a general broad prohibition against dealing with or making available, directly or indirectly, funds, economic resources and financial services to a person or entity that is the target of international sanctions.
- ∞ **Reporting requirement:** There is an obligation to report to the FRA as soon as practicable if a person/entity knows, or has reasonable cause to suspect, that a person (a) is a designated or listed person, or (b) has committed an offence under the licensing, contravention or circumvention provisions of the OOIC

## ∞ Under TL

- ∞ **Freeze and prohibitions** in relation to designated persons under **sections 12-16 of Schedule 4A of the TL** and **reporting sections 20 of Schedule 4A of the TL**

## ∞ Under PFPL

- ∞ **Freezing** of funds and economic resources without direction from the FRA under **section 2B of the PFPL** and **reporting** of action taken **2C of the PFPL**

# Examples of the kind of information that will facilitate compliance

Reporting Area	Example
Person is a designated person	<p><b>A customer or client of yours is a designated person.</b></p> <p>You must provide the FRA with any information you hold about the designated person by which they can be identified.</p>
Offences	<p><b>Can include:</b></p> <ul style="list-style-type: none"> <li>• making funds or economic resources available to a designated person (except where an exemption applies or under licence)</li> <li>• dealing with funds or economic resources that must be frozen (except where an exemption applies or under licence)</li> <li>• transferring funds to and from the DPRK</li> <li>• entering into, or participate in transactions with credit and financial institutions in the DPRK</li> <li>• activities that circumvent an asset freeze</li> <li>• failure to provide information which would facilitate compliance</li> <li>• breaches of licensing conditions</li> </ul>
Funds and economic resources	<p>You must include details of any funds and economic resources that you have frozen.</p>
Credits to frozen accounts	<p>Businesses must inform the FRA without delay whenever it credits a frozen account with:</p> <ul style="list-style-type: none"> <li>• payments due under prior contracts</li> <li>• funds transferred to an account by a third party</li> </ul>

# Reporting Obligations

## ∞ How to Report

- ∞ Reports of accounts and amounts frozen should be made using the TF/PF form on the FRA website.
- ∞ <http://fra.gov/ky/contents/page/1>

## ∞ Legal privilege

- ∞ The reporting requirements do not apply to information to which legal privilege is attached. However, it is expected that you would carefully ascertain whether legal privilege applies, and which information it applies to. The FRA may challenge a blanket assertion of legal privilege where it is not satisfied that careful consideration has been made as to whether such privilege applies to all information.

## ∞ Other reporting obligations

- ∞ Your obligation to report to the FRA is in addition to any other reporting obligations you may have. These could include reporting required by CARA, and SARs to the FRA under the PCL
- ∞ If you are unsure of your reporting obligations, you should seek independent legal advice

# What if you think you are dealing with a sanctions target?

- ⌘ Review all the information you have about them (NB it is the responsibility of those engaging in financial activity to ensure they comply with sanctions. FRA does not do due diligence for entities or individuals.)
- ⌘ Check if they are on OFSI's consolidated list of designated persons
- ⌘ If you are not sure, consider asking them for more information
- ⌘ Check if they're on the Cayman Islands domestic consolidated list of designated persons by the Governor
- ⌘ Consider if they may be owned or controlled by a designated person
- ⌘ If still unsure or if they match the list details, contact the FRA immediately

## **If you are dealing with an individual/firm subject to sanctions, you must:**

- ⌘ freeze their funds and assets immediately and report to the FRA
- ⌘ not deal with or make funds or economic resources available to them
- ⌘ Do not do anything that would circumvent the asset freeze

**You may be able to apply for a licence from the Governor (where there are licensing grounds) or rely on an exemption in the law to continue dealing with those subject to sanctions.**

<http://fra.gov.ky/contents/page/1>

Please note that licences cannot be issued retrospectively. Breaching financial sanctions is an offence and can lead to criminal prosecution.

# Offences and penalties

## ⌘ Offences will depend on the particular legislation, but can 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
- ⌘ breaches of licensing conditions

## ⌘ Penalties

- ⌘ Breaches of financial sanctions are considered to be a serious criminal offence. Offences under the OOICs now carry a maximum of seven years' imprisonment on indictment and, on summary conviction, to a maximum of six months' imprisonment or a maximum fine £5,000 or its equivalent in the Cayman Islands.
- ⌘ Similarly a person who commits an offence under Schedule 4A of the TL is liable on summary conviction, to a fine of CI\$4,000, or to imprisonment for a term of twelve months, or to both, or on conviction on indictment, to a fine or to imprisonment for a term of seven years, or to both; or.
- ⌘ Under the PFPL the FRA has the power to impose civil penalties of such amount as it considers appropriate (not exceeding CI\$40,000) on a person who fails to comply with freezing and reporting obligations of any frozen funds or economic resources. A person who fails to comply with a freezing obligation is also liable on summary conviction to a fine of \$50,000, or on conviction on indictment, to a fine of CI\$70,000, or imprisonment for a term of three years, or to both. A person who fails to comply with a reporting obligation is liable on summary conviction to a fine of \$10,000.

# When should you contact the FRA?

## **To provide us with information**

You have an obligation, under the OOIC, TL and the PFPL, to report information to the FRA that facilitates compliance with financial sanctions (e.g. when you freeze funds and/or economic resources, when you have information that will assist the FRA to detect a circumvention of financial sanctions). FRA may also request information from you. Specific reporting requirements are often included in licences.

## **To report a suspected breach**

It's in your interest to report non-compliance with financial sanctions immediately.

## **To apply for a licence**

FRA will facilitate the processing of licences to be issued by the Governor where there are specific and relevant licensing grounds. Licences allow certain transactions to take place that, otherwise, would be prohibited under financial sanctions.

## **To get general guidance**

General enquiries about financial sanctions should be addressed to:

The Sanctions Coordinator  
Financial Reporting Authority  
P.O. Box 1052  
Grand Cayman KY1-1102  
Cayman Islands  
Email: [financialsanctions@gov.ky](mailto:financialsanctions@gov.ky)

# Take Away

## Financial Sanctions Obligations:

- ⌘ Are in addition to SARS obligation
- ⌘ All Caymanians (wherever they are in the world) and non-Caymanian individuals, businesses and charities need to comply with financial sanctions if they are:
  - ⌘ carrying out activities within the Cayman Islands
  - ⌘ established under Caymanian law and operating overseas
- ⌘ Stay updated with regimes and compliance policies
- ⌘ Immediately freeze funds, other financial assets or economic resources of designated individuals and entities
- ⌘ Not enter into financial transactions or provide financial assistance or services in relation to: (i) designated individuals, entities or items; or (ii) proliferation and nuclear, or other sanctioned activities; and
- ⌘ Inform the FRA of any fact or information relating to the funds, other financial assets or economic resources owned or controlled, directly or indirectly, by a designated individual or entity.
- ⌘ Any person/entity that contravenes any OOIC and/or domestic legislation commits an offence and is liable to a maximum of seven years imprisonment on conviction on indictment, or to a fine or both.

