



# DEALING WITH ASSETS OWNED OR CONTROLLED BY DESIGNATED PERSONS AND ENTITIES

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This guidance note is produced by the Australian Sanctions Office (ASO) within the Department of Foreign Affairs and Trade (DFAT). It provides a summary of relevant sanctions laws but does not cover all possible sanctions risks. Users should consider all applicable sanctions measures and seek independent legal advice. This document should not be used as a substitute for legal advice. Users are responsible for ensuring compliance with sanctions laws.



## OVERVIEW

Australian sanctions laws impose strict prohibitions on dealing with designated persons or entities, including to require financial institutions and other entities to freeze assets owned or controlled by these persons or entities.

This guidance note outlines the obligation to freeze assets owned or controlled by designated persons or entities and the mandatory reporting to the ASO and the Australian Federal Police (AFP). It details the procedures for unfreezing assets when a person or entity is de-listed and provides steps for those who believe their assets have been wrongfully frozen.

## Contents

Australian sanctions laws .....	2
Dealing with designated persons or entities .....	3
The Consolidated List.....	3
Holding an asset owned or controlled by a designated person or entity .....	3
Determining if an asset is owned or controlled by a designated person or entity .....	4
Wrongfully frozen assets .....	5
Sanctions permits .....	6

## Glossary

Term	Definition
<b>Australian Sanctions Office</b>	The Australian Sanctions Office ( <b>ASO</b> ) is the Australian Government's sanctions regulator. The ASO sits within the Department of Foreign Affairs and Trade ( <b>DFAT</b> ).
<b>Controlled asset</b>	Generally, an asset owned or controlled by a designated person or entity. Some sanctions legislation also refers to these kinds of assets as 'freezable assets'.
<b>Consolidated List</b>	See <b>Designated person or entity</b> .
<b>Designated person or entity</b>	A person or entity listed under Australian sanctions laws. Listed persons and entities are subject to targeted financial sanctions. Listed persons may also be subject to travel bans. See <a href="#">DFAT website</a> for further information. Some sanctions legislation also refers to these persons and entities as 'proscribed persons and entities'.  DFAT keeps a <a href="#">Consolidated List</a> of designated persons and entities, available on the Department's website.
<b>Pax</b>	<a href="#">Pax</a> is the Australian sanctions platform. You can make general enquiries or submit sanctions permit applications to the ASO in Pax.
<b>Reasonable precautions and due diligence</b>	In the sanctions context, reasonable precautions and due diligence are not defined terms but generally refer to the steps and measures a regulated entity must take to ensure it is not engaging in sanctioned activities. This includes implementing robust internal controls, screening transactions and parties against the Consolidated List, and ensuring staff are adequately trained to recognise and respond to potential sanctions risks. This is a relative standard, as what constitutes "reasonable" can vary based on a range of factors, including the size and nature of the business, the complexity of transactions, the geographic areas involved, and the specific sanctions regulations in place. Consequently, what is deemed sufficient for one entity may not be for another, making the concept inherently flexible and context dependent.
<b>Regulated entity</b>	A government agency, individual, business or other organisation whose activities are subject to Australian sanctions laws.
<b>Sanctions permit</b>	A sanctions permit is authorisation from the Minister for Foreign Affairs (or the Minister's delegate) to undertake an activity that would otherwise be prohibited by an Australian sanctions law.

## AUSTRALIAN SANCTIONS LAWS

Australia implements two types of sanctions frameworks under Australian sanctions laws:

- United Nations Security Council (**UNSC**) sanctions frameworks, which Australia must impose as a member of the United Nations,
- Australian autonomous sanctions frameworks, which are imposed as a matter of Australian foreign policy.

Each sanctions framework imposes specific sanctions measures, depending on the individual circumstances and objectives of the regime. Sanctions measures can include prohibitions on making a sanctioned supply, providing a sanctioned service, dealing with a **designated person or entity**, or dealing with **controlled assets**.

Further information on Australia's sanctions frameworks and specific sanctions measures can be found [here](#).

## Dealing with designated persons or entities

Australia has imposed prohibitions on dealing with certain persons, entities and assets as part of its UN Security Council (UNSC) and autonomous sanctions frameworks. These frameworks are respectively governed by the *Charter of the United Nations Act 1945* and the *Autonomous Sanctions Act 2011*.

Under Australian sanctions laws it is an offence to directly or indirectly make an asset available to, or for the benefit of, a **designated person or entity**. It is also an offence to use or deal with an asset, or allow or facilitate another person to use or deal with an asset, that is owned or controlled by a designated person or entity. That is, the assets must be 'frozen'. The prohibition on 'dealing' with assets includes using, selling or moving assets.

For the purposes of Australian sanctions laws, an 'asset' includes an asset or property of any kind, whether tangible or intangible, movable or immovable. It can also include a legal document or instrument evidencing title to, or an interest in an asset – e.g., bank credits, travellers cheques, money orders, shares and securities.



### Penalties for sanctions offences

Sanctions offences are punishable by:

- For an individual - up to 10 years in prison and/or a fine of 2500 penalty units (\$825,000 as of 7 November 2024) or three times the value of the transaction(s) (whichever is the greater).
- For a body corporate – a fine of up to 10,000 penalty units (\$3.3 million as of 7 November 2024) or three times the value of the transaction(s) (whichever is the greater).

## The Consolidated List

You are responsible for undertaking the **due diligence** checks necessary to understand whether any of the persons or entities connected with your proposed activity are designated.

The **Consolidated List** is a list of all the designated persons and entities (i.e., individuals, organisations, groups, or businesses) listed under Australian sanctions laws. Listed persons and entities are subject to targeted financial sanctions and may also be subject to travel bans. Those listed may be Australian citizens, foreign nationals, or residents in Australia or overseas.

The Consolidated List can be accessed [here](#).

## Holding an asset owned or controlled by a designated person or entity

Assets are 'controlled assets' under Australian sanctions laws if they are owned or controlled by a designated person or entity. A person who or entity which holds a controlled asset is prohibited from:

- using or dealing with the asset,
- allowing the asset to be used or dealt with,
- facilitating the use of or dealing with the asset.

## Reporting Requirements

If you are, or think you may be, using or dealing with an asset that is owned or controlled by a designated person or entity (that is, you are holding a freezable or **controlled asset**), you must hold (or 'freeze') the asset. You must also inform the ASO via email to [asset.freezing@dfat.gov.au](mailto:asset.freezing@dfat.gov.au), and the AFP via completing the form at <https://www.afp.gov.au/report-crime>, as soon as possible.

Asset holders are required by law to provide the AFP with specific information about controlled assets. See regulation 42 of the Charter of the United Nations (Dealing with Assets) Regulations 2008 and regulation 24 of the Autonomous Sanctions Regulations 2011.

If you have frozen an asset that is owned or controlled by a designated person or entity, you are permitted to disclose to the designated person or entity that the asset has been frozen in compliance with Australian sanctions laws.

If a designated person or entity is de-listed from the Consolidated List and assets owned or controlled by the designated person or entity need to be released, please notify the ASO via email to [asset.freezing@dfat.gov.au](mailto:asset.freezing@dfat.gov.au) within 48 hours of your decision to release the asset.



### Case study 1

An Australian financial institution conducts a routine audit and identifies an account potentially linked to a designated person. To confirm this suspicion, the institution cross-references the person's details with those of a person of the same name on the Consolidated List. This check confirms that the person in question is designated under Australian sanctions laws.

The financial institution promptly freezes the relevant funds to prevent any further transactions. The institution notifies the ASO and the AFP, providing comprehensive details about the controlled assets, including account numbers, transaction history, and the total amount frozen.

## Determining if an asset is owned or controlled by a designated person or entity

Ownership and control of the asset is determined according to the factual circumstances, including the kind of asset and the laws of jurisdiction in which it was created. It is not necessary for the asset to be directly held by the designated person or entity.

**Ownership** of an asset can be established by a designated person or entity's legal title to the asset. It can also be indicated by a designated person or entity's rights to exclusively enjoy, destroy, alter, alienate or dispose of, or maintain and recover possession of the asset.

**Control** of an asset can be indicated by a designated person or entity's command or direction over the asset. This may be established by circumstances such as possession of the asset, or the ability to dictate how it may be dealt with in comparison to other persons or entities.

For example, a controlled asset may be a financial instrument such as a share or bond to which a designated person has legal title.

On the other hand, shares that have been issued by a designated entity to an Australian individual or company are not controlled assets. This is because shares are owned by the shareholder as personal property, even though they represent a legal interest in the designated entity. The issuing entity has no command or direction over shares once they have been issued.

Asset holders may request the assistance of the ASO to determine whether an asset is owned or controlled by a person or entity on the Consolidated List. Please contact the ASO if you have any questions via email, [asset.freezing@dfat.gov.au](mailto:asset.freezing@dfat.gov.au).



### Case study 2

An Australian real estate firm discovers a property which may be connected to a sanctioned country through its ownership. The property is registered under a shell company with complex ownership structures and several layers of intermediaries, raising concerns that the ultimate beneficial owner is potentially a designated person or entity. The firm, using available information sources, is unable to conclusively determine whether the asset is owned or controlled by a designated person or entity.

Faced with this ambiguity, the firm seeks the assistance of the ASO. The firm provides detailed documentation, including ownership records, transaction history, and information on intermediaries involved.

## Wrongfully frozen assets

The responsibility to freeze a controlled asset rests with the person or entity that holds the asset, for example the financial institution that holds the funds of a designated person or entity.

If you consider that an asset that you directly or indirectly own or control has been frozen in error, you should contact the asset holder in the first instance. If, following contact with the asset holder, you continue to consider that the asset has been frozen in error, you should email the ASO at [asset.freezing@dfat.gov.au](mailto:asset.freezing@dfat.gov.au) to provide the following information:

- your full name and contact details,
- the details of the asset and asset holder, including details of your legal or other interest in the asset,
- details of your contact with the asset holder,
- the reasons for your belief that the asset has been frozen in error.

### Compensation for a wrongfully frozen asset

Under UNSC sanctions, an asset holder is not liable for any loss resulting from a wrongly frozen asset if they acted in good faith and without negligence to freeze an asset in compliance with relevant sanctions laws.

Persons or entities may be entitled to seek compensation from the Commonwealth if they own or control an asset and suffer a loss as a result of the wrongful freezing of the asset under certain circumstances as set out in section 25 of the *Charter of the United Nations Act 1945*.

To be eligible for compensation, all the following criteria must be met:

- the owner/controller of the asset has instructed the person holding the asset to use or deal with it,
- the holder has refused to comply with the instructions in good faith and without negligence in order to comply with relevant sanctions law,
- the asset was not a freezable asset under the law,
- the owner/controller of the asset has suffered a loss because of the refusal.

Persons or entities that have suffered loss in these circumstances are recommended to seek legal advice.

### Compensation claim

Claims for compensation can be made to the ASO. To make a claim, please provide a statutory declaration with all relevant information, including evidence:

- of the name, contact details and, where relevant, ABN of the asset owner, controller and holder,
- of the basis under which the asset holder held the asset on behalf of the asset owner or controller,
- that the owner/controller was the owner/controller of the asset at all relevant times,

- that the asset was held by the asset holder at all relevant times, or as the case may be,
- of the relevant instruction(s) to the asset holder to use or deal with the asset,
- that the asset holder refused to comply with those instructions,
- that the refusal was in good faith, and without negligence, in purported compliance with the Act,
- that the asset was not a freezable asset,
- that a loss was suffered by the asset owner due to the refusal of the asset holder to comply with the relevant instructions,
- of the amount of the loss suffered, including details of the loss and the method of calculation.

Claims should be made by emailing [asset.freezing@dfat.gov.au](mailto:asset.freezing@dfat.gov.au) and be accompanied by consent to contact the relevant asset holder or controller for confirmation of the circumstances of the claim.

## SANCTIONS PERMITS

A sanctions permit is authorisation from the Minister for Foreign Affairs (or the Minister's delegate) to undertake an activity that would otherwise be prohibited by an Australian sanctions law.

The Minister may grant permits in relation to both UNSC and autonomous sanctions frameworks. For some countries, both UNSC and autonomous sanctions apply. More detailed information on Australia's sanctions frameworks, including the specific criteria for granting permits under each framework, can be found on the DFAT [website](#).

The criteria for sanctions permits under UNSC sanctions frameworks vary, as do the range of activities that the Minister can authorise. These activities tend to be more limited than those which can be authorised under autonomous sanctions frameworks. Additionally, some of the UNSC sanctions frameworks require the Minister to notify or receive the approval of the UNSC before granting a sanctions permit.

### What is the 'national interest' test?

All permits issued under autonomous sanctions frameworks must meet the same criteria, in particular that the Minister must not grant the permit unless the Minister is satisfied that granting the permit is in the 'national interest'.

This generally requires the Minister to be satisfied that the grant of a permit is beneficial, or advantageous, to the national interest. It requires a consideration of whether something is advantageous to the nation as a whole, as opposed to only a particular company, group or section within the nation, or to a particular region or locality.

### Applying for a permit

A person may also apply to the ASO for a permit in relation to dealing with frozen assets or the provision of assets to a designated person or entity. The application must generally be in respect of a basic expense dealing, a legally required dealing or a contractual dealing. Whether a permit may be granted for a particular dealing will depend on the particular sanctions framework.

A **basic expense dealing** is generally a transaction that is necessary for basic expenses. This includes payments for foodstuffs, rent or mortgages, medicines or medical treatment, taxes, insurance premiums, public utility charges and reasonable professional fees.

A **legally required dealing** is generally a transaction that is necessary to satisfy a judicial, administrative or arbitral judgement that was made prior to the date which the person or entity who is party to the proposed transaction became a designated person or entity. The transaction must not be for the benefit of a designated person or entity.

A **contractual dealing** includes payment of interest on accounts holding controlled assets and payments required under contracts, agreement or obligations made before the date on which the assets became controlled assets.



### Sanctions permits

The ASO advocates for proactive risk management rather than relying on permits. Sanctions permits are generally appropriate only when there is a clear likelihood of a sanctions contravention occurring. For broad or non-specific sanctions risks, it's better to manage compliance through **reasonable precautions and due diligence** to prevent issues before they arise. To enable due consideration of any permit application, ASO must be provided sufficient detail of a specific contravention to which the application relates.

Further information on sanctions permits and how to apply for a sanctions permit can be found [here](#).



### Further information and resources

While this guidance note provides a framework for understanding key sanctions risks and compliance requirements, it is essential to remember that it does not cover every possible scenario. Sanctions compliance is a dynamic, ongoing process rather than a one-time assessment. Sanctions measures and associated risks are constantly evolving, requiring regulated entities to continuously monitor and reassess their compliance strategies. Regulated entities are encouraged to seek independent legal advice tailored to their specific situations and ensure thorough due diligence in all activities.

Further information is available on the Department's [website](#) and in [ASO guidance notes](#) on specific sanctions topics. If you have any questions, you can make an enquiry through [Pax](#).