



# FINANCIAL TRANSACTIONS INVOLVING 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

This guidance note outlines the prohibitions on dealing with designated persons or entities under Australian sanctions laws. It details restrictions on providing financial assets to these parties and managing assets they own or control. The guidance also describes the obligations of regulated entities holding assets owned or controlled by designated parties, including compliance and reporting requirements. Additionally, it identifies how a sanctions permit can be used to manage transactions involving frozen financial assets or to provide financial assets to designated parties.

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## 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>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.

## PROHIBITIONS ON DEALING WITH DESIGNATED PERSONS AND CONTROLLED ASSETS

Australia implements two types of sanctions frameworks:

- 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.

Australia has imposed prohibitions on dealing with certain persons, entities and assets as part of its UNSC and autonomous sanctions regimes. The purpose of these prohibitions is to freeze a person or entity's assets and prevent them from obtaining additional assets while they are subject to targeted financial sanctions.

Targeted financial sanctions prohibit:

- Directly or indirectly making an asset available to, or for the benefit of, a **designated person or entity**; and
- Using or dealing (or allowing or facilitating the use or dealing) with certain '**controlled assets**' or 'freezable assets'. Such assets are generally those owned or controlled by a designated person or entity.

Targeted financial sanctions include tangible, intangible, moveable and immovable kinds of assets regardless of how they are acquired. They may also include any legal documents or instruments demonstrating title to or an interest in an asset or property.



#### 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).



#### Strict liability

Sanctions offences are strict liability offences for bodies corporate, meaning that it is not necessary to prove any fault element (intent, knowledge, recklessness or negligence). However, bodies corporate can prove that they undertook **reasonable precautions** and exercised **due diligence** to avoid contravening sanctions laws as a defence.



#### Australian Government Officials

Australian Government officials must comply with Australian sanctions laws and are not immune from prosecution for sanctions offences.

In addition to their obligations to comply with Australian sanctions laws, Australian Government Officials have other relevant legal obligations. These include obligations under the [APS Code of Conduct](#) and the *Public Governance, Performance and Accountability Act 2013* (Cth).

## What is a designated person or entity?

A designated person or entity is an individual, organisation, group or business who is subject to targeted financial sanctions. They may be Australian citizens, foreign nationals, or residents in Australia or overseas.

The Minister for Foreign Affairs may designate persons or entities for the purposes of the sanctions legislation. The criteria for designation vary according to the sanctions regime that it relates to. In addition, some persons and entities are designated pursuant to UN Security Council resolutions.

The Department of Foreign Affairs and Trade keeps a [Consolidated List](#) of designated persons and entities, available on the Department's website.

## Restrictions on making financial assets available to a designated person or entity

A person will commit an offence if they make assets available to a designated person or entity. This includes financial assets such as cash, bank credits, travellers and bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit.

Importantly, the sanctions legislation may be contravened by *indirectly* making a financial asset available to a designated person or entity. This may occur if someone makes funds available to a person who acts at the designated person or entity's direction.

A person may also commit an offence if they make financial assets available *for a designated person or entity's benefit*. For example, this may include paying money to another person in satisfaction of a designated person's liabilities.



### Beneficial ownership

Beneficial ownership refers to the individuals or entities that ultimately own, control, or benefit from assets or transactions, despite being hidden behind layers of corporate structures or intermediaries.

A person can mitigate the risk of indirectly providing funds to a designated person or entity by conducting thorough due diligence and implementing robust know-your-customer procedures to verify the ultimate beneficial owners of their counterparties. These procedures are critical to ensure that a transaction does not indirectly benefit a designated person or entity through a beneficial ownership arrangement.



### Case study 1

An Australian import-export company plans to send a payment to a new supplier. The company conducts an initial screening of the supplier against the Consolidated List. While no immediate matches are identified, the company has robust sanctions compliance procedures in place which require due diligence on investigating and verifying the background of its suppliers.

The company further investigates the ownership structure of the supplier and discovers it is wholly owned by a holding company, which in turn is owned by a designated person. Further due diligence confirms that the person has beneficial ownership of the supplier. This indicates that any payment made to the supplier is likely to benefit the designated person. The company concludes that proceeding with the payment would contravene the prohibition on making an assets available to, or for the benefit of, a designated person or entity.

## Restrictions on using or dealing with financial assets that are controlled assets

A person who 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 or dealing with the asset.

Funds or financial assets are "controlled assets" if they are 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.

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

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 and inform the ASO via email, [asset.freezing@dfat.gov.au](mailto:asset.freezing@dfat.gov.au) and the AFP as soon as possible, via <https://www.afp.gov.au/report-crime>.

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.

Further information on freezing controlled assets is available on the DFAT website [here](#).



#### Case study 2

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. In accordance with its legal obligations, the institution notifies the ASO and the AFP, providing details about the controlled assets.



#### Case study 3

An Australian brokerage firm manages shares in a company on behalf of a designated person. The designated person retains ownership and control over the shares, including the right to sell them or receive dividends, but the brokerage firm holds and manages the shares on behalf of the designated person.

As the shares are owned or controlled by the designated person the brokerage firm may not use or deal with the shares or allow or facilitate any use or dealing with the shares.

### Restrictions on receiving financial assets from designated persons or entities

Under Australian sanctions laws, there are no prohibitions on receiving funds or financial assets from a designated person or entity. This includes when receiving funds or financial assets in satisfaction of an existing liability or entitlement. For example, it is not an offence for a person in Australia to receive pension payments from a designated bank in a sanctioned country.

However, if the asset received remains under the ownership or control of the designated person or entity, the receiver may not use or deal with the asset or allow or facilitate any use or dealing with it once it is in the receiver's possession.

## 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](#).

### Class-based permits

The Minister for Foreign Affairs has issued a number of permits authorising certain activities that would otherwise be prohibited under Australian sanctions laws. Some of these permits provide blanket authorisations for a range of activities.

Further information on class-based sanctions permits 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 an ongoing obligation 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. Australian 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](#).