



## EMPLOYMENT WITH DESIGNATED PERSONS OR 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

**Employment with a designated person or entity involves a real and significant risk of contravening Australia's sanctions laws**

This guidance note sets out how Australian sanctions laws apply to Australian citizens, and foreign residents living in Australia, considering employment with designated persons or entities. It outlines some of the significant legal risks and notes that such employment is likely to contravene sanctions laws. Australians are strongly advised not to pursue employment with designated persons or entities without first obtaining independent legal advice and consulting the ASO.

Australian sanctions laws have broad extraterritorial application, covering conduct by Australian citizens both within Australia and overseas. This includes employment-related activities undertaken abroad. Australia's sanctions laws also apply to other persons within Australia, including those performing roles for foreign entities while based in Australia.



### Penalties for sanctions offences

Sanctions offences for individuals are punishable by up to 10 years in prison and/or a fine of 2,500 penalty units (\$825,000 as of 7 November 2024) or three times the value of the transaction(s) (whichever is the greater).

### Risks associated with employment by 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 regimes. The purpose of these prohibitions is to freeze a person's or entity's assets and prevent them from obtaining and/or benefiting from any assets while they are subject to targeted financial sanctions. Designated persons may also be subject to travel bans<sup>1</sup>.

The primary risks of employment with designated persons or entities stem from targeted financial sanctions. These sanctions apply broadly to all forms of assets—tangible or intangible, movable or immovable—including legal instruments that evidence ownership or interest.

<sup>1</sup> Some sanctions legislation also refers to these persons and entities as 'proscribed persons and entities'. DFAT keeps a **Consolidated List** of designated persons and entities, available on the Department's website at <https://www.dfat.gov.au/international-relations/security/sanctions/consolidated-list>. Further information is available at <https://www.dfat.gov.au/international-relations/security/sanctions/guidance>.

Whilst the scope of the targeted financial sanctions depends on the particular sanctions framework (we recommend you refer to each framework for specific conditions), these measures commonly prohibit a person from:

- 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 ‘controlled assets’ or ‘freezable assets.’ Such assets are generally those owned or controlled by a designated person or entity.

### **Assets that may be made available or controlled assets that may be used or dealt with in the course of employment**

Given the broad scope of targeted financial sanctions and the definition of ‘asset’ under the legislation, any employment association with a designated person or entity presents significant compliance risks. In some instances, merely entering into an employment contract with a designated person or entity may contravene sanctions laws as it may confer contractual rights that could be considered assets under the legislation.

Individuals may make available various tangible or intangible assets to their employer in the course of their employment.

Sanctions laws may also be contravened if a person uses or otherwise deals with assets owned or controlled by a designated person or entity—particularly where the employer is designated.

Whilst the term ‘asset’ is defined broadly for the purposes of Australia’s sanctions legislation, some examples of assets that are commonly dealt with in the course of employment include:

#### Tangible Assets

- *Physical goods*, including equipment, tools, or materials
- *Documents*, including printed reports, signed contracts, or physical records
- *Hardware*, including laptops, storage devices, or prototypes

#### Intangible Assets

- *Electronic reports and analysis*, including strategic assessments, financial or legal advice, or technical documentation
- *Intellectual property*, including original designs, software code, or proprietary methodologies
- *Confidential information*, including internal data, client lists, or trade secrets
- *Digital content*, including presentations, databases, or multimedia assets.

Sanctions laws may also be contravened in the course of employment activities if a person makes assets available, including indirectly, for the benefit a designated person or entity. Depending on the sanctions framework, this may include making assets available to a person’s employer (or another entity) acting on behalf of, or at the direction of a designated person or entity or an entity that is owned or controlled by a designated person or entity.



### Beneficial ownership

Beneficial ownership refers to individuals or entities that ultimately own or control an entity or asset, despite being hidden behind corporate structures or intermediaries. This means that a designated person or entity may own or control an entity or asset even if they are not the legal owner.

A person may be employed by an entity that is not itself designated but is beneficially owned or controlled by a designated person or entity. In such cases, they may inadvertently provide assets - financial or non-financial / tangible or non-tangible - directly or indirectly to, or for the benefit of, the designated party in the course of their employment. This risk can be mitigated by conducting due diligence on prospective employers to ensure they are not ultimately owned or controlled by a designated person or entity.

## What should I do if I am considering, currently engaged in, or have previously been employed by a designated person or entity?

**Employment with a designated person or entity involves a real and significant risk of contravening Australia's sanctions laws.** Depending on the nature of the employment, there is a significant risk of contravening sanctions by providing assets to a designated person or entity or dealing with their assets in the course of employment.

If you are currently employed by a designated person or entity, there is a significant risk—depending on the nature of your role—that you have provided, or may provide, assets to a designated person or entity, or have dealt, or may deal, with their assets in the course of your employment. This could potentially result in a contravention of Australian sanctions laws.

When evaluating the sanctions implications of employment, Australian citizens should check whether the prospective employer—or any individuals or entities connected to it—appear on the Consolidated List. This includes verifying the company name against the list and assessing any links to designated persons or entities, including as part of its corporate structure or other beneficial ownership arrangements.

When you have gathered all relevant facts and concluded that a sanctions contravention has or is likely to occur, the necessary action is straightforward:

- If the employment has not started, you should not proceed.
- If the employment has already started, you should seek legal advice and take steps to avoid sanctions contraventions, including considering terminating your employment. You should also take remedial steps, including voluntarily disclosing the contravention to the ASO.
- If cessation of your employment is impractical due to factors beyond your control, such as other legal obligations, you should contact ASO. It may be possible to obtain a sanctions permit to allow the employment to continue (see Sanctions Permits below). A permit will only provide relief against a contravention of Australia's sanctions laws, it will not necessarily assist in other contractual disputes.

The ASO is committed to working collaboratively with the regulated community to address sanctions non-compliance. It encourages both self-reporting and reporting of others, including businesses. Recognising that most Australians seek to comply with sanctions laws, the ASO applies a risk-based approach and may, in some cases—particularly where breaches are voluntarily disclosed - choose not to pursue enforcement. Further information about this approach is available at <https://www.dfat.gov.au/international-relations/security/sanctions/compliance-policy>.



### Independent legal advice

Independent legal advice can be important to accurately identify sanctions risks. Legal experts can offer tailored guidance that takes into account your specific circumstances and the nature of your activities.

Legal professionals can help interpret complex sanctions regulations and identify potential risks associated with your activities. They can also provide clarity on ambiguous or evolving aspects of sanctions laws.

Moreover, legal advisors can assist in documenting the steps taken to identify sanctions risks. This documentation is essential for demonstrating your due diligence, which can be crucial when engaging with the ASO or in the context of legal proceedings.

## Sanctions permits

A sanctions permit is an 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 under both the UNSC and autonomous sanctions regimes. More detailed information on Australia's sanctions frameworks and the specific criteria for granting permits under each framework is available at <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes>.

### Applying for a permit

A person may apply to the ASO for a permit in relation to the provision of assets to a designated person or entity or using or dealing with controlled assets. 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. In the case of permits for activities prohibited under Australia's autonomous sanctions framework, the Minister must also be satisfied that granting the permit is in the **national interest**.

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 on which the person or entity who is party to the proposed transaction became a designated person or entity. The dealing must not be for the benefit of a designated person or entity.

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



### Sanctions permits

The ASO advocates proactive risk management rather than relying on permits. Sanctions permits are generally appropriate only when there is a clear likelihood of a sanctions contravention. 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.

Further information on sanctions permits and how to apply for a sanctions permit is available at <https://www.dfat.gov.au/international-relations/security/sanctions/what-we-can-do-help>.

### 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 general authorisations for a range of activities.

Further information on class-based sanctions permits is available at <https://www.dfat.gov.au/international-relations/security/sanctions/general-permits>.



### 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. 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 at <https://www.dfat.gov.au/international-relations/security/sanctions>, or by making an enquiry to [sanctions@dfat.gov.au](mailto:sanctions@dfat.gov.au).