Australian Government
Department of Foreign Affairs and Trade

Australian Sanctions Office

SANCTIONS GUIDANCE NOTE

SANCTIONS COMPLIANCE FOR LEGAL PROFESSIONALS

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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 only be used as a guide and should not be used as a substitute for legal advice. Users are responsible for ensuring compliance with sanctions laws.

OVERVIEW

This guidance note covers information relevant to managing sanctions risks in connection with providing legal services.

Legal professionals may rely on a class-based Legal services permit (SAN-2024-00138 - Legal services permit) when their activities involve providing legal advice, legal representation in Australian courts or tribunals, or delivering Ancillary Services, in relation to matters arising under, or related to Australian law.

This guidance note also include guidance in light of reforms to anti-money laundering and counter-terrorism financing legislation.

PROVIDING LEGAL SERVICES TO PERSONS SUBJECT TO SANCTIONS

The ASO recognises the importance of legal representation for individuals and entities subject to sanctions. For this reason, the ASO has issued a class-based Legal Services permit – SAN-2024-00138. This permit allows legal professionals to provide legal advice, legal representation in Australian courts and tribunals, and ancillary services to persons or entities designated for targeted financial sanctions under the autonomous sanctions framework. It enables access to legal services in relation to matters arising under Australian law.

See further information below under **Legal Services permit – SAN-2024-00138 section**.

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING REFORMS

On 29 November 2024, the Parliament of Australia passed the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024* that simplifies and modernises Australia's anti-money laundering and counter-terrorism financing (**AML/CTF**) laws. Australia's AML/CTF laws are supported by the *Anti-Money Laundering and Counter Terrorism Financing Rules 2025* (**AML/CTF Rules**) made under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

These reforms aim to strengthen Australia's laws to help prevent organised crime and ensure our laws meet international standards set by the global financial crime policy and standard-setter – the Financial Action Task Force (**FATF**). Key changes expand the AML/CTF framework to new industries providing services recognised both domestically and globally as high-risk for criminal exploitation. The reforms also strengthen Australia's targeted financial sanctions by helping to identify and prevent dealings with sanctioned individuals or entities, or their assets, through designated services provided by legal professionals.

Services provided by legal professionals pose a high money laundering risk in Australia. The ability of legal professionals to create legal structures, such as companies and trusts, and transfer ownership of real estate and

businesses, makes them vulnerable to criminal exploitation. Australian authorities find criminals are increasingly using the services of legal professionals to try and legitimise their illegal proceeds.

From 1 July 2026, AML/CTF obligations will apply to legal practices providing 'designated services'. These services could include, for example:

- buying, selling or transferring real estate or legal entities;
- buying, selling or transferring legal entities or a legal arrangement;
- receiving, holding, controlling (including disbursing) or managing funds or property (e.g. money, accounts, securities and other property);
- transactional work relating to equity or debt financing for a legal entity or legal arrangement.

Legal practices who are 'reporting entities' will be subject to the reformed AML/CTF obligations regarding customer due diligence (**CDD**). Reporting entities (e.g. businesses that provide designated services) are required to collect and verify information to establish whether their customers and certain associates are designated for targeted financial sanctions (**TFS**).

For the purposes of the AML/CTF laws, a person designated for targeted financial sanctions means:

- a designated person or entity (within the meaning of regulations made under the *Charter of the United Nations Act 1945*); or
- a designated person or entity (within the meaning of regulations made under the *Autonomous Sanctions Act 2011*).

Reporting entities are also required to develop, maintain and comply with AML/CTF policies aimed at ensuring that they do not contravene Australian sanctions laws related to targeted financial sanctions in providing its designated services.

The AML/CTF framework is administered by AUSTRAC. For further guidance on sanctions-related requirements under AML/CTF reforms , please visit AUSTRAC's website: Persons designated for targeted financial sanctions (Reform) | AUSTRAC

MANAGING SANCTIONS OBLIGATIONS

Australian Sanctions Laws

Sanctions are measures that the Australian Government, autonomously or on the basis of decisions of the United Nations Security Council, impose in response to situations of international concern. Sanctions offences, which can include certain financial dealings, are criminal offences under Australia's *Autonomous Sanctions Act 2011* and the *Charter of the United Nations Act 1945*. Sanctions measures include prohibitions on dealing with a designated person or entity, dealing with controlled assets, or providing a sanctioned service. Sanction measures also include travel bans, trade restrictions and prohibitions on certain services or commercial activities.

Details of sanctions frameworks and measures applicable under them vary according to the objectives of the individual framework and can be obtained at DFAT's website. It is important to check the relevant sanctions framework for the specific measures which are applicable. For details on sanctions frameworks, please refer to DFAT's website: Legislation and Sanctions Frameworks | DFAT

The Sanctions Compliance Toolkit offers practical guidance to help the regulated community identify and mitigate sanctions risks. Key elements of Australian sanctions laws are described below.

Designated Person or Entity

A designated person or entity is an individual, organisation, group or business who is listed under Australian sanctions laws. Designated persons or entities are subject to targeted financial sanctions. The Consolidated List (which includes persons and entities designated under Australia's UNSC and autonomous sanctions frameworks) is maintained by DFAT and identifies all designated persons or entities (including aliases) currently sanctioned by Australia. You are responsible for undertaking due diligence checks necessary to understand whether any of the persons or entities connected with your proposed activity are designated.

Australian sanctions laws are linked to AML/CTF Tranche 2 obligations. This extends CDD obligations to legal professionals providing designated services. Legal professionals who are reporting entities must exercise due diligence such as targeted financial sanctions checks of their clients, any beneficial owners, persons acting on behalf of the clients, clients receiving services on behalf of another person, and beneficiaries of trusts against the Consolidated List.

Sanctions risks may be present if an individual or entity attempts to 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. In the context of legal professionals, these risks could arise, for example, when a client deposits funds into a legal professional's trust account and asks the legal professional to transfer funds to a third party. Sanctions risks could also arise where a person uses the services of a legal professional to facilitate the purchase, sale or transfer of assets such as real estate or legal entities.

Controlled Assets

Assets are generally 'controlled assets' under Australian sanctions laws if they are owned or controlled by a designated person or entity. Assets may also be controlled assets if they are owned or controlled by a person acting on behalf of 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; or
- facilitating the use of or dealing with the asset.

An 'asset' is defined broadly for the purposes of Australian sanctions laws and includes funds and other property, including intangible property. This broad definition of assets may limit the extent to which legal professionals can deal with a designated person or entity. For further guidance, please refer to the ASO's website: Guidance Note - Dealing with assets owned or controlled by designated persons and entities | DFAT.

Targeted Financial Sanctions

Targeted Financial Sanctions generally prohibit directly or indirectly making assets available to, or for the benefit of, designated persons or entities. They may also prohibit using or dealing with certain assets owned or controlled by such persons, effectively freezing these assets. A person or entity will commit an offence if they engage in conduct in contravention of those prohibitions.

The scope of assets captured by the TFS measures include tangible, intangible, moveable and immoveable kinds of assets, regardless of how they are acquired. In terms of financial assets, this could be cash, bank credits, travellers and bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit. This may also include legal documents and instruments demonstrating title to, or an interest in, an asset or property.

Importantly, the sanctions legislation may be contravened by indirectly making an asset available to or for the benefit of a designated person or entity. By way of example, this may occur if someone makes funds available to

a person who acts at the designated person or entity's direction, an entity owned by a designated person or entity, or in which the designated person has a financial interest.

A person may also commit an offence if they make 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.

For further guidance, please refer to the ASO's website: Guidance Note - Financial transactions involving designated persons and entities | DFAT and Guidance Note - Securities and Investments Sector | DFAT.

LEGAL SERVICES

Australian sanctions laws generally prohibit activities associated with designated persons and entities (e.g. TFS), and activities associated with sanctioned countries, regions or terrorist groups which vary depending on the particular sanctions framework.

In addition to the risk arising from TFS measures, sanctions risks associated with provision of a legal service may include (but are not limited to):

the provision of a legal service in connection with a sanctioned supply or certain other sanctioned services – see e.g. regulation 5 of the Autonomous Sanctions Regulations 2011; or

certain sanctioned commercial activities, such as those relating to the acquisition, sale or extension of an interest in certain entities – see e.g. regs 5A-5CA Autonomous Sanctions Regulations 2011.

Please refer to each Legislation and Sanctions Framework for the specific prohibitions.

Before accepting an engagement for legal services, legal professionals should be aware of the sanctions risks/obligations that relate to their business and how sanctions laws may apply to their client (or other relevant persons involved in the transaction).

Legal Services permit – SAN-2024-00138

SAN-2024-00138 is a class-based permit that authorises the making of assets available to persons or entities designated under the *Autonomous Sanctions Regulations 2011.* It also deals with the use of, or dealing with 'controlled assets', in connection with legal services, settlement of legal proceedings, and payment of legal costs if such transactions or activities are carried out by certain persons. The classes of persons covered by the permit includes individual legal service providers, designated persons or entities, bodies corporate, such as law firms, the Commonwealth, the Reserve Bank of Australia or financial institutions.

SAN-2024-00138 can be relied on in limited circumstances (see Authorised Actions), but it is important to note that this permit only applies to sanctions imposed under Australian's autonomous sanctions framework.

A condition of this permit is that certain classes of Permit Holders must notify the ASO Contact Point if they intend to rely on this Permit. This permit does not exempt legal professionals from AML/CTF obligations.

For further details, please refer to: SAN-2024-00138 - Legal services permit | DFAT

What should you do if you identify a possible sanctions contravention?

Assets owned or controlled by a person or entity designated for TFS must be frozen. This means persons who hold those assets cannot use or deal with, or allow the asset to be used or dealt with, or facilitate the use of the assets or dealing with the asset without a sanctions permit. In view of that prohibition, it may not be appropriate to conduct business with persons or entities that have been designated for TFS.

A person who holds a controlled asset and forms an opinion that the asset is a controlled asset must provide information about that asset to the Australian Federal Police. They should also report any attempt to use or deal with controlled assets to the Australian Sanctions Office through the PAX Portal or email at

sanctions@dfat.gov.au if the transactions have not taken place. They should not facilitate dealings with frozen assets by others, e.g. by helping to arrange the transfer of ownership of frozen assets.

Reporting entities should also consider their obligations under the AML/CTF, including whether they must submit a suspicious matter report (SMR) to AUSTRAC (e.g. if you suspect attempted sanctions contraventions or other offences).

Penalties for Sanctions Offences

Sanctions offences are punishable by:

- For an individual – 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).
- For a body corporate – a fine of up to 10,000 penalty units ($3.30 million as of 7 November 2024) or three times the value of the transaction(s) (whichever is greater).

The offences are strict liability offences for bodies corporate, meaning that it is not necessary to prove any fault element (intent, knowledge, recklessness or negligence) for a body corporate to be found guilty. However, an offence is not committed if a body corporate can demonstrate that it took reasonable precautions, and exercised due diligence, to avoid contravening Australia's autonomous sanctions laws.

Common Red Flag Indicators

Red flag indicators of suspicious clients and activities are valuable tools to detect illicit behaviour linked to sanctions evasion. Common red flags for clients who are seeking evasion sanctions include:

- seeking to establish offshore structures, with minimal public disclosure and a broad use of nominee services. This could include establishing front, shell or shelf companies;
- individuals linked to high-risk jurisdictions or sanctioned entities and seeking legal documents that obscure beneficial ownership (including shareholder agreements, trusts, articles of association);
- seeking contracts to obfuscate the true purpose of transactions; and
- when client interests concern the high-risk jurisdictions included on the Consolidated List and/or when the client requests contractual provisions designed to safeguard against sanctions contraventions.

For example, please refer to: Advisory note - Russian contracts aimed at circumventing sanctions | DFAT

Before providing legal services, it is recommended you assess sanctions risk and undertake TFS checks. High risk clients will require enhanced due diligence to mitigate against the risk of a possible sanctions contravention.

AUSTRAC also provides further guidance on high risk indicators for legal professionals to consider when assessing for money laundering: Risk insights and indicators of suspicious activity for legal professionals | AUSTRAC

WHAT DOES THIS MEAN FOR LEGAL PROFESSIONALS?

The restrictions under Australian sanctions laws can be nuanced and contingent upon the specific nature of the legal services being offered, the identity and status of the client, and the circumstances surrounding the engagement. Legal professionals must assess each situation individually, considering whether the client is a designated person or entity and whether the type of service provided falls within the scope of sanctioned activities as defined by the relevant Legislation and Sanctions frameworks | DFAT.

By adopting appropriate sanctions checks and adequate due diligence practices, legal professionals can meet their obligations under Australian sanctions laws. This involves exercising due diligence and conducting risk assessments for each matter, taking into consideration the unique circumstances of the client and the nature of

the legal service to be provided. Through these careful steps, legal professionals can mitigate against the risk of inadvertently breaching sanctions laws while continuing to provide legitimate legal assistance where not prohibited. In this way, compliance requirements are satisfied without unnecessarily restricting access to lawful legal support in situations where it is not prohibited by the relevant sanctions framework.

HOW TO MITIGATE SANCTIONS RISK

Additional Obligations under the AML/CTF Act

Under the AML/CTF Act, a reporting entity must establish on reasonable grounds the following matters before they start to provide a designated service:

- the identity of the client;
- the identity of any beneficial owner of the client (where that client is a legal entity);
- the identity of any person on whose behalf the client is receiving the designated service; and
- the identity of any person acting on behalf of the client and their authority to act.

A reporting entity must also establish on reasonable grounds whether any of the abovementioned persons is designated for targeted financial sanctions.

During the course of a business relationship with the client or the abovementioned persons, a reporting entity should be alert to potential sanctions compliance risks and continue to check whether any of those listed above become designated for TFS as part of their ongoing customer due diligence.

Exercise due diligence

Due diligence helps you understand who your clients are, and the sanctions risks they may bring to your practice. Based on your due diligence outcome, you should establish whether your client is a designated person or entity on the Consolidated List subject to targeted financial sanctions – and therefore subject to restrictions that prevent dealing with them or their assets.

Reasonable precautions and due diligence are the guiding principles to manage exposure to sanctions compliance risk. Legal professionals should implement due diligence measures to mitigate the risk of potential sanctions contraventions. When engaging in high-risk activity, this will often require enhanced due diligence measures.

For activities involving high risk jurisdictions, this may involve conducting more thorough checks and further investigation, as well as seeking additional legal advice. The Sanctions Compliance Toolkit and the Sanctions Risk Assessment Tool provide comprehensive guidance, outlining key principles, risk management strategies, and best practises that regulated entities can adopt to help ensure they do not contravene sanctions. Those resources are developed to assist with identifying and managing risks related to Australia's sanctions laws.

The AML/CTF Act and Rules also require regulated businesses to develop and maintain AML/CTF policies that appropriately mitigate and manage money laundering, terrorism financing and proliferation financing risk that business face when providing designated services.

A reporting entities' AML/CTF policies must set out how the business will make sure that, in providing designated services, it:

- does not make any assets available to, or for the benefit of, a person designated for TFS, in contravention of Australia's sanctions laws; and
- does not use or deal with, or allow or facilitate someone to use or deal with, any assets owned or controlled (directly or indirectly) by a person designated for TFS, in contravention of Australia's sanctions laws.

Case Study

A legal practice is approached by a representative of an Australian company to provide a registered office address. Before accepting instructions, the legal practice conducts initial customer due diligence checks in accordance with its sanctions and AML/CTF policies and discovers that the company may be connected to a sanctioned country through its complex ownership structures and several layers of intermediaries. This raises concerns that the beneficial owner may be a designated person or entity. The legal practice, using available information sources, including the Consolidated List, is unable to conclusively determine whether the company is owned or controlled by a designated person or entity.

Faced with this ambiguity, the legal practice seeks independent legal advice from an external firm specialising in sanctions laws and complex corporate structures to establish who the beneficial owner is before commencing to provide a designated service to ensure it complies with its AML/CTF obligations, and to avoid making an asset (the property) available in possible contravention of Australia's sanctions laws.

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.

UNSC Sanctions Permits: The criteria for sanctions permits under UNSC 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 the autonomous sanctions frameworks. Additionally, some UNSC sanctions frameworks require the Minister to notify or receive the approval of the UNSC before granting a sanctions permit.

Autonomous Sanctions Permits: 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 the permit is beneficial or advantageous to the nation as a whole, as opposed to only a particular company, group, or region within the nation.

For more detailed information about how to apply for sanctions permits, including guidance on specific frameworks and classes of permits, please refer to DFAT's website: Apply for a sanctions permit | DFAT.

Approach to 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 is 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 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 and require regulated entities to continuously monitor and reassess their compliance strategies. Regulated entities are encouraged to seek independent legal advice tailored to their specific situation and ensure thorough due diligence in all activities.

The Sanctions Compliance Toolkit and the Sanctions Risk Assessment Tool provide comprehensive guidance, outlining key principles, risk management strategies, and best practises that regulated entities can adopt to help ensure they do not contravene sanctions.

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 the Pax Portal, or email sanctions@dfat.gov.au