



## SECURITIES AND INVESTMENTS SECTOR

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The **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 covers issues relevant to financial institutions, individuals and businesses that are likely to engage with persons or entities listed under the *Autonomous Sanctions Regulations 2011* (**Autonomous Regulations**) or the *Charter of the United Nations Act 1945* (**COTUNA**).

This guidance applies to all companies, employees, agents, representatives, and subsidiaries of your businesses, particularly those involved in:

- Trading in securities or financial instruments
- Asset management
- Investment advisory
- Brokerage and custodial services
- Corporate finance and underwriting
- Back- and middle-office operations

### SANCTIONS RISK

Those sectors, as listed above, encounter a wide range of sanctions risks under both the COTUNA and Autonomous Regulations, including:

- Using or dealing with controlled assets;
- Making assets available to designated persons or entities.

There is also additional risk under the Autonomous Regulations, including:

- The provision of a financial service in connection with a sanctioned supply, sanctioned import or sanctioned commercial activity or any other sanctioned service – see reg 5.
- Sanctioned commercial activities, such as those relating to the acquisition, sale or extension of an interest in an entity, its securities or other financial instruments or making any loan or credit – see regs 5A-5CA.

It is recommended that this guidance note is read in conjunction with the following guidance notes available on the DFAT website:

- [Guidance Note - Financial transactions involving designated persons and entities | Australian Government Department of Foreign Affairs and Trade](#)
- [Guidance Note - Dealing with assets owned or controlled by designated persons and entities | Australian Government Department of Foreign Affairs and Trade](#)
- [Sanctions Compliance Toolkit | Australian Government Department of Foreign Affairs and Trade](#)
- [Sanctions Risk Assessment Tool | Australian Government Department of Foreign Affairs and Trade](#)

## WHAT IS AN INVESTMENT?

An investment can be defined as an asset acquired with the goal of generating income or 'appreciation'. Appreciation refers to the increase in the value of an asset over time. When an individual purchases a good as an investment, the intent is not to consume the good but to use it in the future to create wealth. There are many different types of investments, some which include securities.

## WHAT ARE SECURITIES?

For the purposes of Australian sanctions laws, an 'asset' means 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.

Securities are financial instruments that represent some form of financial value, interest or ownership. are typically tradable and represent a claim on assets or earnings. The most common types of securities include:

- **Stocks (Equities):** Securities that represent part ownership in a corporation. Owners of stocks may be entitled to a portion of the company's assets and earnings, as well as voting rights at shareholder meetings. See s.101 of the *Corporations Act 2001* for further information.
- **Shares:** Securities that represent a single unit of ownership interest in a corporation or financial asset and represent part ownership in a company and can be traded on regulated exchanges. See s.101 of the *Corporations Act 2001* for further information.
- **Bonds:** Securities representing debt obligations issued by governments, municipalities, or corporations. Bondholders effectively lend money to the issuer in exchange for regular interest payments (coupons) and the return of the bond's face value at maturity.
- **Mutual Funds:** Collective investment vehicles that pool money from many investors to purchase securities such as stocks, bonds, or other assets. Investors in mutual funds own shares of the fund rather than the underlying securities.
- **Exchange-Traded Funds (ETFs):** Like mutual funds, ETFs also pool investor funds to invest in a diversified portfolio of securities. However, ETF shares are traded on stock exchanges like individual stocks.
- **Derivatives:** Financial contracts whose value is based on or 'derived' from the value of an underlying asset, index, or interest rate. Examples include options, futures, and swaps.

For the definition of 'tradeable securities' please see regulation 3 of the Autonomous Regulations.

## LEGAL REQUIREMENTS

Australian sanctions laws impose strict prohibitions relating to designated persons or entities, including to require financial institutions and other entities to freeze assets owned or controlled by these persons or entities. Freezing securities under sanctions involves legally holding the assets of designated persons or entities, preventing their use or transfer.

There are also prohibitions on providing sanctioned services in certain circumstances, including 'financial services' (which includes 'investment services') and engaging in certain forms of 'sanctioned commercial activity'.

The scope of these prohibitions may require financial institutions and other entities to effectively freeze the securities of specific entities. For example, significant businesses in various sectors of the Russian economy, including the financial sector and energy sector have been specified by Australia for the purpose of prohibiting the direct or indirect purchase or sale, or any other dealing with its issued securities.

Australia's sanctions laws also prohibit a person from acquiring an interest in, participating in a joint venture with, or granting a financial loan or credit to, an entity of a sanctioned country engaged in certain sectors. This applies to:

- Telecommunications and energy sectors for **specified Ukraine regions**;
- An extractive or related industry for the Democratic **People's Republic of Korea**;
- The petrochemical, oil and gas industry for **Syria**; the transport; and
- Selling an Australian interest in a commercial activity in respect of these sectors may also be prohibited. In addition, opening or establishing a branch or subsidiary of, a financial institution domiciled in **Syria**, or selling an interest in an Australian financial institution to a financial institution domiciled in **Syria** is also prohibited.

See regs 5A-5CA for further information. **Understanding the legal obligation to freeze securities can be challenging. It is recommended that you seek independent legal advice**, or contact the ASO at [sanctions@dfat.gov.au](mailto:sanctions@dfat.gov.au).

## RISK AREAS AND DUE DILIGENCE

Sanctions risk can arise in various areas, including but not limited to:

- **Securities issuance and trading:** Dealing in securities issued by sanctioned entities (e.g., Russian sovereign bonds)
- **Asset management:** Holding or managing funds or portfolios for designated persons or entities
- **Custody and settlement:** Holding securities or facilitating settlements involving sanctioned entities
- **Corporate finance:** Underwriting debt/equity instruments or advising on M&A transactions involving sanctioned parties
- **Client onboarding and Know Your Customer (KYC):** Failing to identify sanctioned or high-risk individuals/entities

Businesses should implement due diligence measures to mitigate the risk of potential sanctions contraventions. Steps in a compliance program to avoid breaching Australian sanctions laws would generally include:

### 1. Risk assessment

- When evaluating investments, it is important to consider geopolitical risk and the possible applicability of sanctions. Sanctions are imposed in response to international issues. By identifying emerging concerns, investors can mitigate risks by adjusting their investment strategies.

### 2. Screening and Monitoring:

- This could be done by implementing procedures to regularly screen clients, investments and transactions against updated sanctions lists and regulatory requirements;
- This should include understanding true ultimate and beneficial ownership of the securities.

### 3. Due diligence:

- Conduct thorough due diligence on new clients and periodically review existing client relationships to identify changes in circumstances that could impact sanctions compliance.
- Maintain records of client identities, investments and transactions to demonstrate compliance efforts.
- Undertake enhanced due diligence where high risk indicators are present (see below).

#### 4. Training, Awareness and Outreach:

- Provide regular training and awareness programs for staff regarding sanctions, including identifying red flags and reporting suspicious activity.
- Ensure that all staff understand their responsibilities in maintaining sanctions compliance.
- Engage with the ASO to receive informative industry specific presentations on sanctions compliance.

#### 5. Seek Legal Advice:

- Consult with legal adviser or compliance experts who specialise in sanctions law to ensure policies and procedures are current and effective.
- Seek guidance on specific client transactions or investments that may pose sanctions risk.

#### 6. Prompt Action and Reporting:

- Immediately cease any transactions or dealings with designated entities upon becoming aware of their sanctions designation.
- Report suspicious transactions or potential sanctions breaches to the ASO and the AFP promptly and cooperate fully with investigations.

### High risk indicators

- **Special Purpose Vehicles** - The use of special purpose vehicles (SPVs) is a common tool to circumvent sanctions and disguise the ultimate ownership arrangements. This could include the use of shadow holding companies, buyback operation companies or conduit companies.
- **High Risk Jurisdiction** – There is likely to be a heightened sanctions risk in a jurisdiction where sanctions apply. This is particularly true in jurisdictions where sanctions are prolific and rapidly evolving, such as Russia.
- **Exchange Traded Funds (ETFs)** – Exchange traded funds can be at risk of sanctions exposure due to the nature of their diversification. They can be indirectly impacted by sanctions if their holdings include entities or assets subject to sanctions.
- **Custody banking arrangements** - Custody banking arrangements are frequently associated with increased sanctions risks. These arise from the possibility of sanctioned individuals or entities indirectly benefiting from, or being involved in, custody services, or assets held in custody becoming subject to sanctions.
- **Global Depository Receipts** - Global depository receipts also associated with elevated sanctions risks where there are links to sanctioned financial institutions.

### 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 under Australian sanctions law. 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'. 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](#).



### 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 (\$3.30 million as of 7 November 2024) or three times the value of the transaction(s) (whichever is the 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.



### Further information and Resources

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](#).

## Considerations of obligations in other jurisdictions

If your business operates across multiple jurisdictions, you must be aware of all sanctions obligations that may apply. The United States has multiple sanctions measures that affect investments and securities.

### 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.