



Please note that these Guidelines are currently under review. The ABA anticipates releasing updated Guidelines in late 2019.

## ABA's Sanctions Guidelines

### ABA Sanctions: Financial Services Sector Guidelines

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#### 1. Scope of the Guidelines

These guidelines are intended for Australian Banking Association (ABA) member banks.

The guidelines are not legally binding. They aim to set out good industry practice for ABA members and their staff in relation to sanctions requirements.

The guidelines are limited to obligations under the *Charter of the United Nations Act 1945 (Cth.)* (COTUNA) and Australian autonomous sanctions requirements. ABA members may also use these guidelines when developing policy and processes to comply with other extra-territorial sanctions obligations issued by foreign jurisdictions, and in relation to sanctions compliance arrangements in majority-controlled overseas subsidiaries, entities and joint ventures, which are subject to the extra-territorial application of COTUNA and Australian autonomous sanctions requirements.

Organisations that are not members of the ABA may have regard to these guidelines as industry good practice, particularly where their industry body has not issued specific guidelines to them on sanctions.

The guidelines have been developed with reference to other regulatory regimes, including but not limited to the measures put in place in response to obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth.)* ("AML/CTF") and Rules, which are the subject of separate industry guidance.



These guidelines will have impact on operational areas, but it is expected that more detailed internal policies and guidance will be developed, specifically tailored to suit the needs of member banks, using these guidelines as a guide to good practice.

Compliance with sanctions requirements is also part of good practice in corporate and social responsibility.

## 2. Sanction Types

Sanctions are punitive or coercive measures against a state or its nationals, including bodies corporate. Australia has in place two types of sanctions, multi-lateral and autonomous.

### 2.1 Multi-Lateral

The United Nations (UN) Security Council imposes sanctions to respond to situations that pose a threat to international peace and security. All UN member states are obliged to implement UN Security Council sanctions domestically. Australia implements its obligations under UN law through COTUNA and the *Suppression of the Financing of Terrorism Act 2002 (Cth.)* ("SOFTA").

UN Security Council sanctions requirements can include arms embargoes, travel sanctions, financial restrictions, civil aviation restrictions and import/export bans of certain commodities. Sanctions are also imposed against designated persons and may also include downgrading or suspension of diplomatic ties.

### 2.2 Autonomous Sanctions

Australia and a number of other countries impose autonomous sanctions in support of their foreign policy objectives.

## 3. Designated Persons

A 'designated person' is any individual, group or entity, including bodies corporate, which appears on a list relating to sanctions issued by the United Nations Security Council (UNSC), by Australia pursuant to United Nations resolutions or issued under Australian autonomous sanctions.

The measures imposed on designated persons can include targeted financial sanctions, travel restrictions and targeted arms embargoes. A designated person may be subject to any or all of these measures, but may not always be subject to targeted financial sanctions.

As designated persons lists are frequently updated, they should be monitored on a regular basis.

## 4. Offences

It is an offence to make an asset available to designated persons or to deal in proscribed assets that are subject to financial restrictions. The offences include strict liability offences for an entity such as a bank if, without having taken reasonable precautions and due diligence, they are involved in:

- The use or dealing with a designated person's assets;
- Making assets available to a designated person;
- Contravening UN sanction enforcement laws in relation to financing of goods or services

Through their sanctions due diligence programs, ABA members may identify designated persons who are not subject to financial restrictions and/or other restrictions relevant to the activity being undertaken. ABA members should have in place procedures to manage this risk, as part of their sanctions risk management processes.



Improper conduct by an employee could leave both the employee and the employer open to prosecution if the employee's actions were judged to be collusive or negligent. This includes individual criminal liability for employees, even if the proven application of due diligence and reasonable precautions exonerates the employer.

These guidelines provide advice to ABA members in relation to what may constitute reasonable precautions and sufficient due diligence in complying with COTUNA and its attendant regulations, as well as the requirements resulting from Australian autonomous sanctions.

## 5. General Obligations

An ABA member should have procedures in place to:

- Adequately identify all relevant sanctions requirements;
- Determine the extent of any relevant sanctions that apply to it or any of its subsidiaries and international operations;
- Actively manage and document compliance with the sanctions requirements under COTUNA and attendant regulations;
- Train all relevant staff on bank sanctions obligations;
- Report any sanctions breaches as required by local and foreign laws;
- Have procedures to comply with any information request from government agencies or other parties involved in the transaction chain in a timely manner; and
- Have appropriate levels of senior management oversight and approval of any policy or procedures that are implemented as a result of these guidelines.

## 6. Sanctions Due Diligence

Member organisations must first consider their obligations under COTUNA and attendant regulations before considering the application of these guidelines to their businesses, branches and subsidiaries.

Due diligence needs to be applied consistently and in a transparent manner. ABA members should be aware that certain sanctions apply to non-listed persons acting at the direction of or on behalf of listed persons, or owned or controlled by listed persons.

Sanctions due diligence should be undertaken with respect to:

- Payments;
- Customers; and
- Trade Transactions.

## 7. Payment Due Diligence

Payment due diligence is the filtering of international SWIFT payments against lists of designated persons to ensure that inward and outgoing payment messages are not for and do not otherwise involve a designated person or entity subject to financial restrictions.

ABA members should filter the names of the beneficiary, remitter and intermediaries of an inward or outward payment, or the information contained within the beneficiary, remitter and intermediaries fields of the inward or outward payment message, against designated person lists.

In certain circumstances it is permissible or mandatory to handle payments involving designated persons subject to financial restrictions. These payments require specific authorisation by the Australian government agency responsible for administering the relevant sanction obligations. Where a



payment involves a designated person, ABA members should not process the transaction and refer the matter to the relevant Australian government agency for authorisation.

Where an ABA member is acting as an intermediary bank for another Australian financial institution and there is a potential match against the designated person lists for a beneficiary on an inward payment, the ABA member should have processes in place to facilitate the transaction, with notification to the beneficiary's bank of the potential match.

Appropriate due diligence is to be conducted by the bank that has the relationship with the beneficiary and holds the information necessary to determine whether or not the match requires referral to the relevant Australian government agency.

In order to control their risk of undertaking a sanctioned payment, ABA members should consider whether it is appropriate to filter other inward or outward payment message fields to identify links to countries sanctioned by Australia.

In relation to domestic payments, the controls deployed by Australian banks for customer screening and trade finance due diligence, as set out in other sections of these guidelines, should adequately mitigate the risks of undertaking or receiving a sanctioned payment.

ABA members should ensure that all outward payment messages they create contain all relevant beneficiary, remitter and intermediary names.

Where required beneficiary and remitter information is missing from an inward payment message from an institution in a country sanctioned by Australia, the ABA member should have processes in place to either reject the inward payment message or request and obtain the missing information, then verify that the information provided does not relate to a designated person or sanctioned activity, before processing the payment message and/or releasing the payment.

Where multiple transfers are bundled into a single batch file, the payment message may not contain the beneficiary and remitter information. ABA members should have processes in place to ensure that such payments do not relate to sanctioned activity, or otherwise involve designated persons.

## 8. Customer Due Diligence

Customer due diligence requires collecting information about a customer, and checking it to confirm that the customer, or in certain circumstances a person connected to the customer, if information is collected as part of other due diligence processes, is not a designated person.

ABA members should scan the names of customers against designated person lists during the establishment of a relationship or account, and periodically over the course of the relationship. Where an ABA member identifies a customer as being a designated person who is subject to financial restrictions, they must freeze or block the assets held on behalf of the designated person, and must notify the Australian government agency responsible for administering the relevant sanctions obligations.

In certain circumstances it is permissible or mandatory to hold accounts for, or on behalf of designated persons subject to financial restrictions. This requires specific authorisation by the Australian government agency responsible for administering the relevant sanctions obligations. Where an ABA member is considering opening or maintaining an account for a designated person, they should refer the matter to the relevant Australian government agency.

In order to manage their risk of being involved in activity subject to sanctions, ABA members should also consider whether it is necessary to obtain and assess business information about customers.

### 8.1. "High Risk" Customers

Where an ABA member is aware that a customer has substantive business activities involving sanction countries, that customer should be classified a "High Risk" customer.



Where an ABA member is aware that a customer is in an industry that involves goods or services, which if provided to a particular sanctioned country would be subject to sanction restrictions, that customer should be classified a “High Risk” customer.

If a “High Risk” customer is an entity other than an individual person, and is domiciled or registered in a sanctioned country, ABA members should, during the establishment of the relationship, collect the names of beneficial owners<sup>1</sup> and controllers<sup>2</sup> of such customers, in line with their AML/CTF procedures, and scan the names against designated person lists.

ABA members should also have processes in place to periodically update the list of names of beneficial owners and controllers collected on these customers, and should periodically scan against the designated person lists, the names collected or updated over the course of the relationship with the customers concerned.

## 8.2. Other Customers

Where a customer not assessed as “High Risk” is an entity other than an individual person and is registered in an overseas country or jurisdiction; and, due to other legislative requirements (eg AML/CTF), the names of that person’s beneficial owners and controllers have already been collected, ABA members should scan those names against the current designated person lists, during the establishment of the relationship or account.

Where a customer not assessed as “High Risk” is an entity other than an individual person and is domiciled in Australia or registered by ASIC; and, beneficial owner and controller names are collected due to other (eg AML) legislative requirements, ABA members do not need to scan these names against the current designated person lists during the establishment of the relationship or account.

## 9. Trade Transactions Due Diligence

Trade transactions due diligence requires that the transaction documentation be reviewed to confirm that the transaction does not involve a designated person, or involves trade in goods or services controlled under sanctions programs.

ABA members should ensure that all parties (including intermediaries) to the transaction are not designated persons, by checking the names of the parties against the appropriate list of designated persons.

Where an ABA member engages in trade related transactions they should have in place processes to identify when a transaction involves a sanctioned country, and to confirm that all transactions that involve a sanctioned country do not breach sanctions prohibitions or restrictions.

Where an ABA member engages in trade related transactions, they should have in place processes to identify business activities and trade in goods or services which, if they involve a sanctioned country, may be subject to sanctions prohibitions or restrictions, and must ensure that transactions do not breach sanctions controls.

## 10. Permit or Licensed Transactions

ABA members should have processes in place that ensure if they become involved in the provision of financial services that require a permit or licence under COTUNA, the appropriate application is made to DFAT.

An ABA member should ensure that sufficient information is provided in that application for DFAT to make an assessment of the licence or permit request. Failure to provide adequate information may leave an ABA member exposed to the offence of providing false or misleading information.



Where an ABA member engages in financial services related to the trade in restricted goods or services to a sanctioned country by a customer, the ABA member must obtain from the customer full details of the transaction and the permit granted by DFAT. The ABA member must then:

- Confirm with DFAT the existence of the permit;
- Check that the details of the permit correspond with the details of the transaction provided by the customer; and
- Ensure that the customer includes the name of the ABA member in the permit granted by DFAT, apply to DFAT themselves for a permit for the financial services relating to the permitted transaction; or, request that DFAT include the ABA member in the original permit for the transaction.

ABA members should have processes in place to manage risk in situations where they become involved in the provision of financial services relating to trade in goods and services outside Australia, which are subject to sanction restrictions and require an appropriate permit or licence being granted.

The processes should include verifying that:

- A permit or licence has been granted;
- The counterparty holding the permit or licence was the party to whom it was issued; and
- The permit relates to the trade in goods or services for which the financial services are provided

Where the transaction is trade related the ABA member must check the details of the transaction provided by the customer against any and all documentation it holds in relation to the transaction. Any discrepancy should be investigated and where appropriate reported to DFAT.

## 11. Notification to Relevant Australian Government Agencies

Where an ABA member wishes to proceed with a transaction that involves a designated person subject to financial restrictions, or the provision of controlled goods or services to a sanctioned country, they must seek approval from the Australian government agency responsible for administering the relevant sanction obligations before undertaking the transaction.

There is no general duty to report transactions declined due to sanctions requirements. There may be circumstances where an ABA member may wish to report a declined transaction to the relevant Australian government agency, or where an AML/CTF suspicious matter obligation arises, which would require a report to AUSTRAC.

## 12. Structuring Transactions to Avoid Sanctions

ABA members must not knowingly structure transactions for their customers in a way that would result in the avoidance of sanction prohibitions or restrictions, or result in the concealment of (potential) sanction breaching activity.

Where an ABA member has concerns as to whether or not the transaction or financial services it is offering are being used to avoid, circumvent, or conceal activity that may breach sanctions, the ABA member should consult their own legal advisors or the relevant government agency.

## 13. Cooperation with law enforcement and regulatory bodies

ABA members are committed to cooperating with regulatory and law enforcement bodies.

ABA members will work with relevant government agencies, such as DFAT and the Australian Federal Police (AFP) to develop protocols to aid compliance with, and enforcement of, Australia's sanctions



regime. The protocols will build on the measures agreed between the ABA and the AFP to assist ABA members with the execution of their responsibilities under SOFTA.

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1. **Beneficial Owner**, in respect of a company, means any individual who owns through one or more shareholdings more than 25 per cent of the issued capital in the company.
2. **Controller**, means directors of the body corporate, partners of a partnership, and the chairman, secretary and treasurer of an association or co-operative.