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Guernsey Financial Services Commission

INSTRUCTION (NUMBER 03/2014) FOR FINANCIAL SERVICES BUSINESSES

UN, EU AND OTHER SANCTIONS

1 August 2014

This Instruction is made under section 49.(7) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

The legislation in respect of sanctions measures against Afghanistan and Al-Qaida has been amended to impose a reporting requirement on financial service businesses. This instruction is being issued to reinforce the requirements of the amended legislation, stated below, and the rules in the Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing (“the Handbook”).

In order to comply with the requirements of the Legislation the Commission has included with this Instruction an amended Handbook Chapter 14 “UN, EU and Other Sanctions”. A copy of the revised Chapter has also been issued on the Commission’s website, www.gfsc.gg. The revised Chapter should be adopted immediately.

Legislation

- The Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011
- The Afghanistan (Restrictive Measures) (Guernsey) Ordinance, 2011
- The Afghanistan (Restrictive Measures) (Alderney) Ordinance, 2011
- The Afghanistan (Restrictive Measures) (Sark) Ordinance, 2011
- The Al-Qaida (Restrictive Measures) (Guernsey) Ordinance, 2013
- The Al-Qaida (Restrictive Measures) (Alderney) Ordinance, 2013
- The Al-Qaida (Restrictive Measures) (Sark) Ordinance, 2013

Action to be taken by Financial Services Businesses

The Commission requires the Board of each financial services business to:

- a) review business compliance arrangements against the requirements of this Instruction;
- b) review and revise policies, procedures and controls in accordance with the legislative obligations of the legislation;
- c) replace existing copies of Chapter 14 of the Handbook with the revised Chapter attached to the Instruction and published on the Commission's website; and
- d) delete Appendix L of the Handbook.

When undertaking the review Boards must note that, in accordance with paragraph 30 of the Handbook, a financial services business must ensure that the Commission is advised of any material failure to comply with the provisions of the Regulations and the rules in the Handbook and of any serious breaches of the policies, procedures or controls of the financial services business.

The action taken by each financial services business under this Instruction will be reviewed during on-site visits and by other means as necessary.

For further information regarding sanctions legislation and the associated obligations, financial services businesses should refer to the sanctions webpage of the States of Guernsey which can be accessed at <http://www.gov.gg/sanctions>.

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CHAPTER 14 – UN, EU AND OTHER SANCTIONS

Applicable Legislation

The Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011

Appendix K

<http://www.guernseylegalresources.gg/article/98999/Terrorist-Asset-Freezing-Bailiwick-of-Guernsey-Law-2011>

The Afghanistan (Restrictive Measures) (Guernsey) Ordinance, 2011

<http://www.guernseylegalresources.gg/article/93433/Afghanistan-Restrictive-Measures-Guernsey-Ordinance-2011>

The Afghanistan (Restrictive Measures) (Alderney) Ordinance, 2011

<http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=70430&p=0>

The Afghanistan (Restrictive Measures) (Sark) Ordinance, 2011

<http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=78298&p=0>

The Al-Qaida (Restrictive Measures) (Guernsey) Ordinance, 2013

<http://www.guernseylegalresources.gg/article/108694/Al-Qaida-Restrictive-Measures-Guernsey-Ordinance-2013>

The Al-Qaida (Restrictive Measures) (Alderney) Ordinance, 2013

<http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=84805&p=0>

The Al-Qaida (Restrictive Measures) (Sark) Ordinance, 2013

<http://www.guernseylegalresources.gg/article/109720/Al-Qaida-Restrictive-Measures-Sark-Ordinance-2013>

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LEGISLATION

In addition to the Regulations, and the Rules and Guidance elsewhere in the Handbook, there are also some dedicated enactments which implement sanctions measures relating to terrorist financing and which have specific requirements with regard to making funds or financial services available to listed persons (“the terrorist asset freezing enactments”).

The text of the Terrorist Law 2011, the Afghanistan Ordinances and the Al-Qaida Ordinances is accessible by the hyperlinks displayed under applicable legislation.

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14. UN, EU AND OTHER SANCTIONS

A financial services business must comply with the Rules in addition to the terrorist asset freezing enactments. In order to assist financial services businesses to understand the contents of the terrorist asset freezing enactments, some of the text below paraphrases the prohibitions which must be observed. Any paraphrasing of that text within this chapter represents the Commission's own explanation of the terrorist asset freezing enactments and is for the purposes of information and assistance only. That paraphrasing does not detract from the legal effect of the terrorist asset freezing enactments or from their enforceability by the courts. In case of doubt you are advised to consult a Guernsey Advocate.

The paraphrased text is contained within a clear box in order to provide clarity whilst the rules which must be followed are boxed and shaded for ease of reference.

14.1 Objectives

383. This chapter outlines the statutory provisions concerning UN, EU and other Sanctions, the policies, procedures and controls necessary in respect of such sanctions and the provision of information on sanctions and freezing of funds notices.

14.2 The Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011 ("Terrorist Law 2011")

384. The Terrorist Law 2011 implements United Nations Security Council Resolution 1373 and Council Regulation (EC) No. 2580/2001 ("the EU Regulation"). The EU regulation imposes restrictive measures directed against certain persons and entities with a view to combating terrorism.

385. The Terrorist Law 2011 prohibits any person from:

- (a) dealing with funds or economic resources owned, held or controlled by a designated person, knowing or having reasonable cause to suspect such funds or economic resources are being dealt with;
- (b) making funds or financial services available (directly or indirectly) to a designated person knowing or having reasonable cause to suspect, the funds or financial services are being made so available;
- (c) making funds or financial services available to any person for the benefit of a designated person, knowing or having reasonable cause to suspect the funds or financial services are being made so available;
- (d) making economic resources available (directly or indirectly) to a designated person, knowing or having reasonable cause to suspect that the economic resources are being made so available, and that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services;
- (e) making economic resources available to any person for the benefit of a designated person, knowing or having reasonable cause to suspect, that the economic resources are being made so available;
- (f) intentionally participating in activities, knowing that the object or effect of such activities (whether directly or indirectly) is to circumvent or facilitate the contravention of any of the above prohibitions.

386. A designated person means –

- (a) a person designated by Policy Council under the Terrorist Law 2011; or
- (b) a person who is the subject of a designation under and within the meaning of the UK's Terrorist Asset-Freezing etc. Act 2010; or
- (c) a natural or legal person, group or entity included in the list provided for by Article 2(3) of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (as that Regulation is amended from time to time).

387. When determining whether a particular individual or legal person is a designated person, financial services businesses must consult the full list of financial sanctions targets which may be found in the financial sanctions section of the HM Treasury website at: http://www.hm-treasury.gov.uk/fin_sanctions_index.htm

388. The list referred to above is a consolidated list of specified countries, organisations and individuals who have been designated by the United Nations, European Union and United Kingdom under legislation relating to current financial sanctions regimes.

389. Any legal or natural persons designated by the Policy Council who are not on the consolidated lists are named in a separate list maintained by the Policy Council which is accessible on the States of Guernsey website.

390. The disclosure and other requirements of the Terrorist Law 2011 are separate to the requirements of the Disclosure Law and the Terrorism and Crime Law.

14.3 The Afghanistan (Restrictive Measures) (Guernsey) Ordinance 2011 together with corresponding Ordinances for Alderney and Sark (“Afghanistan Ordinances”), and the Al-Qaida (Restrictive Measures) (Guernsey) Ordinance, 2013 and corresponding Ordinances for Alderney and Sark (“Al-Qaida Ordinances”).

391. The Afghanistan Ordinances and the Al-Qaida Ordinances implement United Nations Security Council Resolution 1267 (“the original Resolution”). The original Resolution was given effect within the EU by Council Regulation (EC) No. 881/002 (“the original Regulation”) which was in turn implemented in the Bailiwick by the Al-Qaida and Taliban (Freezing of Funds) (Guernsey) Ordinance 2011 and corresponding Ordinances for Alderney and Sark. The original Resolution and Regulation, as initially enacted, applied to parties associated with both the Taliban and with Al-Qaida. In 2011, after the death of Osama Bin Laden, the United Nations Security Council created two separate regimes for the Taliban and Al-Qaida. This was done by creating a new regime specific to Afghanistan under United Nations Security Council Resolution 1988, which was based on the list of parties associated with the Taliban that had been listed under the original Resolution. This change was reflected in a corresponding EU Regulation, namely Council Regulation (EU) No. 753/2011 which was then implemented in the Bailiwick by the Afghanistan

Ordinances. The original Regulation continued to apply to parties associated with Al-Qaida and it is currently given effect in the Bailiwick by the Al-Qaida Ordinances.

392. The EU Regulations impose restrictive measures in respect of designated persons, that is, persons, groups or entities designated by the relevant United Nations Sanctions Committees. The lists maintained by those Committees can be accessed at:

<http://www.un.org/sc/committees/1988/list.shtml> and

http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml.

Persons named in those lists are included in the lists at Annex 1 to each of the two EU Regulations.

393. In order to determine whether any person, group or entity is a designated person, financial services businesses must consult the UN lists as well as the consolidated versions of Annex 1 to each of the two EU Regulations which are accessible at: <http://eur-lex.europa.eu/homepage.html>

394. The lists in Annex 1 to each of the two EU Regulations are consolidated lists of individuals, groups and entities subject to the sanctions measures and consist of two sections, specified below:

- (a) individuals associated with the Taliban or Al-Qaida, as the case may be;
- (b) entities and other groups and undertakings associated with the Taliban or Al-Qaida, as the case may be.

395. The Afghanistan Ordinances and the Al-Qaida Ordinances prohibit any person from:

- (a) dealing with funds or economic resources belonging to, or owned, held, or controlled by, a designated person;
- (b) making available, directly or indirectly, to or for the benefit of a designated person funds or economic resources;
- (c) participating knowingly and intentionally in activities with the aim of circumventing the prohibitions, or enabling or facilitating their contravention.

396. The prohibitions in the Afghanistan Ordinances and the Al-Qaida Ordinances are subject to certain exceptions, such as payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account, and payment of interest on frozen funds.

397. In addition, the prohibitions do not apply to anything done under the authority of a licence granted by the Policy Council.

14.4 Licences

398. The Policy Council may grant a licence permitting the release of specified funds which would otherwise be caught by the provisions of the Terrorist Law 2011 and of the Afghanistan and Al-Qaida Ordinances. No offence is committed in respect of such funds provided that the terms of the licence are complied with.

399. The Policy Council will entertain applications for licences under the Terrorist Law 2011 and the Afghanistan and Al-Qaida Ordinances from any party. Such licences will normally only be issued in respect of funding for necessities such as food, medical treatment and accommodation, but funding for extraordinary expenses will also be considered.

14.5 Obligation to Report

400. Financial services businesses should note that, under the Terrorist Law 2011 and the Afghanistan and Al-Qaida Ordinances, it is a criminal offence for a financial institution to fail to disclose to the Policy Council its knowledge or suspicion that a customer or potential customer is a designated person or has committed any of the offences set out in the Law or Ordinances. This requirement is additional to the reporting obligation in the Disclosure Law and the Terrorism and Crime Law.

14.6 Obtaining information

401. It should be noted that neither the European Union nor the United Nations has a notification facility for advising when the lists of designated persons maintained by them are updated. However, the consolidated list provided by HM Treasury referred to above includes designations by the European Union and the United Nations and it is kept up to date.

402. The Asset-Freezing Unit of HM Treasury offers a free subscription facility for notification by e-mail when a financial sanctions-related release is published on its website and the consolidated list of targets is updated. Information on how to subscribe for this service is provided on the UN, EU and other sanctions section of the Commission's website, together with the full text of the terrorist asset freezing enactments, information regarding the obligations contained within the enactments and links to both the UN Sanctions Committee lists and the consolidated list of asset freeze targets provided by HM Treasury.

14.7 Information on Guernsey's Sanction Regime

403. In addition to the sanctions regime implemented by the terrorist asset freezing enactments, financial services businesses should be aware that Guernsey has enacted legislation to implement a wide range of country-specific sanctions. Sanctions of this kind are a tool used increasingly for enforcing foreign policy by putting pressure on a State or entity in order to maintain or restore international peace and security. Often, sanctions are used as an alternative to force.

404. The United Nations and the European Union are key bodies that adopt sanctions measures. Sanctions measures may include:

- financial sanctions including asset freezes and investment bans;
- travel bans;
- import and export bans;
- arms embargos; and
- trade restrictions.

405. Although Guernsey's sanctions regime is based on legislation that broadly mirrors equivalent legislation in the UK, it is completely separate from, and operates independently of, the UK regime.

406. Notwithstanding Guernsey's independent sanctions regime, trans-jurisdictional issues may arise at times. Many transfers of funds will be made to or from another jurisdiction that operates a sanctions regime and in such cases a licence, authorisation, or notification may be required in both jurisdictions. In addition, the legislative frameworks of some jurisdictions contain provisions that have extra-territorial effect, so that they may apply to some of the parties involved in a Guernsey transaction on the grounds of nationality or place of incorporation even if the jurisdiction in question is not involved in that transaction.

407. Financial services businesses in Guernsey should be aware, in particular, of sanctions implemented by the US Office of Foreign Assets Controlled (OFAC). OFAC regulations can be applied to:

- U.S. citizens and permanent resident immigrants regardless of where they are located;
- persons and entities within the United States;
- persons and entities trading in U.S. Dollars;
- U.S. incorporated entities and their foreign branches;
- in the cases of certain sanctions, such as those regarding Cuba and North Korea, all foreign subsidiaries owned or controlled by U.S. companies;
- foreign persons in possession of U.S. origin goods in some cases.

408. Guernsey has established a Sanctions Committee to co-ordinate sanction activities, ensure information is distributed publicly and to provide advice on sanctions. The committee reports to the External Relations Group of the Policy Council and Guernsey's AML/CFT Advisory Committee.

409. The External Relations Group is mandated on behalf of Policy Council to:

- Agree to implement new sanctions measures;
- License frozen funds; and
- Administer notifications and authorisations (e.g. those under the Iran (Restrictive Measures) (Guernsey) Ordinance, 2010).

410. The Group also works with HM Treasury and the UK's Foreign and Commonwealth Office.

HANDBOOK FOR FINANCIAL SERVICES BUSINESSES ON COUNTERING FINANCIAL CRIME AND TERRORIST FINANCING

RECORD OF CHANGES

CHAPTER 14 UN, EU AND OTHER SANCTIONS

Point No.	Title	Guidance / Rule Reference	Change
14.1	Objective	383	No change.
14.2	The Terrorist Asset-Freezing (Bailiwick of Guernsey) Law 2011	384 – 388	No change.
		389	Revised to provide reference to Policy Council list maintained on States of Guernsey website.
		390	No change.
14.3	The Afghanistan (Restrictive Measures) (Guernsey) Ordinance 2011 together with corresponding Ordinances for Alderney and Sark (“Afghanistan Ordinances”), and the Al Qaida (Restrictive Measures) (Guernsey) Ordinance, 2013 and corresponding Ordinances for Alderney and Sark (“Al-Qaida Ordinances”).	391	Revised to make reference to the Afghanistan (Restrictive Measures) (Guernsey) Ordinance 2011 with corresponding ordinances for Alderney & Sark and the Al-Qaida (Restrictive Measures) (Guernsey) Ordinance, 2013 and corresponding ordinances for Alderney and Sark.
		392	Guidance includes references to UN Resolutions & EU Regulations.
		393	Added website links to access UN Sanctions Committees designated persons lists.
		394	Added reference to UN Resolutions & EU Regulations and added website link.
		395	Revised to include reference to Annex 1 to each of the two EU Regulations.
		396	Added reference to the Taliban to points (a) & (b).
		397	Revised reference to Ordinances. Removed reference to 2011.
		396	Added reference to the Afghanistan Ordinance and removed year from current reference to Al-Qaida Ordinance.
		397	No change.

HANDBOOK FOR FINANCIAL SERVICES BUSINESSES ON COUNTERING FINANCIAL CRIME AND TERRORIST FINANCING

RECORD OF CHANGES

CHAPTER 14 UN, EU AND OTHER SANCTIONS

Point No.	Title	Guidance / Rule Reference	Change
14.4	Licences	398 & 399	Added reference to the Afghanistan Ordinance and removed year from current reference to Al-Qaida Ordinance.
14.5	Obligation to Report	400	Added reference to Afghanistan and Al-Qaida Ordinances.
14.6	Obtaining Information	401	Revised to include reference to EU. Revised to state that the consolidated list provided by HM Treasury is kept up to date rather than updated regularly.
		402	Reference to list revised to state lists.
14.7	Information on Guernsey's Sanction Regime	403 - 410	No change.
Appendix L			Delete Appendix