



Sanctions issues for Australian charities

Sanctions Section
Department of Foreign Affairs and Trade





What are sanctions?

‘Measures not involving the use of armed force’, including ‘complete or partial interruption of economic relations.’ (*Charter of the United Nations*, Article 41.)

‘Measures not involving the use of armed force’ imposed ‘in situations of international concern’, including ‘the grave repression of the human rights or democratic freedoms of a population by a government, or the proliferation of weapons of mass destruction (WMD) or their means of delivery, or internal or international armed conflict.’ (*Autonomous Sanctions Bill 2010*, explanatory memorandum.)



The two types of sanctions regimes



United Nations Security Council (UNSC) sanctions regimes

- Imposed by the UNSC in response to a threat to the peace, breach of the peace, or act of aggression. (*Charter of the United Nations*, Article 39.)
- Implemented by all United Nations Member States, including Australia, as a matter of international law. (*Charter of the United Nations*, Article 25.)

Autonomous sanctions regimes

- Imposed and implemented by a country as a matter of foreign policy.
- May supplement a UNSC sanctions regime, or be imposed in relation to a situation for which there is no UNSC sanctions regime.



Current sanctions regimes



UNSC sanctions

- Al-Qaida
- CAR
- Cote d'Ivoire
- Counter-terrorism
- DRC
- Eritrea
- Guinea-Bissau
- Iraq
- Lebanon
- Liberia
- Somalia
- South Sudan
- Sudan
- The Taliban
- Yemen

Both

- DPRK
- Iran
- Libya

Australian autonomous sanctions

- Burma
- Former Yugoslavia ¹
- Syria
- Ukraine and Russia
- Zimbabwe

¹ Targeted against persons associated with the former Milosevic regime.



Types of sanctions measures



Each sanctions regime is different and responds to the particular situation in a country or a particular matter of international concern.

“Targeted financial sanctions” and travel bans target particular persons or entities, and include prohibitions on:

- dealing with a ‘designated person or entity’; or
- using or dealing with a ‘controlled asset’.

Some sanctions regimes target particular goods or services, or other commercial activities for example:

- providing a ‘sanctioned service’; or
- making a ‘sanctioned supply’ of ‘export sanctioned goods’.

While not formally a sanctions measure, there is also a general prohibition on financial transactions of \$20,000 or more with Iran.



Targeted financial sanctions: “Designated persons and entities”



Persons or entities can be designated:

- by the **UN Security Council** or a **UN Security Council Sanctions Committee**
 - UN Security Council listings have immediate and automatic legal effect under Australian law.
- by the **Minister for Foreign Affairs** for:
 - UN Security Council Resolution 1373 (counter-terrorism)
 - Australian autonomous sanctions.

There are different criteria for designation for each sanctions regime but all designated persons and entities are listed in the **DFAT Consolidated List**.



Targeted financial sanctions: Dealing with 'designated persons' example



UNSC sanctions in relation to Al-Qaida, the Taliban and res. 1373

A person is generally prohibited from directly or indirectly making an asset available to, or for the benefit of

- a 'designated person or entity';
- a person or entity acting on behalf of, or at the direction of, a 'designated person or entity'; or
- an entity owned or controlled by a 'designated person or entity'.

(Charter of the United Nations (Sanctions – Al-Qaida) Regulations 2008, section 11, Charter of the United Nations (Sanctions – the Taliban) Regulation 2013, section 10, Charter of the United Nations Act 1945, section 21.)

An 'asset' is an asset or property of any kind, whether tangible or intangible, movable or immovable.

(Charter of the United Nations Act 1945, section 2.)



Targeted financial sanctions: Using or dealing with assets example



UNSC sanctions in relation to Al-Qaida, the Taliban and res. 1373

A person who holds an asset of a designated person or entity is prohibited from using or dealing with it, or allowing or facilitating it to be used or dealt with.

(Charter of the United Nations (Sanctions – Al-Qaida) Regulations 2008, section 11, Charter of the United Nations (Sanctions – the Taliban) Regulation 2013, section 10, Charter of the United Nations Act 1945, section 20.)



Other sanctions measures: Sanctioned exports and imports examples



UNSC sanctions in relation to Liberia (exports example)

Australian law prohibits the direct or indirect supply, sale or transfer to Liberia of the following 'export sanctioned goods' without a sanctions permit:

- arms or related matériel.

(Sections 5, 7, 8 and 9 of the Charter of the United Nations (Sanctions – Liberia) Regulations 2008)

UNSC sanctions in relation to Somalia (imports example)

Australian law prohibits the procurement from Somalia, or from a person or entity in Somalia, of the following 'import sanctioned goods':

- charcoal.

(Sections 5A and 15A of the Charter of the United Nations (Sanctions – Somalia) Regulations 2008)



Penalties



Contravening Australian sanction laws

- for individuals: maximum 10 years imprisonment and a fine the greater of \$450,000 or three times the transaction value
- for bodies corporate: a fine the greater of \$1.8 million or three times the transaction value
 - **strict liability offence for bodies corporate** (meaning it is not necessary to prove that the body corporate intended to commit the offence)
 - it is, however, a defence for bodies corporate to show they took **reasonable precautions** and exercised **due diligence**.





Steps you can take

- Comprehensive guidance on the DFAT web site at **www.dfat.gov.au/sanctions**, where you can:
 - find out what sanctions measures may apply to your situation
 - check the **DFAT Consolidated List**, which includes the names of all designated persons and entities
 - **subscribe** to receive notification of Consolidated List updates by e-mail
 - inquire about whether a specific activity requires a permit through the **On-line Sanctions Administration System**.
- **General contact point:** sanctions@dfat.gov.au
 - e-mail to request access to free name matching software **LinkMatchLite**.

