



Instruction Guide

Subject: Designated Persons Listings and Sanctions Laws

Date: June 2010

Overview

Canada's legislative measures against terrorists, terrorist groups and other listed and sanctioned individuals and entities ("Designated Persons") are contained in various Canadian statutes and regulations. These impose prohibitions, disclosure and other compliance obligations targeting specific countries, individuals and entities, and their financial activities. These legislative measures apply to all Canadians including Canadians resident outside Canada, and more particularly to all financial institutions, including federally regulated financial institutions ("FRFIs")¹.

This Instruction Guide addresses Canadian legislative measures that: identify Designated Persons; prohibit activity with respect to assets of Designated Persons; require disclosure of information concerning these assets to law enforcement authorities; and require reporting of aggregated values of these assets to financial regulators (which, in the case of FRFIs, is OSFI) ("Designated Persons Listings and Sanctions Laws" or "Laws").

FRFIs should note that other Canadian legislation may apply financial sanctions and that this legislation may include lists of designated persons. OSFI expects FRFIs to comply with all such legislation, which includes, for example, the [Special Economic Measures Act](#) ("SEMA") and the *Special Economic Measures (Burma) Regulations* and *Special Economic Measures (Zimbabwe) Regulations* under SEMA.

Compliance with the Laws requires that FRFIs implement the following types of control measures:

- Searching in FRFI records for individuals and entities designated by the Laws and subject to financial sanctions;
- Determining whether the FRFI is in possession or control of property of Designated Persons;
- Preventing prohibited activity with respect to property of Designated Persons (by freezing assets) and monitoring for and preventing prohibited transactions;

¹ FRFIs include Canadian branches of foreign institutions, which are subject to Canadian laws in respect of their business in Canada, and foreign branches of Canadian institutions which, in addition to being subject to any applicable foreign legislation, are also subject to Canadian laws outside Canada.



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- Disclosing information to the Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Service (CSIS) concerning property of Designated Persons in the FRFI's possession or control; and
 - Reporting to OSFI monthly on the aggregate value of property of Designated Persons in the FRFI's possession or control.

Information about individuals and entities that FRFIs collect and develop in the “know your client” process, and any other information at their disposal, must be used to determine whether an individual or entity on their records is a Designated Person since government agencies, including the Royal Canadian Mounted Police (RCMP) and Canadian Security Intelligence Service (CSIS), cannot assist FRFIs with the determination.

The Department of Foreign Affairs and International Trade Canada (DFAIT) and Department of Public Safety Canada (PS) are responsible for administering the Laws. In the interests of ensuring that FRFIs receive notice of required actions as soon as possible, OSFI notifies FRFIs of the Laws as they are enacted and amended, through its Web site. OSFI also maintains on its Web site up-to-date lists of Designated Persons named by the Laws that require the types of control measures outlined above.

This Instruction Guide does not impose additional compliance requirements. It aims to enhance FRFIs' understanding of their existing obligations under the Laws, to thereby assist FRFIs in reporting to OSFI and managing their reputation risks arising from the Laws. FRFIs must ensure that, in addition to following this guidance, they also fully comply with the Laws.

FRFIs are encouraged to contact DFAIT, PS and their own legal advisors as necessary, for further information about their responsibilities for compliance with the Laws, and for interpretations of terms defined in the Laws, such as “property”, for example.

This Instruction Guide was developed in consultation with other government agencies and departments.

OSFI does not expect to amend this Guide as the Laws change in the future. FRFIs are expected to ensure they have adequate procedures in place to comply with the existing and any future Laws on an ongoing basis.

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Compliance Management and the AML/ATF Compliance Program

OSFI expects the process of managing compliance with the Laws to be incorporated into, or referenced by, the FRFI's Legislative Compliance Management (LCM) framework for which the chief compliance officer is responsible (refer to Guideline E-13: [Legislative Compliance Management](#)). In some FRFIs², responsibility for the process for ensuring compliance with the Laws is assigned to the Chief Anti-Money Laundering Officer (CAMLO) designated under the [Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act](#) (PCMLTFA) and related regulations³.

Designated Persons Listings and Sanctions Laws [as at the date of this Guide]

Canada implements international sanctions and measures to combat terrorism through the following two Canadian statutes and regulations created pursuant to them:

1. The [United Nations Act](#) (UN Act) allows for the enactment of regulations implementing decisions of the United Nations Security Council (UNSC) (which are binding on all UN members) to list and apply sanctions to terrorists and others who threaten international peace and security. Pertinent regulations under the UN Act are:
 - *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* (RIUNRST);
 - *United Nations Al-Qaida and Taliban Regulations* (UNAQTR);
 - *Regulations Implementing the United Nations Resolutions on Iran* (RIUNRI); and
 - *Regulations Implementing the United Nations Resolutions on the Democratic People's Republic of Korea* (RIUNRDPRK)
2. Under the [Criminal Code](#), the Governor in Council may, on the recommendation of the Minister of Public Safety, place an entity on the list of terrorist entities if satisfied that the legal threshold outlined in s. 83.05(1) of the *Criminal Code* has been met. Pertinent regulations under the *Criminal Code* are the *Regulations Establishing a List of Entities* (Criminal Code Regulations).

Compliance with Designated Persons Listings and Sanctions Laws

As noted above, all FRFIs are obligated to comply with the Laws. FRFIs should note that the obligations outlined above apply regardless of whether the FRFI is also obligated to comply with the PCMLTFA.

² Property and casualty insurance companies and credit union centrals are not subject to the provisions of the PCMLTFA, although credit union centrals will be subject to the PCMLTFA under certain circumstances as of July 31, 2010.

³ Ibid.

OSFI publishes Notices on its Web site⁴ of new Laws and amendments to these as they come into force. Each Notice contains links to the Web sites where official information can be found. Official information includes the names and available personal identifiers of Designated Persons, if any, who are subject to the sanctions described in the Laws.

OSFI also maintains on its Web site up-to-date consolidations of UN and PS lists of Designated Persons named under the Laws. The consolidations are maintained in text and spreadsheet formats for downloading and printing. FRFIs can subscribe⁵ to e-mail notifications of updates to these lists, which are usually triggered by publicly announced updates by the UNSC or the PS.

Sanctions passed under the UN Act and the Criminal Code require FRFIs to determine on a continuing basis whether they are in possession or control of property owned or controlled by or on behalf of a listed person. There is no legislative definition of “on a continuing basis”. OSFI encourages FRFIs to download all lists on a weekly basis at a minimum, since the intervals between published list updates can vary significantly. FRFIs are expected to also download each list whenever OSFI publishes a notice of update to that list.

Activities Prohibited by the Laws

The Laws include prohibitions of certain activities by FRFIs, inside or outside of Canada. Examples of prohibited activities include:

- Providing or collecting funds with the intent or knowledge that the funds are to be used by a Designated Person;
- Dealing in property of a Designated Person;
- Entering or facilitating a transaction relating to property of a Designated Person;
- Making a financial service available for the benefit of a Designated Person; or
- Providing a financial service in respect of property of a Designated Person.

Activities Required by the Laws

The Laws include requirements that FRFIs, in and outside Canada, take certain actions to address prohibited activities. These actions are outlined below.

1. Search in FRFI records for Designated Persons:

The Laws require FRFIs to determine on a continuing basis whether they are in possession or control of property of a Designated Person. This obligation requires FRFIs to search their records on a continuing basis for Designated Persons.

⁴ Subscription to e-mail notification of new information published on OSFI's Web site is free of charge and available on the home page at http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?ArticleID=3.

⁵ To subscribe, visit OSFI's home page at www.osfi-bsif.gc.ca and choose *Subscription Centre*.

Since there is no legislative definition of “on a continuing basis”, FRFIs must decide for themselves what this requirement means. OSFI recommends that FRFIs interpret “on a continuing basis” to mean as often as reasonably possible. It is OSFI’s view that “continuing” may reasonably be interpreted as “weekly” at a minimum, and more frequently as circumstances dictate. Some, particularly larger, FRFIs search their records on a daily basis. New client names should be checked against Designated Persons lists as part of, or as soon as reasonably possible after, the process of opening new accounts or otherwise entering into new business relationships. OSFI expects FRFIs to screen existing clients’ names against newly Designated Persons’ names and/or amended names as soon as reasonably possible after initial listing or amendment.

OSFI expects FRFIs that are subject to the [*Proceeds of Crime \(Money Laundering\) and Terrorist Financing Regulations*](#) (“PCMLTFR”), to apply the foregoing search measures to so called “third parties” determined under the PCMLTFR as well as to clients. For clients that are corporations or other legal persons, OSFI expects such FRFIs to apply the search measures to recorded beneficial owners of client entities to the extent reasonably possible. Sanctions under the UN Act and Criminal Code may also apply to beneficial owners of client entities.

With respect to trusts, OSFI encourages FRFIs to search for Designated Persons among recorded settlors and trustees where these individuals or entities are not recorded as clients, to the extent reasonably possible.

A FRFI that uses the services of a third party to meet its searching obligation retains ultimate responsibility for compliance with the search requirements.

A FRFI that has officially closed for business and has transferred all existing client business may stop searching for Designated Persons at that time. However, a FRFI whose business is officially in “run-off” (for example, where a FRFI is not accepting new business but is servicing existing relationships or clients) must continue the searching.

In the event that Designated Persons are removed from official lists, FRFIs need not continue to search for such names, since the sanctions no longer apply to these individuals and entities.

Legislation comparable to the regulations enacted under the UN Act and the Criminal Code may be in effect in other jurisdictions where FRFIs may have branch operations. Unless the laws of such jurisdictions prevent this, OSFI expects FRFIs to ensure that client records, and “third party” records in the case of FRFIs that are subject to the PCMLTFA, in operations outside Canada, are searched on at least the same frequency as the FRFI’s client and “third party” records in Canada. OSFI expects FRFIs that are subject to the PCMLTFA to apply the search measures in operations outside Canada to recorded beneficial owners on the same basis, to the extent reasonably possible. Sanctions under the laws of other jurisdictions may also apply to beneficial owners of client entities.

OSFI encourages FRFIs that experience legal or other obstacles to searching for the names of Designated Persons in other jurisdictions of operation, to notify OSFI that this is the case.

It is the responsibility of the FRFI to make the determination of whether an individual or entity on its records is a Designated Person based on all the information available to it. Available information would include “know your client” information and the determination may require the use of enhanced due diligence measures in the event of uncertainty.

If a name on the FRFI’s records matches or substantially matches that of a Designated Person, the FRFI should compare the personal identifiers, if any, on the Designated Persons list (for example: date of birth, place of birth, nationality, address, etc.) to the full range of personal information in its records. This would include, for example, details or copies of documents used to verify the identity of an individual client or the existence of a client entity, or other verified or easily verifiable information required to be collected or otherwise obtained in the normal course of establishing or maintaining a business relationship, some or all of which was verified at the time of entering the relationship. Other steps to verify personal client information could include comparing it with publicly available information and/or contacting the client directly to update the client’s file. On the basis of all that information, along with any other pertinent information reasonably available, the FRFI should determine whether the person in its records is a Designated Person.

Government departments and agencies including the RCMP and CSIS do not assist FRFIs with name matching and identification of false positives.

FRFIs should be aware that an individual or entity on their records may not be a Designated Person even where the name fully matches one contained in a listing of Designated Persons. This may be the case where, for example, there are mismatches between the personal identifiers on the Designated Persons list and the personal information about the individual or entity on the FRFI’s records. Similarly, an individual or entity on the FRFI’s records may be a Designated Person even where the names do not match fully. This may be the case where, for example, the personal identifiers on the Designated Persons list and personal information about the individual or entity in the FRFI’s records match fully or very closely.

2. Determine whether the FRFI is in possession or control of property of a Designated Person

Once a FRFI determines that a person or entity on its records is a Designated Person, the FRFI must determine whether it is in possession or control of “property” of a Designated Person as defined in the Laws.

One object of the Laws is to remove the ability of Designated Persons to deal with their property. The definition of “property” varies in the Laws, but typically has a very wide definition. Broadly interpreted by OSFI on this basis, “property” would include any transferable financial interest of a Designated Person. For the purpose of guidance only, some examples of “property” would include:

- a positive balance in a deposit account or guaranteed investment certificate in the name of a Designated Person;
- a balance in excess of the amount owing on a credit card in the name of a Designated Person (or where a Designated Person is an authorized signer);

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- cash and securities in a brokerage account in the name of a Designated Person;
 - drawings by a Designated Person under a letter of credit;
 - an insurance benefit for which a claim for payment to a Designated Person has been determined by the FRFI to be otherwise valid; and
 - insurance premiums received by the FRFI for which a claim for return to a Designated Person has been determined by the FRFI to be otherwise valid.

FRFIs should consult their legal counsel before dealing in anything that could be interpreted as the property of a Designated Person.

3. Prevent prohibited activity with respect to property of a Designated Person [by freezing assets]

A key objective of the Laws is to ensure that FRFIs freeze any property of a Designated Person in the FRFI's possession or control, without prior notice to the Designated Person. The effect must be to suspend all activity with respect to the property (not deal with or otherwise dispose of the property) and ensure that it is not made available to, or for the benefit of, the Designated Person.

The freezing requirement is subject only to limited exceptions set out in the Laws. A clear process must be in place to ensure that, where necessary, decisions about exemptions can be made and authorized promptly.

To facilitate processing by DFAIT of possible future mistaken identity or delisting requests, FRFIs may wish to inform clients whose funds are frozen of the specific Regulation and Designated Person listing information under which the client's property was frozen.

4. Unfreezing property

A FRFI must not unilaterally unfreeze⁶ assets of a Designated Person in its possession. It may only unfreeze property if the Government issues a certificate allowing a Designated Person to use the property following an application for same made by the Designated Person, or if the Designated Person is de-listed. Similar processes may apply under foreign legislation in the case of branch operations outside Canada.

OSFI publishes notices of Designated Person de-listings on the OSFI Web site and also amends the consolidated lists on its Web site to reflect the deletions.

Information on how to de-list Designated Persons can be found on DFAIT's Web site. DFAIT's Web site also has information on how to obtain a mistaken identity certificate. FRFIs may wish to refer affected clients to DFAIT.

⁶ Unfreezing means reversing the suspension of access to, and resuming services in respect of, the previously frozen property.

5. Immediately disclose details of property of Designated Persons to law enforcement authorities

The Laws require FRFIs to immediately disclose to the RCMP and CSIS the existence of property in their possession or control that they have reason to believe is owned or controlled by or on behalf of a Designated Person. Contact information for the RCMP and CSIS is contained in pertinent Notices on OSFI's Web site. Neither the RCMP nor CSIS assist in determining a match.

In addition, reporting entities⁷ under the PCMLTFA who are required to report details of property or assets of Designated Persons under the *Criminal Code* or RIUNRST, to the RCMP and CSIS, are also required to file Terrorist Property Reports to FINTRAC. For further information concerning the requirement to report to FINTRAC, including instructions related to the preparation and submission of terrorist property reports, please refer to the FINTRAC Web site at: <http://www.fintrac.gc.ca/publications/guide/Guide5/5-eng.asp>.

Personal and other information concerning Designated Persons and/or property of Designated Persons should not be sent to OSFI. Reporting to OSFI is a separate matter and is described below.

Property values disclosed to the RCMP and CSIS should also be used as the value for all subsequent reporting to OSFI with respect to that property.

If a FRFI determines, after disclosing frozen property to the RCMP and CSIS, that the freezing was in error, or information in the disclosure (for example, the valuation of assets) was incorrect, the FRFI should make an amending disclosure immediately to the RCMP and CSIS. The FRFI should also correct the error in its monthly report to OSFI.

6. Monitor for and prevent prohibited transactions

To ensure that prohibited transactions are prevented, FRFIs are encouraged to implement appropriate transaction monitoring and screening processes to the extent reasonably possible. Examples of transactions for which screening would be appropriate include international and domestic payment transactions that may not involve an account.

Even after freezing the property of a Designated Person, FRFIs should continue to monitor for transactions with that Designated Person.

FRFIs should disclose information about the property involved in prohibited transactions to the RCMP and CSIS and, where property of a terrorist designated under the *Criminal Code* or the RIUNRST is involved, file a Terrorist Property Report with FINTRAC.

⁷ FRFIs that fall into this category are banks, authorized foreign banks, trust companies, loan companies and life insurance companies.

Some of the Laws prohibit transactions relating to specified countries and subject matter. FRFIs should classify transactions with connections to such countries and subject matter as high-risk and screen them through appropriate control filters prior to completion to ensure compliance with the prohibitions.

7. Report to OSFI monthly on the value of property of Designated Persons in the FRFI's possession or control

The Laws require financial institutions to report information monthly to their primary regulator (which, in the case of FRFIs, is OSFI) about frozen property of Designated Persons, including the aggregate dollar value of the property held. The Laws also require a "nil" report to be filed if no property is held.

FRFIs must file two forms each month: A short or long Form 525 and a short or long Form 590. The short forms of 525 and 590 are for "nil" reports, which are to be used when there is no frozen property to be reported. The long forms are for reporting on frozen property of a Designated Person.

OSFI Form(s) 525 must be completed and filed with respect to property frozen pursuant to requirements of the Laws concerning terrorism⁸. OSFI Form(s) 590 must be completed and filed with respect to property frozen pursuant to requirements of the Laws concerning specific countries with respect to nuclear proliferation activities⁹.

The monthly reporting obligation is entirely separate from, and must not be confused with, the obligation to immediately disclose detailed information to the RCMP and CSIS. The monthly reports to OSFI, including "nil" reports, do not need to be sent to the RCMP and CSIS.

Each month, OSFI reminds FRFIs of their obligations to file completed Form(s) 525 and 590 by the 15th day of the following month. OSFI's monthly reminders to file Form(s) 525 can be found on the OSFI Web site at: http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?ArticleID=524. OSFI's monthly reminders to file Form(s) 590 can be found on the OSFI Web site at: http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?ArticleID=2069#590.

OSFI 525 Form of Report

FRFIs must use OSFI 525 – Long Form or OSFI 525 – Short Form (as the case may be) to report the results of their internal searches for property of Designated Persons who are terrorists. These forms, along with instructions for completion and filing can be downloaded from the OSFI Web site at: http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?ArticleID=524#525.

⁸ Criminal Code; RIUNRST; UNAQTR

⁹ RIUNRI; and RIUNRDPRK.

All amounts reported to OSFI must be stated in Canadian dollars. If the value of property frozen is denominated in a currency other than Canadian dollars, then the Canadian dollar equivalent must be reported, using the rate of exchange in effect when the property was originally frozen. The value reported to OSFI and the value disclosed to the RCMP and CSIS must be the same. Where applicable, values reported to FINTRAC in Terrorist Property Reports must also be the same.

OSFI 590 Form of Report

FRFIs must use OSFI 590 – Long Form or OSFI 590 – Short Form (as the case may be) to report the results of their internal searches for property of Designated Persons under the Laws concerning specific countries and nuclear proliferation activities (the RIUNRI and RIUNRDPRK as at the date of this Guide). These forms, along with instructions for completion and filing, can be downloaded from OSFI's Web site at: http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?ArticleID=2069#590

To ensure the accuracy of monthly reports, reporting entities must apply proper due diligence to their preparation. Interests that do not constitute property capable of seizure should not be reported, with the exception that OSFI Form 590 asks that aggregate amounts be provided with respect to letters of credit and other guarantees.

As is the case with amounts reported in the OSFI 525, all amounts reported in the OSFI 590 must be stated in Canadian dollars. If the value of property frozen is denominated in a currency other than Canadian dollars, then the Canadian dollar equivalent must be reported, using the rate of exchange in effect when the property was originally frozen. The value reported to OSFI and the value disclosed to the RCMP and CSIS must be the same. Where applicable, values reported to FINTRAC in Terrorist Property Reports must also be the same.

OSFI Reports - General

A FRFI that changes a property value or other information in a report to OSFI from one month to another must disclose that change to the RCMP and CSIS also, and vice versa.

Examples of property values that should be reported on Long Forms of OSFI 525 and OSFI 590 include,

- the aggregate values of positive balances in deposit accounts and guaranteed investment accounts of a Designated Person;
- the aggregate total balances in excess of the amounts owing on credit cards of a Designated Person;
- the total amount of an insurance benefit payable to the Designated Person in respect of a claim that has been otherwise determined by the FRFI to be valid; and
- the total amount of insurance premiums received by the FRFI for which a claim for return to the Designated Person has otherwise been determined by the FRFI to be valid.

A FRFI that has officially closed for business and transferred all existing client business (for example, the Canadian branch of a foreign institution seeking regulatory approval to exit Canada) will not need to file short or long Forms of OSFI 525 or OSFI 590 for the months after the month in which all clients were transferred from the FRFI. A FRFI that is officially in run-off (has officially closed for new business but retains its existing client business relationships) must continue to file OSFI 525s and OSFI 590s for each month that it continues to have clients, to demonstrate that it has searched its client list for the names of newly Designated Persons as they are posted on OSFI's Web site.