Libya (Sanctions) (EU Exit) Regulations 2020

The Office of Financial Sanctions Implementation (OFSI), part of HM Treasury, is responsible for improving the understanding, implementation and enforcement of financial sanctions in the United Kingdom. OFSI publishes a list of individuals and organisations subject to financial sanctions as well as general guidance to promote compliance.

The Libya (Sanctions) (EU Exit) Regulations 2020 (the Regulations) impose financial, trade immigration and transport sanctions for the purpose of complying with the UK’s obligations pursuant to the sanctions regime set out in the United Nations Security Council resolution (UNSCR) 1970 (2011) as well as subsequent UNSCRs.

The Regulations also have the additional purposes of promoting respect for human rights in Libya, the peace, stability and security of Libya, the successful completion of Libya’s political transition to a democratic, independent and united country, and preventing migrant smuggling and human trafficking taking place from Libya.

Using the powers in the Sanctions and Anti-Money Laundering Act 2018 (the Sanctions Act), the UK will have the power to impose further sanctions to implement either the UK’s
obligations pursuant to the UNSCRs or the additional purposes referred to above.

Certain parts of the Regulations entered into force on 30 December 2020 (the remainder entered into force on 31 December 2020) and replace EU sanctions relating to Libya.

**OFSI guidance on the Regulations**

This guidance aims to help stakeholders navigate the Regulations that specifically apply to the Libya financial sanctions regime. As well as a full asset freeze, the Regulations impose other prohibitions and requirements including a partial asset freeze which applies solely to the Libyan Investment Authority (LIA) and the Libya Africa Investment Portfolio (LAIP), and prohibitions on financial transactions in relation to Libyan oil aboard UN-designated ships.

In addition, the Regulations establish an enforcement mechanism through the creation of offences and penalties. These are set out in detail in the corresponding report under section 18 of the Sanctions Act.

While the Regulations cover different types of sanctions, this guidance, produced by OFSI, only covers financial sanctions.

**The UK government has published statutory guidance** to accompany the Regulations. This covers the wider restrictions detailed in the Regulations, including immigration and trade sanctions. It should be read alongside OFSI’s guidance set out in this document.

**What are financial sanctions?**

Financial sanctions help the UK meet its foreign policy and national security aims, as well as protecting the integrity of its financial system. Financial sanctions specifically relate to restrictions on funds and economic resources that are owned, held, controlled or made available to, or for the benefit of, either directly or indirectly, designated persons or entities (DPs).

**Asset freeze**

The Regulations detail financial prohibitions in relation to DPs. These are persons (natural or legal) who are subject to sanctions including financial prohibitions. These prohibitions consist of: asset freezes along with restrictions on making funds and/or economic resources available to, or for the benefit of, DPs, either directly or indirectly.

There are exceptions to some of the asset freezing and making available prohibitions under certain defined circumstances. Exceptions apply automatically and do not require you to obtain a licence from OFSI. The exceptions for the asset freezing provisions include:

- a relevant institution crediting a frozen account with interest or other earnings due on the account, providing that any such interest or other earnings are frozen in accordance with the relevant legislation
- when funds are transferred to a relevant institution in discharge (or partial discharge) of an obligation which arose before the recipient became a DP
- when funds are transferred in relation to certain ring-fencing requirements
- when funds are transferred to a relevant institution for crediting to a frozen account
- acts done for the purposes of national security or the prevention or detection of serious crime

Where a DP’s assets have been frozen and the above exceptions do not apply, the DP or a representative may apply for a licence from OFSI to be able to, in certain circumstances, deal with frozen funds or economic resources, or to allow for funds or economic resources to be made available to or for the benefit of DPs. For further information on asset freezes, see OFSI’s General Guidance on Financial Sanctions.

Where the provision of financial services is prohibited, this includes, but is not limited to, the provision of payment and money
transmission services, including credit, charge and debit cards, travellers’ cheques and bankers’ drafts. For more information, please contact the Export Control Joint Unit (ECU).

Partial asset freeze

The Regulations impose a partial asset freeze which prohibits persons (including the DP) dealing with relevant funds or economic resources owned, held or controlled by a DP. Relevant funds or economic resources include those located outside of Libya immediately before 17 September 2011. In addition to this, the Regulations place restrictions on making relevant funds available to or for the benefit of DPs. There is no prohibition on making non-relevant funds or economic resources available to or for the benefit of DPs under the partial asset freeze.

Relevant funds or economic resources considered as frozen for the purposes of the prohibition on dealing with those funds are defined as:

- those located outside of Libya immediately before 17 September 2011
- funds credited on or after 17 September 2011 to a relevant account in discharge (or partial discharge) of an obligation which arose prior to the date on which the person became a DP
- any interest or other earnings on the funds referred to above credited on or after 17th September 2011 to a relevant account.

Relevant funds treated as frozen for the purposes of the prohibitions on making those funds available to or for the benefit of a DP are defined as:

- funds due to a DP under an obligation which arose prior to the date on which the person became a DP;
- interest or other earnings due on funds held in a relevant account which are frozen under the partial asset freeze.

Partial asset freeze interest & other earnings freezing requirement

The partial asset freeze applies to funds including:

- interest and other earnings that have accrued on the relevant funds and been credited to a relevant account on or after 17 September 2011, at the date the Regulations come into force
- future interest and other earnings accruing on the relevant funds

Therefore, the above must be frozen unless licensed or subject to an exception.

There is a specific exception according to which the regulations imposing the partial asset freeze are not contravened by a relevant institution crediting a relevant account with interest or other earnings due on the account. However, any such interest and other earnings must be, and remain, frozen.

Failure to freeze interest or other earnings is an offence which may result in enforcement action.

The LIA and LAIP

Both the LIA and LAIP are subject to the partial asset freeze. While subsidiaries of the LIA and LAIP are not automatically subject to the asset freeze or the partial asset freeze simply by virtue of being subsidiaries of these companies, it is advised that you conduct your own due diligence to understand ownership and control structures where applicable. Standard considerations of ownership and control apply, which are explained in the section on ownership and control below. However, some subsidiaries of the LIA and LAIP are listed independently by the UK and appear on the consolidated list. These subsidiaries are therefore subject to a full asset freeze and other financial prohibitions.

Licences can be issued for additional purposes for LIA and LAIP, as well as for those purposes applicable to other DPs. Additional purposes include for the provision of fuel for civil use and the resumption of banking sector operations. For full details of the licensing grounds that apply, see the Regulations.
Oil aboard UN-designated ships

The Regulations set out a prohibition on financial transactions relating to Libyan oil aboard vessels designated by the UN. This includes all petroleum, crude oil and refined petroleum products that originate from Libya. The prohibition of financial transactions in this context includes purchasing or the sale of oil, its use as credit or taking out transport insurance in respect of it. However, this does not include the payment or receipt of any fees following the entry into port of a ship carrying that oil.

Ownership and control

Entities that are majority owned or controlled, directly or indirectly, by a DP are subject to financial prohibitions including an asset freeze but may not appear on the OFSI Consolidated List. Entities can have complicated ownership structures, where it may not be immediately clear if a DP holds ownership (beneficial or otherwise). Both OFSI guidance and the Regulations provide a framework to assist in determining ownership and control.

Article 7 of Council Regulation (EU) 2016/44 has not been reflected in the Regulations. Ownership and control criteria as explained below should be applied when considering whether to undertake dealings with a DP or its subsidiaries.

Ownership

OFSI considers that the key criterion to assessing whether a legal person is owned by another legal person is the possession of more than 50% of the proprietary rights of an entity or having a majority interest in it.

OFSI interprets ‘owned’ to include both direct and indirect ownership. If the ultimate beneficial ownership of an entity rests with a DP (for example, they own a corporate body which owns another corporate body), OFSI takes the view that all entities that are part of the ownership chain are subject to financial sanctions.

Control

OFSI considers that the satisfaction of at least one of the following criteria1 is sufficient to establish whether a legal person is controlled by another:

- Having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity
- Having appointed solely as a result of the exercise of one’s voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person or entity who have held office during the present and previous financial year
- Controlling alone, pursuant to an agreement with other shareholders in or members of a legal person or entity, a majority of shareholders' or members' voting rights in that legal person or entity
- Having the right to exercise a dominant influence over a legal person or entity, pursuant to an agreement entered into with that legal person or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person or entity permits its being subject to such agreement or provision
- Having the power to exercise the right to exercise a dominant influence referred to in the point above, without being the holder of that right (including by means of a front company)

OFSI consolidated Lists and the UK Sanctions List

The OFSI Consolidated Lists reflect all financial sanctions designations made under UK legislation (the Sanctions Act and the Anti-

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1 Note this is not an exhaustive list. Schedule 1 of the Regulations contains provisions applying for the purpose of interpreting ownership and control
terrorism, Crime and Security Act 2001), but do not include those subject to other forms of sanctions such as immigration, trade or transport. The lists consist of a consolidated list of financial sanctions for those subject to asset freezes and a separate list for those subject to restrictions on financial markets and services.

The UK Sanctions List, published by the Foreign, Commonwealth and Development Office (FCDO) on GOV.UK, is the comprehensive list of persons, entities or ships designated under sanctions regimes set up using the powers of the Sanctions Act. The restrictions applied to such persons, entities or ships can include financial, immigration, trade or transport sanctions.

Annex I

Funds means financial assets and benefits of every kind, including but not limited to:

- cash, cheques, claims on money, drafts, money orders and other payment instruments
- deposits, balances on accounts, debts and debt obligations
- publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
- interest, dividends or other income on or value accruing from or generated by assets;
- credit, rights of set-off, guarantees, performance bonds or other financial commitments;
- letters of credit, bills of lading, bills of sale;
- documents showing evidence of an interest in funds or financial resources;
- any other instrument of export financing

Economic resources means assets of every kind tangible or intangible, movable or immovable which are not funds but may be used to obtain funds, goods or services. This includes but is not limited to:

- precious metals or stones;
- antiques;
- vehicles; and
- property

Dealing with funds means moving, transferring, altering, using, accessing, or otherwise dealing with them in any way which would result in any change to their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management.

Dealing with economic resources means exchanging them for funds, goods, or services or using them in exchange for such funds, goods, or services, including, but not limited to, by selling, hiring or mortgaging them. The everyday use by a DP of their own economic resources for personal consumption is not prohibited.

Funds or economic resources are made available for the benefit of a DP if they obtain, or can obtain, a ‘significant financial benefit’, which includes the discharge, in whole or in part, of a financial obligation for which the DP is wholly or partly responsible. This may constitute a criminal offence.

Funds can be made available to a DP either directly or indirectly. This may also constitute a criminal offence.

Economic resources are made available to a DP if the DP would be likely to exchange the economic resources made available for, or use them in exchange for, funds, goods or services. This can be done either directly or indirectly and may constitute a criminal offence.

- Contacts

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OFSI’s Consolidated Lists

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FCDO Libya Page

Trade sanctions on Libya