

Libya Guidance

Financial sanctions guidance for the Libya (Sanctions) (EU Exit) Regulations 2020



HM Treasury
Office of Financial
Sanctions Implementation



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 aircraft, shipping and immigration 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.

The Sanctions and Anti-Money Laundering Act 2018 (the Sanctions Act) enables regulations to be made by the UK imposing 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 (only the Libyan Investment Authority (LIA) and the Libya Africa Investment Portfolio (LAIP) have been designated in respect of this), 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 impose 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 generally impose restrictions on dealing with funds and economic resources that are owned, held, or controlled by designated persons (DPs), dealing with by the DPs themselves, or making available either directly or indirectly various types of funds and economic resources to DPs, or to any person for the benefit of, DPs s.

Full 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 economic resources either directly or indirectly available to DPs, or to any person for the benefit of DPs.

Partial asset freeze

The Regulations also impose a partial asset freeze. This prohibits persons (including DPs) dealing with "relevant funds or economic resources" owned, held or controlled by persons designated for the purposes of the partial asset freeze (the LIA and the LAIP). "Relevant funds or economic resources" are defined in the Regulations as:

- those located outside 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 17 September 2011 to a relevant account

There are also prohibitions on making relevant funds available (directly or indirectly) to the LIA and LAIP and on making relevant funds available to any person for the benefit of the LIA and LAIP. For the purposes of those prohibitions, relevant funds are defined as:

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

Unless licensed by OFSI or subject to an exception, the above must be frozen when credited to a relevant account and must not

be made available to DPs. This includes interest or other earnings that have previously accrued or continue to accrue on relevant funds in the future. Failure to freeze relevant funds (including interest or other earnings) and making available relevant funds due to a DP (either interest or other earnings due on funds frozen under the partial asset freeze or funds due under a pre-designation obligation) is an offence which may result in civil or criminal enforcement action.

There is no prohibition on making economic resources and non-relevant funds available to, or for the benefit of, those designated for the purposes of the partial asset freeze (the LIA or the LAIP).

Subsidiaries of the LIA and LAIP

Both the LIA and the LAIP are subject to the partial asset freeze. Subsidiaries of the LIA and LAIP are not automatically subject to the partial asset freeze simply by virtue of being subsidiaries of these companies. However, it should be noted that some subsidiaries of the LIA and LAIP are designated independently by the UK under the full asset freeze, set out in the Regulations. Therefore, it is advised that you consult the OFSI consolidated list, and that you conduct your own due diligence to understand whether any such subsidiary is subject to financial prohibitions.

Exceptions and Licences

There are exceptions to some of the asset freeze, partial asset freeze, and making-available prohibitions under certain defined circumstances. Exceptions apply automatically and do not require you to obtain a licence from OFSI. These exceptions include:

- a relevant institution crediting a frozen or relevant account with interest or other earnings due on the account
- a relevant institution crediting a frozen or relevant account where it receives funds transferred to that institution for crediting to that account
- when funds are transferred to a relevant institution for crediting to an

account held or controlled by a DP in discharge (or partial discharge) of an obligation which arose before the DP was designated.

These exceptions require that all such funds (including any interest or other earnings) must not be made available to or for the benefit of DPs and should be credited to a frozen account, relevant account, or an account held or controlled by a DP as appropriate at which point they must be frozen. Where no exceptions apply, the DP or a representative may apply for a licence from OFSI to be able to, in certain circumstances, deal with funds or economic resources frozen under the full or partial asset freeze, or to allow for funds or economic resources or relevant funds, to be made available to or for the benefit of DPs.

Licences can be issued for additional purposes for the LIA and LAIP, as well as for those purposes applicable to other DPs. Additional purposes include for the provision of fuel for civilian use and the resumption of banking sector operations. For full details of the licensing grounds that apply, refer to the Regulations.

For further information on asset freezes, see OFSI's General Guidance on Financial Sanctions.

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 the financial prohibitions applying to the DP

including an asset freeze but may not appear on the OFSI consolidated list. Regulation 7 sets out that 'owned' or 'controlled' includes both direct and indirect ownership or control. If the ultimate ownership or control 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 (with the exception of some LIA and LAIP subsidiaries - see above).

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.

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-terrorism, Crime and Security Act 2001), but do not include those subject to other forms of sanctions such as immigration, trade or transport. The consolidated 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
- 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.

Relevant account means an account with a relevant institution which is held or controlled (directly or indirectly) by a designated person.

Relevant institution means a person that has permission under Part 4A of the Financial Services and Markets Act 2000 (permission to carry on regulated activity).

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Contacts

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