

ADVISORY MEMORANDUM

THE UN AND TERRORISM AND TERRORIST FINANCING

INTRODUCTION

In 2015, in response to recent terrorist activity such as the November 2015 Paris attacks and statements from the UN about the need to ensure that financial institutions prevent ISIL, ANF and all other associates of Al-Qaida from accessing the financial system, the (then) Policy Council issued guidance for businesses. The guidance was inspired by material contained in a number of United Nations Security Council Resolutions (UNSCRs) and it provided context for developments in relation to terrorism and terrorist financing, as well as advice to businesses on actions they should take. This was aimed at all businesses, not just financial services businesses, in recognition of the fact that under the Bailiwick's terrorist financing legislation, like the legislation of other jurisdictions which aim to meet international standards in this area, there are requirements that apply to all persons, not just financial institutions.

The Guernsey authorities remain committed to ensuring that the jurisdiction plays a full part in global initiatives against terrorism and terrorist financing. As part of that commitment, amendments have recently been made to Guernsey's terrorist financing offences in respect of ransom payments and the payment of travel costs for terrorist fighters. The Policy & Resources Committee is therefore issuing this guidance document to update the 2015 guidance in light of these recent changes.

The key UNSCRs relating to terrorism and terrorist financing are UNSCRs 1267 and 1373. UNSCR 1267 was enacted in 1999 in response to concern about the activities of Al-Qaida and the Taliban and UNSCR 1373 was enacted in 2001 in response to the terrorist attacks of 11 September 2001. Both have been supplemented by successor UNSCRs.

The original 1267 Sanctions Regime was split into two separate sanctions regimes in 2011 by the adoption of UNSCR 1988 (2011) ("the Afghanistan Sanctions Regime") and UNSCR 1989 (2011) ("the Al-Qaida Sanctions Regime"). The Afghanistan Sanctions Regime targets individuals and entities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan. The Al-Qaida Sanctions Regime targets all individuals, groups, undertakings and entities associated with Al-Qaida. Both regimes consist of an asset freeze, an arms embargo, and a travel ban. These measures apply to individuals and entities that have been designated by dedicated UN Security Council Committees and included on the Al-Qaida Sanctions List or the Afghanistan Sanctions List.

The measures under UNSCR 1373 are primarily financial in nature, and include terrorist financing offences, asset freezes and other financial sanctions. These measures are not targeted at designated persons or territories, but instead apply to any terrorist acts or to any persons who commit or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts, to any entities owned or controlled by such persons, and to any persons or entities acting on behalf of or at the direction of such persons or entities.

Subsequent UNSCRs have been issued which reaffirm the need for the effective implementation of the different sanctions regimes related to terrorism as well as making some changes to the Al-Qaida Sanctions Regime and the Afghanistan Sanctions Regime. UNSCR 2253 (2015) amended the name of the list and UN Committee that relate to the Al-Qaida Sanctions Regime to include specific reference to ISIL (Da'esh). UNSCR 2255(2015) clarified the scope of the exemptions from the asset freeze and travel ban under the Afghanistan Sanctions Regime.

Guernsey legislation

Under Guernsey law there are offences and financial restrictions in place which apply both to persons or entities linked to Al-Qaida or to the Taliban and to persons and groups who are linked to terrorist activity more widely.

The targeted financial restrictions imposed under the Afghanistan Sanctions Regime and the Al-Qaida Sanctions Regime are currently implemented in Guernsey by the Afghanistan (Restrictive Measures) (Guernsey) Ordinance, 2011 and the Al-Qaida (Restrictive Measures) (Guernsey) Ordinance, 2013 (the Ordinances). The Ordinances give domestic effect to EU Regulations that in turn implement the financial aspects of the Afghanistan Sanctions and Al-Qaida Sanctions Regimes within the EU (respectively EU Regulation 753/2011 and EU Regulation 881/2002). There are corresponding Ordinances for Alderney and Sark. Under the Ordinances there is an asset freeze applicable to designated persons, and it is a criminal offence for any person to make funds or economic resources directly or indirectly available to, or for the benefit of, designated persons. Economic resources are assets of every kind, including intangible property and assets that do not constitute funds but which may be used to obtain funds, goods or services.

Financial measures under UNSCR 1373 are currently implemented in the Bailiwick by the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (Terrorism Law) and the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011 (Terrorist Asset - Freezing Law). Under the Terrorism Law there are terrorist financing offences that apply to solicitation, provision, entering into arrangements and laundering in respect of money or other property by a person who intends or knows, or has reasonable cause to suspect, that the money or other property will or may be used for the purposes of terrorism. Property in this context means property anywhere in the world and it includes intangible property. The purposes of terrorism include the provision of financial support for any purpose to any legal or natural person involved in terrorism. Under the Terrorist Asset - Freezing Law there is an asset freeze applicable to designated persons and a prohibition on making funds or economic resources directly or indirectly available to, or for the benefit of, designated persons. Designated persons for these purposes are those who have been designated by the States of Guernsey Policy & Resources Committee, HM Treasury or the EU on the basis that they are suspected or believed to be or to have been involved in terrorist activity, to be owned or controlled directly or indirectly by a person involved in terrorist activity, or to be acting on behalf of or at the direction of a person involved in terrorist activity. As with the measures to implement the Al-Qaida and Afghanistan Sanctions Regimes, economic resources in this context are assets of every kind, including intangible property and assets that do not constitute funds but which may be used to obtain funds, goods or services.

Most payments that fall within the categories of concern to the UN described below are covered by the terrorist financing offences in the Terrorism Law. Any such payments that involve a person or entity who has been designated by the UN, the EU, HM Treasury or the Policy & Resources Committee will also be covered by the offences referred to above under the Ordinances or under the Terrorist Asset-Freezing Law as the case may be.

In addition, a request or enquiry about a transaction with a possible terrorist link may give rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in terrorist financing, in which case a disclosure should be made to the Financial Intelligence Service in the form and manner prescribed by the Terrorism and Crime (Bailiwick of Guernsey) Regulations 2007, as amended.

Alongside these terrorist financing offences, financial restrictions and reporting obligations, there are other criminal offences that relate to specific areas of concern to the UN, and these are looked at under the relevant sections below. In addition, the provision of financial or other services that support or facilitate the commission of these offences could constitute an offence under the Criminal Justice (Aiding and Abetting etc.) (Bailiwick of Guernsey) Law, 2007.

TERRORISM AND KIDNAP AND RANSOM AND HOSTAGE TAKING

Ransom payments to terrorist groups is one of the sources of income which support their recruitment efforts, strengthen their operational capability to organise and carry out terrorist attacks, and incentivise future incidents of kidnapping for ransom.

There has been an increase in incidents of kidnapping and hostage-taking in recent years, in particular the increase in kidnappings by Al-Qaida and its affiliated groups such as ISIL.

The United Nations Security Council has issued a number of resolutions which seek to prevent kidnapping and hostage taking committed by terrorist groups and terrorists benefiting directly or indirectly from kidnapping for ransom. While the United Nations might be regarded as the leading international authority in this area, other international bodies and fora are also deeply committed to preventing terrorism and its funding through kidnapping for ransom. For example, a decision at the Group of Eight Summit in Lough Erne commits the then G8 countries to addressing the threat posed by kidnapping for ransom by terrorists.

The UN is committed to supporting all efforts to reduce terrorist groups' access to funding and financial services and it has called on Member States to prevent terrorists from benefiting directly or indirectly from ransom payments to secure the release of hostages. It has also confirmed that asset freeze measures apply to the payment of ransoms to individuals, groups, undertakings and entities on its list of designated persons, including ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida, regardless of how or by whom the ransom is paid.

The UN has also reaffirmed its decisions that all States shall prevent and suppress the financing of terrorist acts and refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts. This includes financing through kidnapping

for ransom. Terrorists must be prevented from benefiting directly or indirectly from ransom payments.

Guernsey legislation

The Terrorism Law was amended with effect from 14 December 2018 to introduce a new offence at section 11A concerning payments made under insurance contracts in response to terrorist demands. This expressly criminalises conduct that was previously implicit in the existing terrorist financing offences. This conduct also comes within the terrorist financing reporting obligations outlined above. In addition, ransom payments made directly or indirectly to terrorists will be captured by the financial restrictions in the Ordinances or the Terrorist Asset-Freezing Law in any case where the parties concerned are designated persons under the legislation.

What businesses should do

Businesses should exercise extreme caution in respect of any transactions that might involve ransom payments. Any relevant information should be reported to the Policy & Resources Committee.

Businesses should also follow relevant guidelines and good practices for responding to terrorist kidnappings without paying ransoms. For insurers offering kidnap and ransom insurance, good practices include:

- (a) the incorporation of clauses in insurance policies refusing payment of any claims where terrorists might benefit directly or indirectly from using kidnapping or hostage taking to raise funds or gain political concessions;
- (b) recognising that intermediaries are often used in kidnapping situations for the negotiation and acceptance of ransom payments, and that a number of factors should be taken into account when considering whether a terrorist organisation may benefit from any ransom payment such as, but not limited to, location, individuals/entities involved and specialist knowledge;
- (c) having policies, procedures and controls in place agreed by the board or equivalent of the insurer to prevent terrorists benefiting directly or indirectly from using kidnapping (including the incorporation of appropriate clauses in insurance policies);
- (d) taking all necessary steps in practice to ensure that claims payments do not directly or indirectly benefit terrorists;
- (e) ensuring periodic reviews by the board or equivalent of compliance with the policies, procedures and controls.

TRADE

Oilfields and related infrastructure controlled by ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida are also generating income which support their recruitment efforts and strengthen their operational capability to carry out operational capability to organize and carry out terrorist attacks.

The UN condemns engagement in this form of funding and has also expressed concern that economic resources such as oil, oil products, modular refineries and related material, other natural resources including precious metals such as gold, silver, and copper, diamonds and other assets such as grain, livestock, machinery, electronics, and cigarettes might be traded (sold, bartered or used in other ways) by or on behalf of ISIL, ANF and other individuals, groups, undertakings and entities associated with Al-Qaida. It condemns engagement in direct or indirect trade with these persons.

The UN has also reaffirmed its previous decision related to illegally removed Iraqi cultural property in UNSCR 1483 (2003) and further decided that all Member States shall take appropriate steps to prevent trade in Iraqi and Syrian cultural property and other items of archaeological importance illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011, including by the prohibition of cross-border trade in these items.

In addition, the UN has reaffirmed its previous decision in relation to prohibitions on the direct or indirect supply, sale, or transfer to ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida of arms and related materiel of all types. This includes weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for such items, and also extends to the provision of technical advice, assistance or training related to military activities. The UN has also expressed concern at the proliferation of all arms and related material of all types (in particular man-portable surface-to-air missiles) to ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida, and the potential impact of this on regional and international peace and security as well as its impeding of efforts to combat terrorism in some cases.

Guernsey legislation

The terrorist financing offences, financial restrictions and reporting obligations outlined above apply to payments made in connection with any form of trade if the payments are made to terrorists, as these comprise payments to persons involved in terrorism under the Terrorism Law and also, in most cases, payments to designated persons for the purposes of the Ordinances or the Terrorist Asset- Freezing Law. The making of payments via third parties such as brokers or corporate structures will comprise offences under the Terrorism Law if there are reasonable grounds to suspect that the payments are ultimately destined for persons or entities with terrorist links, irrespective of the involvement of the third party. Where such persons are designated persons the restrictions under the Ordinances or the Terrorist Asset- Freezing Law will also apply, and these restrictions cover direct and indirect payments to persons or entities owned or controlled by a designated person or entity, and also payments to persons or entities acting on behalf of or at the direction of a designated person or entity.

There is additional legislation in place that specifically prohibits trade in Iraqi and Syrian cultural property or other items of archaeological importance, together with legislation that specifically prohibits trade in arms and related material with associates of Al-Qaida.

The prohibition on trading in cultural property or other items of archaeological importance from Iraq is set out in the Iraq (United Nations Sanctions) (Channel Islands) Order 2003. The prohibition on trading in cultural property and other items of archaeological importance from Syria is set out in EU Regulation 36/2012 as implemented domestically by the Syria (Restrictive Measures) (Guernsey) Ordinance, 2012 and corresponding Ordinances for Alderney and Sark.

The prohibition on trade in arms and related material with associates of Al-Qaida is dealt with under the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002 and in the Export Control (Military, Security, and Related Matters) (Bailiwick of Guernsey) Order, 2010.

It is an offence to breach these prohibitions, and in addition the provision of financial or other services that support or facilitate such breach may constitute an aiding and abetting offence.

What businesses should do

In complying with Guernsey's legal framework businesses should be mindful of the trading activities specified by the UN and alert to the possibility that funds and other financial resources and assets owned or controlled by a party designated by the UN or any other terrorists or terrorist groups, undertakings and entities may not always be held directly by them and therefore, may not be immediately visible. They should ensure that they know sufficient about entities they administer and transactions they are making or facilitating so that they do not engage in direct or indirect trade with terrorists. Indirect trade should be construed as having a wide meaning and covering any transaction facilitated by the business. Businesses, particular those in the fiduciary sector, should also take steps to ensure that they are not administering companies or trusts that are ultimately owned or controlled by a designated person or entity, or that are acting on behalf of or at the direction of a designated person or entity.

DONATIONS

Donations from individuals and entities have played a role in the financing of ISIL and ANF.

The UN obligations require member states to ensure that their nationals and persons within their territory do not make donations to individuals and entities designated by the Committee or those acting on behalf of or at the direction of ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida.

Guernsey legislation

The terrorist financing offences, financial restrictions and reporting obligations outlined above apply to donations made directly or indirectly to terrorists, as they are persons involved in terrorism for the purposes of the Terrorism Law and in most cases will also be designated

persons for the purposes of the Ordinances or the Terrorist Asset- Freezing Law. In addition, the provision of financial or other services that support or facilitate the making of donations may constitute an aiding and abetting offence.

What businesses should do

Businesses should ensure that they adopt enhanced vigilance in preventing donations from supporting terrorism.

FIGHTERS

The UN has expressed concern about those who travel or attempt to travel to become foreign terrorist fighters, their recruitment and the international networks which have been established through which the fighters and the resources to support them have been channelled. Disruption of financial support is one of several key elements which can address these threats by preventing the recruitment, organisation, transportation, equipping and other support for foreign terrorist fighters and of terrorism.

Guernsey legislation

The Terrorism Law was amended with effect from 14 December 2018 to make it clear that payments made for the purposes of terrorism includes paying the travel costs of terrorist fighters. This was previously implicitly covered in the existing terrorist financing offences. The amendment also ensures that payments for the travel costs of aspiring terrorist fighters (i.e. those who are not yet involved in terrorism as defined in the Terrorism Law) are captured within the terrorist financing offences. This is in addition to these payments being covered in some cases by the existing offence of aiding and abetting the commission of one or more of the offences under Part II of the Terrorism Law (support and membership of particular terrorist organisations) and Part VI (terrorist offences etc.), as well as the substantive offence of inciting terrorism overseas under Part VI.

The reporting obligations outlined above also apply to payments for the travel costs of terrorist fighters. In addition, such payments will be captured by the financial restrictions in the Ordinances or the Terrorist Asset-Freezing Law if they involve terrorist fighters who are designated persons under the legislation.

What businesses should do

Businesses should be alert to the possibility of transactions, particularly wire transfers, being used to provide support to existing or potential terrorist fighters and should ensure that they have sufficient information about transactions they are making or facilitating to prevent this from happening. In doing so they should be aware that the sums required to support such persons, particularly in relation to travel expenses, are often small.

INFORMATION AND COMMUNICATION STRATEGIES

The UN is concerned about the increased use by terrorists and their supporters of new information and communication strategies (particularly the internet) to facilitate terrorist acts.

Guernsey legislation

The terrorist financing offences, financial restrictions and reporting obligations outlined above apply to payments to support this type of activity, as well as to economic resources such as internet hosting or related services, where such payments or economic resources are provided to designated persons or persons who are involved in any activity that would bring them within the definition of persons involved in terrorism under the Terrorism Law. If such payments or economic resources are provided to persons who are neither designated persons nor involved in terrorism as defined in the Terrorism Law, this may constitute aiding and abetting the commission of one or more of the offences under the Terrorism Law referred to above and also, if unauthorised computer access is involved, offences under the Computer Misuse (Bailiwick of Guernsey) Law, 1991.

What businesses should do

In complying with Guernsey's legal framework for combatting terrorism and terrorist financing, businesses should be aware of and take account of the increased use by terrorists and their supporters of new information and communication strategies (particularly the internet) to facilitate terrorist acts. This may involve carrying out enhanced checks in relation to transactions that concern the provision of services in this area.

CHARITIES AND NPOS

The UN recognizes the need to prevent the abuse of non-governmental, non-profit and charitable organisations to prevent and oppose attempts by terrorists to abuse their status.

Guernsey legislation

The terrorist financing offences, financial restrictions and reporting obligations outlined above apply to payments made in the course of charitable giving.

What charities and NPOs should do

Charities and NPOs should ensure that financial flows through charitable giving are not diverted to ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida or to other forms of terrorism.

LISTING OF BUSINESSES BY THE UN

Businesses should be mindful that any business relationships or transactions that directly or indirectly facilitate the activities of those associated with Al-Qaida, including ISIL, in any way

constitute support for such activities, and may therefore lead to a business being listed in its own right by the UN.

FURTHER INFORMATION

Further information on sanctions frameworks and their application in Guernsey can be found on the websites of the States of Guernsey and the Guernsey Financial Services Commission. This includes changes to designations, which are published on the States of Guernsey website as soon as they are made.

Further information on terrorist financing risks for charities and NPOs can be found on the website of the Guernsey registry for charities and NPOs.

Policy & Resources Committee

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