



Procedures for Effective Implementation of Rules and Procedures for Freezing Funds and Assets of Terrorist and Other Persons in the Conditions of the Slovak Republic

MINISTRY OF FINANCE OF THE SR
FINANCIAL MARKET SECTION

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A) Purpose

The new Act No. 289/2016 Coll. on the implementation of international sanctions and amending Act No. 566/2001 Coll. on securities and investment services and amending and supplementing certain acts (Securities Act) as amended (the "International Sanctions Act") was passed in 2016. It amended and supplemented the then-valid legal framework for the implementation of international sanctions to adapt it to the conditions prevailing in the Slovak Republic.

The International Sanctions Act governs the process of the implementation of international sanctions in the area of administrative forfeiture of the money and property of sanctioned persons. It lays down the scope of powers and responsibilities of the competent authorities of state administration in the area of administrative forfeiture of money and property and, concurrently, defines the identification process for natural persons and legal entities jeopardising the international peace, security and the fundamental human rights. It also defines the procedures for their inclusion and exclusion in/from the list of sanctioned persons. The International Sanctions Act defines the group of individuals responsible for the implementation of international sanctions and the competent authorities of the state administration, and the responsibilities and the powers thereof.

The Ministry of Finance of the Slovak Republic (the "MF SR") was one of the principal drafters of this new legal regulation and also became the authority competent to coordinate the measures relating to the implementation of international sanctions in the Slovak financial market. The aim of the implementation of international sanctions is to restrict the access to funds and other assets for individual suspect of funding, supporting or engaging in terrorist activities and prevent them this way to continue such antisocial activities. It is an efficient instrument of fight against terrorism at a global level aiming to protect the life, health and property of the inhabitants of the Slovak Republic. With the dynamic development of modern technological solutions allowing disposal of funds and property virtually from any place in the world, efficient implementation of sanctions nowadays becomes even more important.

Since introduction of the new law, the entities in the financial market have approached the MF SR several times to consult the procedures and possible solutions of the situations associated with the implementation of international sanctions. This is why we decided to prepare a comprehensive summary of the procedures according to the International Sanctions Act on possible model situations which the entities in the financial market may come to face while engaging in their business. We compiled them based on questions and consultations with the financial market entities, the National Bank of Slovakia and the Financial Intelligence Unit, as well as based on the support materials treating international sanctions issued particularly by the FATF organisation (Financial Action Task Force).

The purpose of this paper ***"Procedures for Effective Implementation of Rules and Procedures for Freezing Funds and Assets of Terrorist and Other Persons in the Conditions of the Slovak Republic"*** (***"Procedures"***) is to instruct the entities in the financial market in what to do when they identify during their day-to-day work individuals, payment transactions or assets which are subject to international sanctions. These Procedures constitute an open document which may be amended to reflect the development of the topic of the international sanctions implementation.

Within its scope of work, the MF SR performs tasks resulting from the legal regulation treating the implementation of international sanctions in order to secure, perpetuate and restore peace and security, protection of the fundamental human rights in the financial market in the conditions of the SR. At the same time, it is expected to take up the role of enlightenment and advisory authority for the entities of the financial market in the SR.

Experience shows that to attain greater efficiency it is desirable to reply detailed questions of the financial sector and then elaborate procedures to ensure a clearer and more efficient application of sanction measures in the financial market of the SR.

Therefore, the MF SR prepared these Procedures and their purpose is to establish a clear and uniform methodology for the application of international sanctions and sanction measures in the financial market of the SR. The material is particularly intended for the financial institutions of the SR, but it may also be utilised by other authorities referred to in Article 4 of the International Sanctions Act (for individual areas of the application of international sanctions) or if they keep property which is subject to international sanctions.

Competent authority of state administration for the financial sector

In the event of any sanction measure, the competent authority of state administration for the financial institution in the area of financial services and financial markets, payment system, securities and financial instruments trading is, according to the International Sanctions Act (Article 4), the MF SR or the MF SR's Financial Market section.

For the financial institution, the MF SR's Financial Market section is the point of contact of the state administration in the event of any doubt, uncertainties and questions relating to the implementation of international sanctions.

All information or reports coming from a financial institution and addressed to the MF SR need to include clear, complete and detailed information about the case. The MF SR is authorised to receive information constituting bank secrecy as defined in Article 91(8) of Act No. 483/2001 Coll. on banks.

Compliance with reporting and information duties referred to in the International Sanctions Act is not in lieu of the special obligations under other legal regulations, particularly the duty to report unusual business operations referred to in Act No. 297/2008 Coll. on the prevention of legalization of proceeds of criminal activity and terrorist financing and on a changes and amendments to certain acts as amended and/or to report commission of crime or criminal attempt in accordance with Act No. 300/2005 Coll., Criminal Law.

Reporting duty

In accordance with Article 14 of the International Sanctions Act, financial institution is obligated to inform the client of the forfeiture of client's property and, thereafter, the MF SR as the competent authority for financial institutions.

Reporting process:

- The financial institution shall forthwith report, in writing or by e-mail at sankcie@mfsr.sk, to the MF SR that it keeps property of a sanctioned person, and shall also provide complete available information, identification data and legal ground for the sanction.
- In urgent cases, the financial institution may also inform the MF SR (Financial Market section) by phone of the information or report sent with regard to clients or sanctioned persons at the following phone numbers:

+421-2-59 58 4520

+421-2-59 58 4541

+421-2-59 58 2520

+421-2-59 58 2444

+421-2-59 58 2517

- Written reports are sent at:
Ministerstvo financií SR (Ministry of Finance)
Štefanovičova 5
Sekcia finančného trhu (Financial Market section)
817 82 Bratislava

B) Application of international sanctions – specific procedures used in the financial sector during application of international sanctions

Client's transactions

a) If, in the contracting process relating to a business relation or in the course of making a deal, the financial institution identifies a client as a sanctioned person (person who is included in the lists of sanctioned persons "sanctions list" issued by the UN Security Council¹ - the UNSC or the EU shall forthwith provide such information to the MF SR's Financial Market section.

b) Where the client of a financial institution is a natural person or legal entity which was included in the sanctions list of the UNSC or the EU, the financial institution:

- shall forthwith **restrict** access of the client to the funds and other assets allocated to the financial institution;
- shall not provide the client any other products or services;
- shall not allow the client to make any debit transaction (other than those listed in Article 13 of the International Sanctions Act and upon assessment by the MF SR);
- credit a credit transaction made in favour of the identified client, but shall not allow the client to dispose of such funds;
- shall refuse to credit a credit transaction where the ordering party is a person included in the sanctions list of the UNSC or the EU.

c) If, in the event of a payment which has already been remitted, the financial institution finds out that the beneficiary of the funds is a person included in the sanctions list of the UNSC or the EU, the financial institution will refuse to complete such transfer.

d) In the event of a client or sanctioned person who is a statutory body, beneficial owner or owner of a legal entity, the case needs to be assessed on a case-by-case basis:

- if the financial institution becomes aware of an attempt to pay out assets to the beneficial owner who is a sanctioned person, also steps to block such acquisition of assets need to be made. Products may be cancelled in accordance with the financial institution's internal regulations and the valid contract between the financial institution and the sanctioned person. In such event, the financial institution will forthwith inform the MF SR's Financial Market section of the situation at hand.

¹ <https://www.un.org/securitycouncil/content/resolutions>

e) In the event of an incoming/outgoing payment where neither the ordering party nor the beneficiary is a client of the financial institution:

- where the financial institution only serves as an intermediary for the payment as a corresponding financial institution of the ordering party and the beneficiary, the sanctions list needs to be checked. It is then upon the financial institution to decide whether to return the payment to the bank of the ordering party or to freeze the transaction, if a positive finding results from such a check.
- and will ask the financial institution of the ordering party to provide information about the payment in order to complete investigations of the case and exclude any possible false positive result. MF SR shall be informed by the financial institution in each of those cases.

Loan

Exceptions where loan is being repaid by a sanctioned person:

In accordance with Article 13 of the International Sanctions Act, the MF SR approves exceptions to regulate contractual legal relations between the sanctioned person and the financial institution in the following cases:

- 1) Permit to repay loan for the sanctioned person – the person continues to repay the loan**
- 2) Accession to the loan by a non-sanctioned person and continued repayment of the loan by such person**
- 3) Transfer of the loan to a third – non-sanctioned person and continued repayment of the loan by such third person, new debtor**

The process for all the above cases is as follows:

- The financial institution will e-mail (at the e-mail address **sankcie@mfsr.sk**) complete and clear information about the situation at hand and apply, in writing, with the MF SR as the competent authority of the state administration for the financial sector for an exception, where so allowed under Article 13(2) of the International Sanctions Act.
- Based on the loan agreement, the sanctioned person is obligated to meet the liabilities arising out of the loan agreement, this means that such person is obligated to pay the agreed instalments of the loan.
- The financial institution provides information, in writing and by e-mail, to the MF SR with regard to the prerequisites of the agreement and about all information it will find about the client.
- Depending on the risks identified and where possible in the case at hand, also the origin of the sanctioned person's funds needs to be checked by the financial institution and, at the same time, also the origin of the funds of the third – non-sanctioned person who accedes to the liability on behalf of the sanctioned person.
- The MF SR shall issue a decision based on the application by the financial institution for an exception for the sanctioned person. If the MF SR approves the exception, the client may continue to meet the liabilities arising out of the agreement between the client and the financial institution, i.e. the client will be allowed to repay the loan on his or her own even though he or she is a sanctioned person.
- The decision concerning the exception for repayment of the loan shall be issued by the MF SR on a one-off basis for one specific case, one specific sanctioned person and one contractual relationship.
- Any substantial changes in the loan relationship need to be first consulted with the MF SR (e.g. change of the collateral, change of the pledge value, change of client's marital status – married, divorced).

Securities

- a) If the financial institution manages and keeps in custody a sanctioned security (the "Security"), such financial institution should not allow such Security to be transferred. In such event, the financial institution may charge fees in accordance with the agreement and/or schedule of fees actually in force. If the sanctioned person acquires funds from the yield on Security, such funds need to be allocated to the account and used primarily for the settlement of the cost of management of the Security. Only then should the funds from the yield on Security which are in excess of the cost of its management transferred to the client. It is always desirable to take into consideration the circumstances of a particular sanction measure and of the case at hand.
- b) Process to be applied if a financial institution executed a contractual relationship and between execution and settlement of the contractual relationship when the client, counterparty or the issuer becomes a sanctioned person (transaction settlement):
- Based on **Article 107a(1)** of Act No. **566/2001** Coll. on securities and investment services and on amendments and supplements to certain acts (Act on Securities), as amended (the "AoS"):

"Irrevocability of the transfer registration order"

(1) *From the moment that a transfer registration order has been accepted, neither a participant in the settlement system, nor any third party, may validly revoke or cancel the transfer registration order accepted by the settlement system, and nor may the settlement of this order be otherwise impeded.*

- Based on the above provision, the order must be executed, which means that the transaction needs to be settled.
 - To settle the transaction, the competent authority, i.e. the MF SR, needs to be approached with the application for exception.
 - The MF SR may grant the exception for this case in accordance with Article 13(2)(c) of the International Sanctions Act.
- c) Process to be applied if the financial institution as the issuer is expected to pay interest gains (coupon) to a company or natural person which is a sanctioned person:
- The financial institution shall not pay the interest gains to the sanctioned person, but credit them to such person's account maintained by the financial institution or, where the financial institution does not maintain such account, to an internal account, and shall freeze such funds in the account for the duration of the international sanction. The funds may not be made accessible to the sanctioned person. His or her accounts and assets must be frozen and allocated in the financial institution – either frozen, that is inaccessible in the account of the sanctioned person, or in other "special account" to which funds subject to international sanctions shall be allocated by the financial institution.
- d) Pay-out agent:
- The financial institution and the securities dealer must inform the pay-out agent not to send payments to the sanctioned person. If the dealer is aware of the fact that the client is a sanctioned person, the dealer shall meet obligations based on the International Sanctions Act, otherwise the dealer may face

a threat of sanction due to failure to meet the obligations referred to in Article 21 and 22 of the International Sanctions Act.

Insurance

Life insurance:

If the client becomes a sanctioned person in the course of contractual relationship and such insurance policy may not be terminated by the insurance company:

- The MF SR approves an exception regulating contractual legal relationships between the sanctioned client and the bank/insurance company based on Article 13 of the International Sanctions Act in the following cases:

a) Permitting an exception concerning insurance benefit – for the sanctioned person

b) Transfer of the liability – payments of premiums to another person who is not a sanctioned person

Process for both cases referred to in a) and b):

- Based on the agreement concerning insurance benefit, the client is obligated to pay premiums and is entitled to receive insurance benefit.
- The insurance company will e-mail complete and clear information about the situation at hand and apply, in writing, with the MF SR as the competent authority of the state administration for the financial sector for an exception, where so allowed under Article 13 of the International Sanctions Act.
- Where possible in the case at hand, also the origin of the sanctioned person's funds needs to be checked by the insurance company and, at the same time, also the origin of the funds of the third – non-sanctioned person who accedes to the liability on behalf of the sanctioned person.
- The insurance company will inform, in writing and by e-mail, the MF SR of all facts found out about the sanctioned person by the insurance company (to the e-mail and postal address specified in the "Loan" part).
- The MF SR will make a decision based on the insurance company's application for exception for the sanctioned client. If the MF SR approves the exception, the client may continue to meet the liabilities arising out of the policy between the client and the insurance company, i.e. client may continue to pay the premiums and, concurrently, will also be entitled to receive the pay-out of the insurance benefits.
- The permit to pay premiums shall be issued by the MF SR on a one-off basis for one specific case, one specific sanctioned person and one contractual relationship.
- Any substantial changes in the insurance relationship (e.g. change of client's marital status – married, divorced, transfer of insurance to another person, etc.) need to be first consulted with the MF SR.

Non-life insurance:

a) *When the sanctioned person applies for pay-out of the insurance benefits based on occurrence of loss (whether the premiums are paid by him or her own based on an exception or by another person on his or her behalf):*

- The MF SR may approve an exception for such case in accordance with Article 13 of the International Sanctions Act, if the case meets all of the conditions for exception laid down in point (b) of paragraph (2):

"(2) The competent state administration authority may decide on permitting an exemption from the sanction regime for the sanctioning of financial means:

b) of compensation of damage caused by an activity not connected with the implementation of an international sanction under this Act, and for the payment of related insurance indemnity."

b) *The option of paying the insurance benefits to the aggrieved third person (not a client of the insurance company) if such third person is a sanctioned person (e.g. when the insurance company usually has minimum information about such person, when the aggrieved person is a non-resident)*

- The financial institution sends the payment to the corresponding partner – and is obligated to request maximum information from the corresponding partner in relation to the third person (not a client of the insurance company). Whereas the payment is sent by the financial institution, the responsibility for payment of the insurance benefits is borne by the financial institution. The corresponding partner should have information about the aggrieved person and, consequently, should also be aware of whether or not such aggrieved person is a sanctioned person, and must provide such information to the bank. This means that the financial institution and the corresponding partner are jointly responsible for any failure to pay funds for the sanctioned person or application of the exception for such person.
- If the financial institution has knowledge that the aggrieved third person (not a client of the insurance company) is a sanctioned person, the financial institution will inform thereof the corresponding partner and wait for response – the situation that is most probable (as described above) is that the funds would be sent by the financial institution to the corresponding partner and that partner would block them in the account.
- In any case, an efficient and effective communication needs to be established with the corresponding partner for the compliance area of both parties – the corresponding partner should inform the financial institution, even additionally, about the sanctioned person and, consequently, of not paying the funds or of applying the exception. If the corresponding partner fails to provide such information to the financial institution, the financial institution is obligated to contact the corresponding partner and investigate into the situation concerning the sanctioned person.

c) *Payment of premiums when the policy holder is a sanctioned person, but the person who is eligible to receive the benefits is not a sanctioned person (the insured, beneficiary):*

- In such event, an exception granted by the MF SR is required both for the policy holder and the insured as provided in Article 13 of the International Sanctions Act.
- The MF SR may approve an exception in accordance with Article 13 of the International Sanctions Act treating exceptions, if the case meets all of the conditions for exception laid down in point (b) of paragraph (2):

"(2) The competent state administration authority may decide on permitting an exemption from the sanction regime for the sanctioning of financial means:

- c) of compensation of damage caused by an activity not connected with the implementation of an international sanction under this Act, and for the payment of related insurance indemnity."*

State bonus for the sanctioned client:

- In any case, such assets need to be credited to the account of the sanctioned person and then frozen (not refunded to the state budget). The client may cease to be a sanctioned person and such state bonus would then have to be additionally paid out, leading to additional cost for the state.

Fees

Fee amount: During forfeiture period, the financial institution may charge fees based on the schedule of fees actually in force.

Cancellation of sanctions

If the international sanctions are proved not to apply to the sanctioned person anymore, the competent authority will check such information and take without any undue delay the corresponding measures to make the property seized fully accessible.

The MF SR will issue a decision allowing to make the property accessible to the person who is not a sanctioned person anymore; such procedure to occur after written communication with the financial institution:

- If the financial institution proves the international sanctions to be not applicable to its client anymore, it will inform the MF SR accordingly by e-mail (sankcie@mfsr.sk) and in writing. Upon reviewing the application and meeting the conditions laid down by the law, the MF SR will issue a decision making the property accessible to the person who ceased to be a sanctioned person.

Note: The obligation to provide information to the MF SR's Financial Market section is not in lieu of the obligation of the financial institution to report an unusual business operation (UBO) or an attempt thereof in accordance with Article 17 of Act No. 297/2008 Coll. on the prevention of legalization of proceeds of criminal activity and terrorist financing and on changes and amendments to certain acts as amended.

Signs arousing suspicion of terrorism financing for financial institutions

- Opening of an account for a natural person/legal entity which is entered in sanctions lists – lists of the EU and the UN (persons who are subject to international sanctions in accordance with the International Sanctions Act)
- Account opened in the name of a natural person/legal entity which engages in activities of an international terrorist organisation

- The information available indicate that the client supports well-known terrorists/terrorist groups
- Account of a natural person/legal entity which comes from a country or territory associated with international terrorism which account receives funds that provably do not have a legal and trustworthy origin or do not come from family members of that person/entity
- Opening an account for a natural person/legal entity which comes from the state or territory identified as a risk territory in relation to the support of international terrorism
- Deposits and transfers of funds to countries or territories associated with international terrorism
- Repeated transactions to countries which are identified as high-risk and non-cooperating countries – entered in the FATF list
- Repeated transaction to/from financial institutions based in risk areas – associated with international terrorism
- Use of multiple small accounts to allocate and send funds to non-resident beneficiaries located in a country or territory associated with international terrorism
- Remitting or receipt of funds by way of international payment system from/to a country or territory associated with international terrorism
- Use of cover-up companies which are actually owned by individuals associated with international terrorism and apparently not doing business

C) Application of international sanctions in the conditions of the SR – process based on individual measures under the law in connection with freezing and management of property

- 1) International sanctions are introduced by directly applicable EU regulations, UNSC resolutions and legal instruments of the Slovak Government. The UNSC adopts a resolutions on restrictive measures against natural or legal persons (the "UN resolutions"), which are subsequently implemented in the EU Council regulations. The lists of sanctioned persons are attached to these EU regulations and UN resolutions, which are directly applicable and binding in SR.
- 2) This results in an obligation for the obliged persons – **implementing entities** (responsible for the implementation of international sanctions – according to Article 4 of the International Sanctions Act), to freeze the funds and other assets of the persons entered in the Lists without any undue delay and without notice and on its own initiative, which means not waiting for an instruction or order from the competent authorities of the state administration.
- 3) The implementing entity must be informed of the sanctioned persons and sanctions lists and is expected to monitor the sanctioned persons lists:
 - i) on the web site of the Ministry of Foreign and European Affairs (the "MF&EA SR")
https://www.mzv.sk/europske_zalezitosti/europske_politiky-sankcie_eu
 - ii) on the web site of the MF SR - <https://www.mfsr.sk/en/finance/financial-market/eu-un-sanctions/>
 - iii) on the web site – EU Official Journal
<http://eur-lex.europa.eu/oj/direct-access.html>

- iv) on the web site – Common Foreign Security Policy of the EU
https://eeas.europa.eu/topics/common-foreign-security-policy-cfsp_en
 - v) The MF&EA SR publishes on its web site succession resolutions to the resolutions of the UNSC (1267/1999, 1373/2001, 1718/2006, 1737/2006), making sure that the public and the obliged persons have access to such information
https://www.mzv.sk/zahranicna-politika/medzinarodne-sankcie/-/journal_content/56_INSTANCE_RWOB0aHv4YWW/10182/3048127?p_p_state=pop_up&_56_INSTANCE_RWOB0aHv4YWW_page=1&_56_INSTANCE_RWOB0aHv4YWW_viewMode=print
- 4) If the implementing entity finds to keep sanctioned property or identifies a client who is a sanctioned person, such entity is obligated to forthwith forfeit (freeze) such property and, thereafter, inform the competent authority of the state administration (Ministries and other central bodies of state administration of the SR – "competent authority") and the Slovak Information Service (the "SIS").
 - 5) If, in the process of application of international sanctions, the implementing entity requires cooperation or any guidance, or the case appears to be unclear or confusing, it may, at any time, turn to the competent authority with an application for cooperation.
 - 6) Upon issuing a decision forfeiting property by the competent authority, the competent authority will manage such property for the duration of international sanction.
 - 7) The competent authority informs the sanctioned person of forfeiture of his or her property.
 - 8) If the reasons for forfeiture of the property of the sanctioned person cease to exist, the competent authority of the state administration will issue a decision cancelling forfeiture of the property subject to the international sanction.

Appeal options available to the sanctioned person

- A) A person who objects against his or her inclusion in the list of sanctioned persons may file a motion to initiate a proceeding to exclude a person from the list of sanctioned persons in accordance with the International Sanctions Act (Article 17(2) or Article 17a (2)), and the proceeding on exclusion of the person is initiated by the competent authority at the motion of other authorities or persons.
- B) **If the EU Council** makes a decision to include a person in the list of sanctioned persons, such information is published in an annex to a legal act of the EU in the EU Official Journal, and the Secretariat of the EU Council informs each person, group, entity to which the international sanction applies by way of a notice sent to their addresses always if practicable.
- C) When the sanctioned person learns about his or her inclusion in the list of sanction persons, he or she has the following options of appeal:
 - If the sanctioned person objects against his or her inclusion in the list of sanctioned persons:
 - i) **He or she may apply with the EU Council – "COMET working group"** which was established based on the EU Council Common Position 2001/931/CFSP and is commissioned to review the proposals to include a person in and exclude from the Lists:
<https://www.consilium.europa.eu/en/policies/fight-against-terrorism/terrorist-list/>

- ii) **Or apply with the committees of the UNSC – "Office of the UN Ombudsman":**
- this office was established at the UN for the purposes of the process of exclusion of a sanctioned person from the List to repeatedly review the case based on support documentation and, at the same time, apply for his or her exclusion from the list of sanctioned persons – link to the Ombudsman's web site: <https://www.un.org/securitycouncil/ombudsperson>
- iii) **The sanctioned person may also turn to the MF&EA SR** as the point of contact for consulting on that matter. The **MF&EA SR** sends motions for exclusion (and inclusion) of persons from and in the list of sanctioned persons to the UN department or to the EU COMET working group
- **Based on information from the MF&EA SR** concerning exclusion of a person by the COMET group or by the Office of the UN Ombudsman from the list of sanctioned persons, the competent authority of the state administration will issue a decision unfreezing the frozen property of the person. The person is informed of exclusion from the list by the COMET group, the Office of the UN Ombudsman or by way of the **MF&EA SR**.
 - **The sanctioned person may apply, in writing, with the competent authority for approval of a humanitarian exception** to the extent as provided in the law or e.g. for the purposes of treatment and medical care, to secure basic needs, compensation of damages or settlement of the arisen receivables in accordance with Article 13 of the International Sanctions Act.
 - **If the sanctioned person against which sanction measures were implemented is proved not to be a person listed** in the list of sanctioned persons, **the competent authority will, upon reviewing this fact, issue a decision terminating management of financial assets and property and will thereafter inform the financial institution to make the frozen assets and property accessible to such person.**