

GUIDANCE

pursuant to Article 15(2) of the International Sanctions Act (ISA)

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A PURPOSE AND ENTRY INTO FORCE

The fight against terrorism and the proliferation of weapons of mass destruction continues to be one of the greatest challenges facing the international community, including Europe. Terrorism and proliferation are not possible without financing. As a financial centre, Liechtenstein has a special interest in doing everything possible to prevent the financing of these crimes. This is accomplished using various instruments: preventively, through the due diligence obligations of financial intermediaries (Law on Professional Due Diligence for the Prevention of Money Laundering, Organised Crime and Financing of Terrorism; SPG), and repressively, through enforcement of the relevant provisions of the Criminal Code (StGB). At the intersection of preventive and repressive measures are the measures of the Financial Intelligence Unit pursuant to the Financial Intelligence Unit Act (FIUG) and the measures under the Law on the Enforcement of International Sanctions (International Sanctions Act, ISA). The financial institutions in particular make an important contribution through their preventive activities.

For Liechtenstein, the ISA is the primary basis for implementing international sanctions, including to combat terrorism and proliferation.

In practice, there has been a need to establish guidance to deal with specific issues, in particular questions of interpretation of the coercive measures imposed under the relevant ordinances. This guidance clarifies the obligations and thus responds to a frequently expressed need of persons applying the law, in particular financial institutions. The legal basis for this guidance is Article 15(2) ISA.

B THE INTERNATIONAL SANCTIONS ACT (ISA)

1. GENERAL REMARKS

1.1 Introduction

For the domestic implementation of international sanctions, Liechtenstein created the Law of 8 May 1991 on Measures concerning Economic Transactions with Foreign States. This was replaced on 29 January 2009 by the Law on the Enforcement of International Sanctions (International Sanctions Act, ISA), which was last revised on 1 October 2017.

Pursuant to its international legal obligations, Liechtenstein is required to implement the sanctions adopted under Chapter VII of the United Nations Charter of 26 June 1945. The focusing of international sanctions policy on financial sanctions and sanctions targeting individuals as well as more stringent supervision of implementation have led to a new weighting of priorities, with direct consequences not least of all for the financial centre, whose potential vulnerability lies in particular in the risk of sanctions violations. Additionally, Article 1(2a) ISA expressly also permits the adoption of Liechtenstein's own lists or the implementation of sanctions by other countries to combat terrorist financing within the framework of Security Council resolution 1373.

On the basis of the ISA, Liechtenstein can also implement sanctions adopted by the European Union under its Common Foreign and Security Policy. Liechtenstein regularly aligns itself with these sanctions as part of the political dialogue between the EU and the EEA/EFTA States and on the basis of its foreign

policy priorities. Unlike the sanctions imposed by the United Nations Security Council, however, Liechtenstein is not under an international legal obligation to implement them. Liechtenstein has so far associated itself with these sanctions, taking into account its foreign policy priorities such as, in particular, respect for human rights and the rule of law. The ISA also serves as the legal basis for Liechtenstein's enforcement of Security Council sanctions outside the realm of goods and persons, while at the same time taking into account Liechtenstein's special status arising from its Customs Union with Switzerland.

The measures to be taken at the national level pursuant to the international sanctions include, in particular, restrictions in the arms, trade, and services sectors as well as financial market restrictions. Measures have also been taken in the fields of travel and scientific, technological, and cultural exchange.

1.2 Object

A key element of the ISA is the creation of a legal basis for imposing coercive measures. Such measures may include in particular:

- direct or indirect restrictions on transactions involving goods and services, payment and capital transfers, and the movement of persons, as well as scientific, technological, and cultural exchange;
- prohibitions, licensing, and reporting obligations as well as other restrictions of rights.

The coercive measures are enacted by the Government in the form of ordinances. The measures may stipulate exceptions in order to support humanitarian activities, in particular for the provision of food supplies, medicines, and therapeutic products, or in order to safeguard Liechtenstein interests.

1.3 Freezing of funds and economic resources in particular

The most common coercive measure imposed by ordinance is the freezing of funds and economic resources. Assets which are owned or controlled, directly or indirectly, by a natural person, entity, or organisation which is itself the target of the imposed sanctions are to be frozen immediately and without prior notice. As a rule, such subjects are listed in the annexes to the ordinances ("sanctioned person"). Everyone is also prohibited to transfer funds to the natural persons, entities, and organisations covered by the freezing of assets or to otherwise make funds and economic resources available in any other way, directly or indirectly.

A consequence of the prohibition of transferring funds or otherwise making them available is that any person originating or executing payments must have knowledge of the recipient in order to assess whether the funds may be made available directly or indirectly. Increased caution is required especially for payments to third parties domiciled in countries covered by sanctions. In particular, it must be ensured before carrying out a transaction that outgoing payments are not made to sanctioned persons. This can be assumed when using commercial databases that include matching with sanctions lists (e.g. World-Check) for system-based transaction monitoring (name-matching transactions). The terms "direct or indirect control" are explained below under point 3.3 in connection with the reporting obligation.

1.4 Exclusion of civil and criminal responsibility

Article 4a ISA: Anyone who makes arrangements in good faith in compliance with a coercive measure shall be exempt from any civil and criminal responsibility.

Twenty-seven ordinances issued by the Government pursuant to the ISA are currently in force, two of which (Al-Qaida and Taliban) have a specific reference to terrorism. These ordinances require reports on assets to be made to the competent enforcement authority (generally the Financial Intelligence Unit). At the same time, the ordinances usually require that the assets of sanctioned persons must be frozen.

Similar reporting obligations are provided for under the Due Diligence Act (Article 17(1) SPG). Persons subject to due diligence are prohibited from permitting outflows of assets (Article 18 SPG). Within the scope of application of the SPG, financial intermediaries are excluded from civil and criminal responsibility where they have taken such a measure in good faith.

In light of the very similar situation with respect to the ISA, the new Article 4a provides for a similar form of exclusion of liability. This exclusion of liability applies, for example, where a bank freezes assets entrusted to the bank because it concludes in good faith that a listed person indirectly controls those assets. If it is established, for instance in civil proceedings, that no such indirect control exists, the bank is not liable to pay damages as long as it acted in good faith.

It is possible that in some cases, funds and assets are frozen due to false positives, i.e. the funds and assets of a person are frozen whose identifying details happen to match a listed person, even though the two persons are distinct. If there is any doubt in this regard, the parties subject to the obligation must first avail themselves of all possibilities to clarify the facts of the case. If this approach does not bring about clarity, the Financial Intelligence Unit must be contacted. Subsequently, the Financial Intelligence Unit conducts its own assessment of the case and provides a reasoned decision. In any case, however, no measures that prevent the funds and assets from being frozen may be taken until the facts have been clarified. If the Financial Intelligence Unit decides to confirm the “false positive”, the ex lege block of the law no longer applies; unless the addressee files a complaint against this decision.

2. ENFORCEMENT

Anyone who is directly or indirectly affected by measures under the ISA must, upon request, provide the competent enforcement authorities with all information and documents required for comprehensive assessment or inspection.

In the coercive measures set out by ordinance, the Government designates a competent enforcement authority. The authority varies depending on the coercive measures adopted. For example, the Immigration and Passport Office is generally responsible for restrictions on the movement of persons, while the Financial Intelligence Unit is designated as the competent enforcement authority for financial sanctions. Several ordinances also designate other authorities responsible for taking necessary measures to freeze economic resources (e.g. the entry of a freeze in the Land Register or the attachment or sealing of luxury goods). Some enforcement tasks are also delegated to the Office of Cultural Affairs (e.g. Article 5a(2) of the Ordinance of 11 March 2003 on Economic Measures against the Republic of Iraq).

The Financial Intelligence Unit (FIU) is the central authority for obtaining and analysing information necessary to detect money laundering, predicate offences of money laundering, organised crime, and

terrorist financing. This makes the FIU the suitable authority for the confidential receipt of ISA reports of frozen assets or requests for exemptions in order to prepare a basis for the Government's decision.

The powers of the enforcement authorities include:

- right to obtain information from persons directly or indirectly affected by measures under the ISA;
- right to enter business premises of the persons required to provide information;
- right to inspect relevant documents;
- right to secure incriminating material.

The enforcement authorities may call upon the National Police for this purpose and apply to the Court of Justice for enforcement of their powers. The right to enter premises and the right to secure incriminating material should be considered a last resort and are limited to cases of urgent necessity (see Report and Motion 2008/91, p. 29). The bodies responsible for execution of the ISA and the third parties called upon for assistance are obliged to preserve official secrecy.

The auditors and audit firms mandated to conduct the regular due diligence inspections of the Financial Market Authority simultaneously audit compliance with the provisions of the ISA, using Annex F of the inspection report template. Annex F can be downloaded from the FIU website: <https://www.llv.li/#/118042/dokumente>. The completed Annex F must then be submitted to the FIU.

3. DATA PROTECTION

Data protection provisions apply, subject to Article 8 ISA and the provisions in Articles 8 et seq. of the FIU Act (FIUG).

4. LEGAL PROTECTION

4.1. National legal protection

Until now, there has been no explicit legal protection for persons affected by sanctions. With the appeal of the ISA, persons can now submit a request to the Government at any time under Article 8a ISA to have their name removed from the annex of an ordinance or for non-application of the coercive measure.

Article 8a

Request for removal or non-application:

1) Natural and legal persons, groups, entities, and organisations affected by a coercive measure may submit to the Government a substantiated request to have their name removed from the annex of an ordinance referred to in Article 2(2) or for non-application of the coercive measure.

2) The Government shall decide on the request.

In the case of a request for the removal of a person's name, it must be distinguished whether the person is directly listed in an annex to a Liechtenstein ordinance pursuant to the ISA or whether the ordinance refers to a sanctions list of the UN Security Council. Only persons directly listed in an annex to a Liechtenstein ordinance may apply for removal from that list. A special delisting procedure by the Security Council Sanctions Committee is provided for removal from a UN sanctions list (see point 4.2).

The Member States themselves are not permitted to remove a person from the list. In such cases, only a request for non-application of coercive measures may be made under Article 8a ISA.

For requests submitted under Article 8a ISA, the rules under the National Administration Act apply in principle; however, individual cases may give rise to various special questions relating to the ordinances issued by the Government.

In a first step, the Government examines whether a delisting procedure is already pending at the UN or the EU. If a procedure is already underway, the Liechtenstein procedure is suspended. Where further examination of the request is successful, the Liechtenstein ordinance or the annex thereof is amended accordingly. If a request for non-application of a coercive measure pursuant to a UN resolution is successful, a decision is issued in this regard. This decision is then controlling, e.g. for a bank that has implemented the coercive measure.

The Government has issued instructions on the procedures for request for designation on a sanctions list or removal from a sanctions list for the following ordinances:

- Ordinance of 4 October 2011 on Measures against Persons and Organisations with associated with the Taliban
- Ordinance of 4 October 2011 on Measures against Persons and Organisations associated with "ISIL (Da'esh)" and "Al-Qaida"
- Ordinance of 16 June 2020 on Measures against Certain Persons and Organisations to Fight Terrorism
- Ordinance of 19 January 2016 on Measures against the Islamic Republic of Iran
- Ordinance of 24 May 2016 on Measures against the Democratic People's Republic of Korea

The instructions can be found on the FIU's website.¹

4.2. International legal protection

Persons or entities, that are listed on the ISIL (Da'esh) and Al-Qaida sanctions lists of the UN Security Council and are falling under the respective sanctions regime, can file a request for removal (de-listing) from the sanctions list directly to the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee (<https://www.un.org/securitycouncil/ombudsperson>).

Requests for removal from the UN sanctions list in relation to any other sanctions regime have to be filed with the Focal Point for De-listing (<https://www.un.org/securitycouncil/sanctions/delisting>).

A request for delisting must include all necessary information and must follow the respective procedures of the bodies mentioned above.

4.3. Decrees of the enforcement authorities

Addressees of decrees by the competent enforcement authorities may appeal to the Government within 14 days of service. These decrees include, for instance:

- restrictions on disposal imposed by the Public Register;
- measures restricting the freedom of movement by the Immigration and Passport Office;
- measures to secure incriminating material.

¹ <https://www.llv.li/inhalt/118924/amtstellen/internationale-und-eu-sanktionen>

5. PENAL PROVISIONS

The law distinguishes between wilful and negligent commission of violation of the sanctions ordinances; both are defined as a misdemeanour and carry penalties of up to three years of imprisonment or a monetary penalty of up to 360 daily penalty units. In the event that the violation is committed negligently, the maximum penalty is reduced by half.

The following are punished as contraventions: wilful or negligent refusal to provide information, to hand over documents, or to permit access to business premises, any false or misleading statements, and in general any violation of provisions of sanctions ordinances where the violation is not deemed a misdemeanour.

6. FINAL PROVISIONS

Article 14a: Automatic adoption of United Nations lists

1) By ordinance, the Government may provide for automatic adoption of the lists issued or updated by the United Nations Security Council or the competent committee of the Security Council covering natural and legal persons, groups, entities, and organisations.

2) The lists referred to in paragraph 1 shall not be published in the Liechtenstein Law Gazette. They may be accessed on the website of the United Nations.

The FATF standard requires that the listing must be completed within a maximum of 48 hours. This was possible only by creating a national legal basis that expressly provides for the direct legal effect of UN lists. At the same time, the Financial Intelligence Unit launched a software solution allowing registered persons and entities subject to the law to communicate securely with the FIU. This channel is also used to provide information on changes relating to UN sanctions, such as changes to the lists of names. The service ensures that registered users can keep track of upcoming changes with an impact on their own KYC measures. Registration is available at <https://goaml.llv.li>, where instructions can also be found.

Based on the already mentioned Art. 14a ISA and the provisions of the respective ordinances, the UN sanctions list and modifications to entries in this list are adopted automatically in Liechtenstein and have immediate effect. All subject to the ISA therefore must orient themselves to the UN-list. The list can be found with every web-browser by entering "United Nations Council Consolidated List" or in short "UN consolidated list".

C Reports under the ISA

1. International sanctions in force in Liechtenstein

Under Article 1(1) in conjunction with Article 2 ISA, the Government may enact coercive measures in the form of ordinances to enforce international sanctions that have been adopted by the United Nations or the most significant trading partners of the Principality of Liechtenstein.

As of October 2020, 29 such ordinances are in force, covering measures against the following persons, organisations, and countries:

| <u>LGBI No.</u> | <u>LR No.</u> | <u>Title</u> |
|-----------------|---------------|---|
| 2003.091 | 946.221.1 | <u>Ordinance of 11 March 2003 on Economic Measures against the Republic of Iraq</u> |
| 2009.136 | 946.221.3 | <u>Ordinance of 12 May 2009 on Measures against Somalia</u> |
| 2011.081 | 946.221.4 | <u>Ordinance of 1 March 2011 on Measures against Libya</u> |
| 2011.464 | 946.222.21 | <u>Ordinance of 4 October 2011 on Measures against Persons and Organisations with Links to the Taliban</u> |
| 2011.465 | 946.222.22 | <u>Ordinance of 4 October 2011 on Measures against Persons and Organisations with Links to the groups ISIL (Da'esh) and Al-Qaida</u> |
| 2018.218 | 946.222.3 | <u>Ordinance of 30 October 2018 on Measures against Myanmar</u> |
| 2002.039 | 946.222.4 | <u>Ordinance of 5 March 2002 on Measures against Zimbabwe</u> |
| 2005.116 | 946.222.5 | <u>Ordinance of 21 June 2005 on Measures against the Democratic Republic of Congo</u> |
| 2005.101 | 946.222.6 | <u>Ordinance of 24 May 2005 on Measures against Sudan</u> |
| 2005.269 | 946.222.8 | <u>Ordinance of 20 December 2005 on Measures against Certain Persons in Connection with the Assassination of Rafik Hariri</u> |
| 2006.140 | 946.223.0 | <u>Ordinance of 27 June 2006 on Measures against Belarus</u> |
| 2016.196 | 946.223.1 | <u>Ordinance of 24 May 2016 on Measures against the Democratic People's Republic of Korea</u> |
| 2006.211 | 946.223.2 | <u>Ordinance of 24 October 2006 on Measures concerning Lebanon</u> |
| 2016.010 | 946.223.3 | <u>Ordinance of 19 January 2016 on Measures against the Islamic Republic of Iran</u> |
| 2010.040 | 946.223.4 | <u>Ordinance of 23 February 2010 on Measures against Guinea</u> |
| 2011.058 | 946.223.6 | <u>Ordinance of 3 February 2011 on Measures against Certain Persons from Tunisia</u> |
| 2011.116 | 946.223.7 | <u>Ordinance of 23 March 2011 on Measures against Certain Persons from Egypt</u> |
| 2012.159 | 946.223.8 | <u>Ordinance of 12 June 2012 on Measures against Syria</u> |
| 2012.135 | 946.223.9 | <u>Ordinance of 8 May 2012 on Measures against Certain Persons and Organisations from Guinea-Bissau</u> |
| 2014.058 | 946.224.0 | <u>Ordinance of 28 February 2014 on Measures against Certain Persons from Ukraine</u> |
| 2014.078 | 946.224.1 | <u>Ordinance of 18 March 2014 on Measures against the Central African Republic</u> |
| 2014.235 | 946.224.2 | <u>Ordinance of 16 September 2014 on Measures to Prevent the Circumvention of International Sanctions in Connection with the Situation in Ukraine</u> |
| 2015.229 | 946.224.3 | <u>Ordinance of 25 August 2015 on Measures against the Republic of South Sudan</u> |
| 2014.293 | 946.224.4 | <u>Ordinance of 18 November 2014 on Measures against Yemen</u> |
| 2015.284 | 946.224.5 | <u>Ordinance of 27 October 2015 on Measures against Burundi</u> |
| 2017.278 | 946.224.6 | <u>Ordinance of 10 October 2017 on Measures against Mali</u> |
| 2018.006 | 946.224.7 | <u>Ordinance of 30 January 2018 on Measures against Venezuela</u> |
| 2019.264 | 946.224.8 | <u>Ordinance of 5 November 2019 on Measures against Nicaragua</u> |
| 2020.200 | 946.224.9 | <u>Ordinance of 16 June 2020 on Measures against Certain Persons and Organisations to Fight Terrorism</u> |

These ordinances are available at www.gesetze.li.

To the extent cross-border movement of goods is concerned, Swiss sanctions ordinances are applicable in Liechtenstein pursuant to the Treaty of 29 March 1923 between Switzerland and Liechtenstein on Accession of the Principality of Liechtenstein to the Swiss Customs Area (LGBI. 1924 No. 11). The Liechtenstein sanctions ordinances are expressly subject to the provisions of Swiss war material, goods control, and embargo legislation applicable in Liechtenstein. The Swiss sanctions ordinances largely have the same content as the Liechtenstein sanctions ordinances and can be found in the classified compilation of Swiss federal law (<https://www.admin.ch/gov/de/start/bundesrecht/systematische-sammlung.html>) under SR 946.2.

2. Information on changes to UN sanctions lists

The Financial Intelligence Unit (FIU) has launched a new software solution (goAML) for submitting suspicious activity reports under the SPG and reports under the ISA. This makes the process for submitting such reports more efficient and secure.

This channel is also used to provide information on changes relating to UN sanctions, such as changes to the lists of names. The service ensures that registered users can keep track of upcoming changes with an impact on their own KYC measures. Registration is available at <https://goaml.llv.li>, where instructions can also be found.

3. Reporting of frozen funds and economic resources

3.1 Identification of persons and cases

With the exception of two sanctions ordinances – concerning Lebanon and Myanmar – the coercive measures generally provide for freezing of funds and economic resources of natural persons, entities, and organisations.

A simple search at the Liechtenstein legislation website www.gesetze.li can be used to find the names of listed persons, entities, and organisations, with the exception of those covered by UN sanctions.

The following sites may be of particular use when searching for listed persons, entities, and organisations (UN sanctions):

- UN website: <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>
- Overview of EU sanctions: <https://www.sanctionsmap.eu/>

3.2 Triggering of reporting obligation

The formulation of the reporting obligation is similar in all sanctions ordinances and reads in general as follows:

"Any persons or institutions holding or managing funds or knowing of economic resources which must be assumed to fall under the freeze must report this to the FIU forthwith." The reporting obligation is triggered by:

- holding, managing², or *mere* knowing

² This also covers attempted transactions.

- of funds or economic resources
- which must be *assumed* to fall under the freeze.

The word *assumed* means that a suspicion or suspicious facts are sufficient to give rise to the reporting obligation.

The freeze covers funds and economic resources that are owned or *controlled directly or indirectly* by natural persons, entities, and organisations subject to the ordinances, generally listed in an annex thereof. It is also prohibited to transfer funds to sanctioned natural persons, entities, and organisations or to provide them with funds or economic resources in any other way, *directly or indirectly*.

In this context, the Financial Intelligence Unit draws attention to the fact that the assessment of the overall situation with regard to direct or indirect control must be made by those subject to the law. Only they have knowledge of the facts of the case (e.g. nominees and shells, family ties, complex structures, etc.).

Cases from recent practice involving the reporting obligation under the ISA show that some persons subject to the Due Diligence Act assume that a report of suspicion under Article 17(1) SPG can be submitted in lieu of a report under the ISA. The FIU expressly disagrees with this view and states:

1. The obligation to submit a report immediately under the sanctions ordinances issued pursuant to the ISA applies to anyone who either holds or manages funds or knows of economic resources which must be assumed to fall under the freeze. By issuing the sanctions ordinance, the Government thus requires that, if a person is listed in the ordinance, a report must be made immediately to the Financial Intelligence Unit under that ordinance.
2. Already in its 2013 Annual Report, the FIU pointed out on page 18 under point 4 that in connection with ISA reports, a report must also be submitted under the sanctions ordinance even if a suspicious activity report has already been submitted in the same connection under the SPG.
3. The FIU also points out that the freezing of funds and economic resources imposed under a sanctions ordinance remains unaffected even in the event of a court ruling to lift the asset freeze. Only the Government may, on an exceptional basis, approve payments from frozen accounts, transfers of frozen assets, and the release of frozen economic resources. Transfers of assets in connection with administrative acts of banks and investment firms are exempt from the freeze.

Ownership and control:

Ownership: The criterion to be taken into account when assessing whether a legal person or entity is owned by another person or entity is the possession of more than 50% of the proprietary rights of an entity or having majority interest in it. If this criterion is satisfied, it is considered that the legal person or entity is owned by another person or entity.

Control: The criteria to be taken into account when assessing whether a legal person or entity is controlled by another person or entity, alone or pursuant to an agreement with another shareholder or other third party, could include, inter alia:

- *having the right or exercising the power 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 formation deed 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, without being the holder of that right;*
- *having the right to use all or part of the assets of a legal person or entity;*
- *managing the business of a legal person or entity on a unified basis, while publishing consolidated accounts;*
- *sharing jointly and severally the financial liabilities of a legal person or entity, or guaranteeing them;*
- *being a beneficiary of the legal person or entity (including prospective and discretionary beneficiaries).*

If any of these criteria are satisfied, it is considered that the legal person or entity is controlled by another person or entity, unless the contrary can be established on a case by case basis.

Indirect provision:

The making available of funds or economic resources to non-listed legal persons or entities which are owned or controlled by a listed person or entity will in principle be considered as making them indirectly available to the latter, unless it can be reasonably determined, on a case-by-case basis using a risk-based approach, taking into account all of the relevant circumstances, including the criteria below, that the funds or economic resources concerned will not be used by or be for the benefit of that listed person or entity.

The criteria to be taken into account include, inter alia:

- *the date and nature of the contractual links between the entities concerned (for instance sales, purchase, or distribution contracts concluded shortly before sanctions enter into effect);*
- *the relevance of the sector of activity of the non-listed entity for the listed entity (subsidiaries which, for example, are active solely in the production and distribution of non-military products, while the parent company also produces goods for the armament industry);*
- *the characteristics of the funds or economic resources made available, including their potential practical use by, and ease of transfer to, the listed entity (e.g. non-earmarked loan agreements with non-listed entities, which in turn use advisory services of listed entities).*

An economic resource used to generate profits may be considered to benefit a listed person or entity. However, this is not solely because it has been used for profit by a non-listed person or entity and

those profits are in part distributed to a listed shareholder; additional indicators are required in such cases.

The indirect making available of funds or economic resources to listed persons or entities may also include the making available of these items to persons or entities which are not owned or controlled by listed entities.

The interpretation of the phrase "direct or indirect control" is analogous to the interpretation under the Due Diligence Act. A reporting obligation thus arises whenever a person, entity, or organisation affected by sanctions ultimately exercises direct or indirect control over funds or economic resources, and there is certainty in this regard or it must at least be assumed. In relation to intermediate legal entities, control means the *de facto* possibility to dispose, alone or jointly with others, of the assets of the legal entity, or to change the provisions that characterise the legal entity, or to change the beneficiary arrangements, or to guide the exercise of such control (see Report and Motion 2008/124, p. 46).

The obligation to report immediately applies to anyone who either holds or manages funds or knows of economic resources which must be assumed to fall under the freeze. The Government has therefore deliberately set the threshold for reporting at a low level, taking into account the importance of economic sanctions. Nevertheless, a minimum likelihood of the existence of control or ownership is required; the latter can already be assumed, for example, if someone has signing authority for an account or access rights to a safe deposit box or appears as a beneficiary of a legal entity.³

In addition to the reporting obligation for funds held or managed by the reporting party, there is also a reporting obligation for economic resources that are known and that must be assumed to fall under the freeze, even if they are not managed or held by the reporting party itself. The following constellations serve as examples:

- A professional trustee in Liechtenstein closes the business relationship with X; the assets are transferred to an account at a bank in Zurich. X is sanctioned 3 months after termination of this business relationship. The professional trustee knows or must assume that assets are still with the bank in Zurich and therefore becomes obliged to report this transaction.
- A bank in Liechtenstein receives a transfer order from person X to an account at a bank abroad in the name of a Y Ltd. While X is not subject to sanctions, Y Ltd appears in the annex to a sanctions ordinance. Under the relevant ordinance, it is prohibited to transfer funds or otherwise make funds and economic resources available, directly or indirectly, to the natural persons, entities, and organisations covered by the freeze. The Liechtenstein bank is now aware of an account – at a different bank – which can be assumed to be owned or controlled directly or indirectly by a listed entity, and it is therefore obliged to report this fact pattern to the Financial Intelligence Unit. In this case, the report is limited to the knowledge of the existence of an account of a listed person.
- A Liechtenstein company offers its clients duty-free safe custody of their precious metals. Now the company learns that a client maintaining a custody account with the company is listed in

³ Statement by the Government to the Parliament of the Principality of Liechtenstein on the questions raised at the first reading on the amendments to the International Sanctions Act (ISA), 2017/20, p. 7

the annex of a sanctions ordinance and that the person's economic resources are to be frozen. This results in an immediate report of the fact pattern to the Financial Intelligence Unit.

Management in Liechtenstein – assets abroad

A company managed in Liechtenstein held assets at a foreign bank. A person listed in a Liechtenstein sanctions ordinance was the beneficial owner of those assets. The funds held abroad were frozen via that country's national sanctions ordinance. Now that ordinance has been repealed, and the funds have been released in that country. The assets are to be transferred to the home country of the person, who is still listed in the Liechtenstein sanctions ordinance.

Two questions relating to this fact pattern arise from the perspective of the ISA:

1. Can governing bodies in Liechtenstein approve repatriation via a foreign private account held by the listed person?
The person was listed in the annex under the applicable Liechtenstein sanctions ordinance. According to the ordinance, it was prohibited to transfer assets to the natural persons, entities, and organisations affected by the freeze or to make assets and economic resources otherwise available, directly or indirectly. The Government therefore had no discretion and was unable to grant exemptions. The bans on transfers also applied to all persons and institutions performing administrative acts in Liechtenstein. If payments were to be executed by governing bodies in Liechtenstein, this would be punishable under Article 10 ISA.
2. Are assets situated abroad frozen by the Liechtenstein sanctions ordinance?
According to the Liechtenstein sanctions ordinance, assets and economic resources owned by or under the direct or indirect control of a listed natural person, entity, or organisation must be frozen. The FIU is of the view that assets situated abroad are not frozen by Liechtenstein law. This means transfers from those foreign accounts would in principle be possible, even without approval by the Government.
3. Is there a reporting obligation for Liechtenstein persons and entities if assets or economic resources are situated abroad?
According to the Liechtenstein sanctions ordinance, persons and institutions which hold or administer the assets or which are aware of economic resources that should be assumed to be subject to freezing under Liechtenstein law must report this immediately to the FIU. In the FIU's view, the principle of territoriality also generally applies here. However, if persons and entities in Liechtenstein are aware of assets or economic resources situated abroad, a report must be made to the FIU. The FIU will take note of the report and, where appropriate, contact the foreign authority on the basis of Article 7 ISA. Domestic persons subject to due diligence are not, however, exempt from any obligation to submit a report to the FIU under Article 17(1) SPG.

3.3 Scope of report

The reports must include the names of the persons concerned, their status (e.g. account holder, beneficial owner, (discretionary) beneficiary, payee, prospective beneficiary, etc.) as well as the object and value of the frozen funds and economic resources. This includes all information such as account numbers, safe deposit box identifiers, details of banking institutions or other places where economic resources are stored, or information from public registers (e.g. in connection with real estate). The Financial Intelligence Unit may then, within the scope of Article 3 ISA, request further information or documents that it deems necessary for a comprehensive assessment or inspection.

3.4 Technical submission of reports

The reporting party must submit the report to the FIU using the portal at <https://goaml.llv.li>.

The reporting party must register in advance; registration instructions and a manual for using the electronic reporting system goAML can be found on the FIU website (www.fiu.li).

4. Requests for exemptions

4.1 Exemptions from freezing of assets

On an exceptional basis, the Government may approve payments from frozen accounts, transfers of frozen assets, and the release of frozen economic resources if certain grounds apply – such as especially the protection of Liechtenstein interests or the avoidance of cases of hardship⁴. Similarly, the Government may grant approval for the payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services as well as the payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources. Requests must be submitted to the FIU.

Examples:

The assets of the applicant were frozen at a bank due to a listing of the account holder and beneficial owner in a Liechtenstein sanctions ordinance and reported in accordance with the provisions of the ordinance. Under the ordinance, the Government may on an exceptional basis approve payments from frozen accounts, transfers of frozen assets, and the release of frozen economic resources in order to avoid hardship cases. The request was intended to settle the accrued schooling costs of the listed person's son. The request for the release of assets to pay the schooling bills was approved by the Government. The request fell under the exemption of the applicable sanctions ordinance. Adequate schooling of the minor child was thus deemed a hardship case.

The assets of the applicant (legal entity) were frozen at a bank due to a listing of the beneficial owner in a Liechtenstein sanctions ordinance. Under the ordinance, the Government may on an exceptional basis approve payments from frozen accounts, transfers of frozen assets, and the release of frozen economic resources for the payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services as well as the payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources. The request was intended to cover the costs incurred by legal services provided by a law firm. Furthermore, the fees of the board of trustees were also to be paid. The request for release of assets for the payment of invoices for fees and expenses associated with the provision of legal services as well as service charges for routine maintenance of assets was subsequently approved by the Government.

4.2 Exemptions from prohibition of supply of goods

If the request for an exemption concerns the prohibition of delivery of arms and related material or of other goods, then – if it affects cross-border trade – the Swiss State Secretariat for Economic Affairs

⁴ "Avoidance of hardship cases" subsumes all types of payments that are considered to be basic or extraordinary expenses in accordance with the relevant UN resolutions or guidelines of the relevant UN sanction committees.

(SECO) is responsible for processing of the request. Cross-border trade occurs if the goods cross the border of the Swiss customs territory, which includes Liechtenstein.

Such requests should be submitted to the FIU only if the movement of goods concerned occurs exclusively outside or exclusively within the Swiss customs territory.

5. Special competences pursuant to the Ordinance on Measures against Certain Persons and Organisations to Fight Terrorism

Pursuant to Security Council resolution 1373, Liechtenstein is required to consider inclusion of persons, groups, or organisations in accordance with Article 3 of the Ordinance on the basis of the decisions of the competent domestic or foreign authorities or courts.

Competence for the consideration of a measure to this affect is assigned in Article 4(1) of the Ordinance, according to which the FIU – as the competent enforcement authority for the coercive measures – reviews the available information and documentation in collaboration with other bodies concerned. After the review, the FIU forwards its recommendations to the Government for decision.

The same competences and procedural steps apply to consideration of the delisting of persons, groups, or organisations referred to under Article 3 of the Ordinance.

Financial Intelligence Unit

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