

## **Restrictive Measures against Iran**

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**COUNCIL REGULATION (EC) No 423/2007**

**AS AMENDED BY COUNCIL REGULATION (EC) NO 1110/2008**

### **A GUIDANCE NOTE FOR FIRMS**

This guidance note is intended for credit and financial institutions conducting business with Iranian financial institutions set out in Annex IV of Council Regulation 1110/2008. It will be most relevant for those institutions carrying out money transmission services. This note summarises the changes that Council Regulation (EC) No 1110/2008 introduces to Council Regulation (EC) No 423/2007 in relation to the activities of credit and financial institutions linked with Iran, as set out in Annex IV.

This note explains the purpose of the amendments to Council Regulation (EC) No 423/2007 as they apply to credit and financial institutions. Annex I gives details of the reporting arrangements associated with the regulation, and Annex II sets out sources of further information and examples of good practice.

#### **When does the amended Regulation (EC) No 423/2007 take effect in the UK?**

The amendments to Regulation (EC) No 423/2007 enter into force with effect from 12 November 2008.

#### **Why has the Regulation been amended?**

Regulation (EC) No 423/2007 has been amended in order to implement the vigilance requirements in United Nations Security Council Resolution (UNSCR) 1803 in the European Union. UNSCR 1803 was adopted on 3 March 2008 because of the international community's serious ongoing concerns about Iran's nuclear development programme.

UNSCR 1803, at paragraph 10, calls upon all states to exercise vigilance over the activities of financial institutions in their territories with all banks domiciled in Iran and their branches and subsidiaries abroad, in particular with Bank Melli and Bank Saderat, in order to avoid such activities contributing to the proliferation-sensitive nuclear activities or the development of nuclear-weapon delivery systems referred to in UNSCR 1737.

## **What are the rules?**

As introduced by Council Regulation (EC) No 1110/2008, Article 11a of Regulation (EC) No 423/2007 requires credit and financial institutions, in their activities with listed entities, to:

- a) exercise continuous vigilance over account activity including through their programmes on customer due diligence and under their obligations relating to money-laundering and financing of terrorism;
- b) require that all information fields of payment instructions which relate to the originator and beneficiary of the transaction in question be completed; and if that information is not supplied, refuse the transaction;
- c) maintain all records of transactions for a period of five years and make them available to national authorities on request; and
- d) promptly submit a proliferation finance report to SOCA using the SAR format and process if they suspect or have reasonable grounds to suspect that funds are related to proliferation financing.

In relation to the practical implementation of (b) above, Article 11a (1) (b) applies only to the payment remitting financial institution and the paying financial institution; it does not apply to intermediary financial institutions. The Regulation does not require all information fields to be completed; it is sufficient for mandatory fields to be completed before a transaction can be accepted. These points have been clarified in official communication with the European Commission.

The proliferation finance (PF) reporting regime introduced by the amendments to Regulation (EC) No 423/2007 requires credit and financial institutions to submit a report in relation to transactions which involve an Iranian entity, and where they suspect or have reasonable grounds to suspect that funds are related to proliferation financing.

## **Which businesses are covered?**

All credit and financial institutions subject to the Money Laundering Regulations 2007 are covered by the new Regulation.

## **Over which businesses is vigilance required?**

The Regulation requires vigilance over all credit and financial institutions domiciled in Iran, their branches and subsidiaries overseas, and entities controlled by them. Annex IV of Council Regulation 1110/2008 lists all credit and financial institutions to which the Regulation applies at the time of publication and this list is included as Annex VI to Regulation (EC) No 423/2007. This list will be updated in future by the European Union as necessary.

## **I suspect a transaction may be related to proliferation, what should I do?**

If a transaction involve an Iranian entity listed in Annex VI to Regulation (EC) No 423/2007, then it should be subjected to vigilance as set out in the regulation.

If you flag the transaction as potentially suspicious, and further investigation does not allay that suspicion, then you should:

- Refuse the transaction; and
- Submit a Proliferation Financing (PF) report.

## **How can I identify suspicious activity?**

See Annex II of this guidance for sources of information and good practice which can assist in identifying suspicious activity.

## **How do I report?**

Reports should be submitted via the Serious Organised Crime Agency's (SOCA) Suspicious Activity Reporting (SAR) mechanism. You may submit reports using your preferred existing SAR method. See Annex I of this guidance for full details on how to submit Proliferation Finance (PF) reports.

## **How does this Regulation affect existing requirements?**

The changes to Regulation (EC) No 423/2007 enhance the measures already in existence in relation to Iran and do not affect other financial sanctions regimes, all of which remain unchanged. Guidance on financial sanctions can be found at [http://www.hm-treasury.gov.uk/financial\\_sanctions.htm](http://www.hm-treasury.gov.uk/financial_sanctions.htm).

Regulation (EC) No 423/2007 does not affect the requirement already in place to submit SARs in relation to suspected money-laundering, including cases where the offences for money-laundering or criminal property relate to proliferation<sup>1</sup>. In such cases credit and financial institutions may be required to submit a SAR.

## **Do I need consent?**

There is no facility in the Regulation (EC) No 423/2007 to seek consent to proceed with a transaction/activity when making a Proliferation Finance report. Annex I sets out how to submit reports, and explains consent issues further.

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<sup>1</sup> Proliferation offences include those under sections 47, 50 and 51 of the Anti-terrorism, Crime and Security Act 2001; sections 1 and 1A of the Biological Weapons Act 1974; and sections 2 and 3 of the Chemical Weapons Act 1996.

**What is the timescale for making reports?**

PF reports should be made as soon as you become suspicious of a possible PF transaction or as soon as is reasonably practicable.

**Will I get feedback?**

Periodically the reporting sector will be given feedback on the quality of the reports and a further guide to reporting.

If your report is being investigated, you may be contacted directly by the appropriate authorities.

**Is there a legal requirement to act?**

Regulation (EC) No 423/2007 is binding in its entirety and directly applicable in all EU Member States. The changes introduced by Council Regulation 1110/2008 take effect on the day following that of its publication in OJEU, which was on 11 November 2008.

**What are the penalties if firms fail to act?**

It is mandatory for firms to implement provisions passed in EU Regulations.

Failure to comply with this Regulation may also evidence a breach of a regulatory requirement.

**What are the tipping off provisions?**

There is no tipping off provision under this Regulation, but firms are advised not to tell their customers or counterparties of a notification. If you are submitting a suspicious activity report (SAR) in addition to a PF report (see Annex I), the Tipping Off provisions in PoCA still apply.

## How do I make a Proliferation Finance report?

Proliferation Financing (PF) Reports should be submitted via the Serious Organised Crime Agency's (SOCA) SAR mechanism using your preferred existing SAR method.

### Key points to note:

- If you are making a PF report using the SAR system you are **not making a SAR for the purposes of Part 7 of the PoCA (but see below for circumstances where a PF report and a SAR for money laundering might both be required); or under the Terrorism Act 2000 (TACT).**
- You **must** include the unique identifier *xxOCPxx* at the start of the Reason For Suspicion (RFS) field. If the unique identifier is not included, the report will not be dealt with as a PF report.
- **DO NOT TICK THE CONSENT BOX** when submitting a PF report as there is no consent facility associated with PF reports (see section below).

### What details do I need to include?

1. Reports should include the following 'header' information:
  - Your reference number (if relevant);
  - Choose the 'SAR' Type as 'Terrorism' This is so that SOCA can secure the reports as sensitive material;
  - The date of the report;
  - Related disclosure numbers (if appropriate); and
  - Your reporting entity details and branch.

***DO NOT TICK THE CONSENT BOX*** (see section below).
2. The 'main' report **must** include the following three things:
  - Completed details of the Main subject/Company and any associated companies as appropriate;
  - Transaction details, if appropriate; and
  - RFS including the unique identifier *xxOCPxx* at the start of this field.
3. When deciding what details might be appropriate to include in the RFS field, consider the following:
  - Who is involved?
  - What are they doing?
  - At what stage is the activity?
4. You should therefore also consider including:
  - Source and beneficiary information for the activity and /or transaction;
  - Company registration numbers (if known);

- Names of Directors and positions held in the company/companies;
- If the company has subsidiaries, or holdings in other companies;
- If the company is itself a subsidiary and who its parent company is;
- What are the goods or activities being financed; and
- Where are the goods currently located?

**What if I also need to submit a SAR for an underlying money laundering offence?**

You should submit **one** report and include both the PF information and the money laundering information. Continue selecting the ‘Terrorism’ box and you **must** include the following text at the start of the RFS field:

*Ref: xxOCPxx and this report is also submitted under PoCA s327 – 329*

You **must** include details of your suspicion of money laundering of criminal financing in the body of the RFS field, in addition to your PF concerns.

**Who can I speak to if I have a query about submitting a PF report or a dual report?**

You should contact the UK Financial Intelligence Unit SAR Control Team at SOCA on 0207 238 8282 option 2.

**What if I need consent to proceed for the money laundering activity?**

Select the ‘consent’ box **and** the ‘Terrorism’ header, and you **must** use the following text at the start of the RFS field:

*Ref: xxOCPxx and consent to proceed under PoCA 2002 s327 – 329.*

Do not select the PoCA header on the report.

***Please note that the PoCA notice period of 7 working days for granting or refusing consent will be applied by SOCA, even though the report is submitted under Terrorism.***

You **must** include details of your suspicion of money laundering or criminal financing and why you require consent to proceed, in the body of the RFS field; in addition to your PF concerns.

You will be notified of the consent decision in the normal way; but consent applies to the PoCA offence alone and does not apply to any aspect of the proliferation financing offences.

**Who can I speak to if I have a query about submitting a dual report requiring consent?**

You should contact the UK Financial Intelligence Unit Consent Team at SOCA on 0207 238 8282 option 4.

## Annex II

### Further Information and Good Practices

This Annex provides details of the further information available which may be useful to credit and financial institutions in carrying out their obligations under the Regulation, and highlights the background information and best-practice guidance available from international organisations and industry groups. The information presented in this annex is non-binding and does not extend the legal requirements of the Regulation.

There are few financial warning signs associated with proliferation finance, and we recognise it is difficult for a financial institution to determine whether a transaction is legitimate or suspicious. Nevertheless, some information is available on potential indicators and high-risk entities. Internationally agreed guidance recommends an entity-based approach to identifying proliferation finance. Under this approach names and other identifying information of high-risk entities are the basis for the screening of customers and transactions for those entities.

Firms may wish to use publicly available sources of information on high-risk entities in making their risk assessment and determining whether an unusual and potentially suspicious transaction should be reported. Sources of information available include:

- **High-risk entities:** The department for Business, Enterprise and Regulatory Reform (BERR) publishes a publicly available 'Iran list' (<http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/licensing-policy/end-use-control/page29307.html>) to provide exporters with more specific information about end-users in Iran. This list is intended to help exporters judge which exports might be of concern on end-use grounds, based on previous licensing decisions. It can be used by firms in their assessment of which accounts to exercise vigilance over. The list is not exhaustive: the entities included are mainly based on the last 3 years' experience of either invoking the WMD end-use control or refusing licences under it. In addition there are a few other entities for which the Government has not refused licences or invoked the control, but on which there is publicly available information indicating their involvement in WMD programmes of concern.

*NB Firms should note that this list includes both entities subject to financial sanctions and other entities. There are no prohibitions on doing business with the non-sanctioned entities, but they pose a high risk which financial institutions should take steps to manage.*

- **Sanctioned Entities:** Except under an exemption in the Regulation, or under the authority of a licence granted by HM Treasury, it is illegal to deal with the funds or economic resources of, or make any funds, economic resources or, in some circumstances, financial (or related) services available directly or indirectly to for the benefit of, an entity subject to UK, EU or UN sanctions. Information about financial

sanctions, including a consolidated list of financial sanctions targets, can be found at [http://www.hm-treasury.gov.uk/financial\\_sanctions.htm](http://www.hm-treasury.gov.uk/financial_sanctions.htm).

- Licences: In determining whether an unusual and potentially suspicious transaction should be refused and/or reported, firms may wish to seek information on whether a licence has been issued by Government. These include licences issued by BERR in relation to controlled exports, and by HM Treasury in relation to financial transactions with sanctioned entities.

If a firm suspects a transaction on the basis of the associated goods movement, it may wish to seek confirmation from the exporter that it has a licence, or that BERR has confirmed that an export licence is not required.

If a firm suspects a transaction on the basis of the involvement of a sanctioned entity, it may wish to confirm whether a licence has been issued by HM Treasury in relation to that transaction.

Further information is available on proliferation finance, indicators, and best practices from international organisations and industry bodies:

- The Financial Action Task Force (FATF) issued guidance in October 2008 on Implementing the Financial Provisions of UNSCR 1803 (available from - <http://www.fatf-gafi.org/dataoecd/47/41/41529339.pdf> ). This describes in greater detail the specific measures jurisdictions and financial institutions could adopt in implementing the provisions of the UN Resolution.
- Background information on proliferation finance threats and methodologies is included in the FATF typology report on proliferation finance, published on 18 June 2008 (available from -<http://www.fatf-gafi.org/dataoecd/14/21/41146580.pdf>). This report includes a set of investigative indicators under development as a tool to assist financial institutions identify wider suspicious activity related to proliferation, and outlined the information available from jurisdictions on suspicious entities and practices.
- The FATF has previously published guidance on implementing the activity-based prohibitions of UN Security Council Resolution 1737 (available from - <http://www.fatf-gafi.org/dataoecd/43/17/39494050.pdf>) which describes an entity-based approach to the identification of high-risk customers and transactions, and the additional due diligence which these could be subject to.
- The Wolfsberg Group is currently preparing a guidance paper on trade finance. This is due to be published on their website [www.wolfsberg-principles.com](http://www.wolfsberg-principles.com) by the end of 2008.
- The Government will continue to work with industry bodies, including the British Bankers Association, to develop further information and incorporate this issue within industry-specific guidance.