



Sanctions & Embargoes

A straightforward brochure to explain how sanctions and embargoes work, the ways in which they may impact your business and why it's important to understand them.

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Complex legislation, simply explained.

When you work in business, keeping on top of all the different rules and regulations can be hard work. So we do what we can to help our Business Banking customers in understanding how these changes may potentially impact their business.

In this brochure you'll find a straight forward summary of sanctions and embargoes – how they work, your obligations as an Australian business and the potential penalties for non-compliance.

While most businesses will only rarely be affected by sanctions and embargoes, the consequences for breaking the rules can be severe. So we suggest you have a good read through this brochure and, if necessary, seek independent legal advice, before entering into any agreements with offshore providers or their agents.

What is a sanction?

A sanction is a restriction that's imposed on a country, a specific person, a legal entity or an organisation. They're used by governments as a non-violent foreign policy tool to fight activities such as financial crime, human rights abuses, the sheltering of international criminals, nuclear weapons development and terrorism.

Sanctions affect financial institutions such as NAB (and their customers) because they place restrictions and controls on the movement of goods, services and money. We, and our customers, are legally bound to adhere to the sanctions imposed by relevant jurisdictions.

Typical restrictions associated with sanctions include:

- Prohibiting the transfer of funds to and/or from a sanction country and/or Specifically Designated Nationals (SDN);
- Freezing the assets of a government, entity, individual or resident of a sanctioned country;
- Prohibiting particular types of activities;
- Imposing travel bans; and
- Other financial and diplomatic restrictions.

What is an embargo?

An embargo is a unilateral or collective restriction on the import or export of goods, materials, capital or services into or from a specific country or group of countries. Embargoes are similar to sanctions and are legal barriers to trade.

We, and our customers, are legally bound to adhere to embargoes imposed by relevant jurisdictions.

What are the penalties for failing to comply with a sanction or embargo?

Infringements of sanctions or embargoes, or dealing with Specially Designated Nationals, are regarded as serious offences with severe penalties to match, including seizure of goods, significant fines and even imprisonment.

On top of these penalties, your transactions and your business could be placed at risk. For example, your payments may be confiscated or your funds frozen, restricting your cash flow. You may also be subject to increased due diligence by regulators, financial institutions and counter parties on your future transactions and activities. Ultimately, it's highly likely that your business reputation will be damaged.

What sort of transactions should I be wary of?

If you or your business is involved in any of the following transactions, you may be at risk:

- You make a payment directly to someone who is subject to sanctions or embargoes (SDN); or
- You make a payment to someone in a sanctioned country, even if their account is located in a non-sanctioned country.

The movement of funds or goods in your transaction involves a party that's subject to sanctions or embargoes (for example airlines, banks, shipping vessels and ports).

The different types of sanctions.

There are two types of sanction regimes in Australia:

- **Multilateral** – These are sanctions adopted by more than one country against another country. They're usually issued by super national bodies such as the United Nations Security Council (UNSC); and
- **Autonomous** – These are sanctions adopted by just one country against another country. They're usually issued by domestic government bodies such as the USA Office of Foreign Asset and Control (OFAC), the Australian Department of Foreign Affairs and Trade (DFAT), or Her Majesty's Treasury (HMT) in the UK.

Sanctions aren't always imposed on an entire country; there are various forms of targeted sanctions, including:

Specially Designated Nationals (SDNs) – SDNs can be individuals or entities (such as financial institutions, companies, shipping vessels, ports or airlines) and they can be located anywhere in the world. Authorities designate SDNs for a number of reasons. They may be linked to human rights abuses, nuclear proliferation, terrorism, narcotics trafficking, transnational criminal organisations, or they may support sanctioned regimes. In most cases, entities that are beneficially owned by or significantly linked to an SDN will also be considered an SDN.

Goods and services – Common sanctioned goods and services range from weapons and rough diamonds to the provision of higher education in specific sciences. The sanctions cover the supply, sale, transfer, maintenance and provision of training in these goods or services, and include fund transfers related to their trade.

Arms embargoes – Arms embargoes prohibit the trade of certain weaponry as well as products and technologies that may normally be used for civilian purposes but which have military applications (Dual Use Goods). These items commonly require an export trade licence.

Keeping up with changes.

The nature of sanctions and embargoes means that they're subject to frequent and sometimes sudden changes. They can be imposed at any time and by any country, international organisation or super national body. In general, the effect is immediate.

All financial institutions have a duty to ensure that they comply with applicable sanction and embargo regimes. Failing to do so could lead to significant regulatory enforcement action, fines, criminal charges in Australia or elsewhere, and serious reputation damage.

That's why we may request certain information about the nature of your business transactions and activities, to determine whether you are complying with current sanction and embargo regimes.

If you don't provide all of the information we request from you, we may not be able to complete your financial transaction.

Who implements sanctions and embargoes?

Australia – The Department of Foreign Affairs and Trade (DFAT) is responsible for the implementation of UN sanctions and embargoes in Australia. The Autonomous Sanctions Act (ASA) was tabled by Parliament in October 2010 and is designed to enable further regulation and faster implementation and enforcement of Australia's autonomous sanctions.

European Union – The EU implements sanctions and embargoes (commonly referred to as 'restrictive measures' in the EU) under the Common Foreign and Security Policy (CFSP) framework. EU sanctions and embargoes apply to all EU member states.

United Kingdom – Her Majesty's Treasury (HMT) is responsible for the implementation and administration of international financial sanctions and embargoes in the UK.

United Nations – The United Nations Security Council (UNSC) is responsible for implementing United Nations sanctions and embargoes. All member countries under the Charter of the United Nations are obliged to abide by UN sanctions.

United States – The United States Treasury Office of Foreign Assets Control (OFAC) is responsible for administering and enforcing autonomous US sanctions and embargoes. Recent changes to US sanction and embargo laws (such as comprehensive Iran Sanctions and the Accountability and Divestment Act (CISADA)) have strengthened the regime substantially. Obligations now have far-reaching applications, often beyond US borders, and include non-US based financial institutions and businesses, as well as all US citizens and green card holders.

How are sanctions and embargoes enforced in Australia?

Restrictions are implemented through regulations made under the Charter of the United Nations Act 1945 and can apply to:

- Any person in Australia;
- Any Australian person, anywhere in the world;
- Companies incorporated overseas that are owned or controlled by Australians or people in Australia; and
- Anyone using an Australian flag vessel or aircraft to transport goods or transact services that are subject to UN sanctions.

Case study: The Australian Wheat Board (AWB)

In the late 1990s, Iraq was one of Australia's most lucrative wheat markets, accounting for one-tenth of our exports.

Under the UN Oil-for-Food Program, it was prohibited for organisations to pay money directly to Saddam Hussein's regime in Iraq. Instead, money from the sale of Iraq's oil was kept in a UN-administered account and used to pay for food supplies (including wheat).

AWB was found to be in breach of the sanction. Payments for its wheat were being inflated, with the surplus funds paid to the Iraqi government, giving them access to US dollars.

The consequences for AWB were substantial. They were forced to pay \$39.5 million to over a thousand aggrieved institutional and retail investors, Australia lost almost all of the wheat market in Iraq, and AWB lost significant support for its monopoly power over the sale of Australian wheat. After a continued decline in its share price, AWB was sold in December 2010 and delisted from the Australian Securities Exchange (ASX).

Some additional things to look out for.

Here are some 'red flags' to keep in mind. If you notice any of these in your business dealings, then it may be worth investigating further, before entering into any transaction.

- **Lack of information** – If the counterparty fails to provide you with information about the shareholder or owners of a company, you should ask for more information;
- **Division countries** – Some countries are commonly used as trans-shipment destinations, prior to cargo being delivered to a sanctioned country. If the goods you're dealing with are passing through a country that you wouldn't normally associate with those goods, then you should investigate further, especially if the goods are delivered in close proximity to a country that's subject to international sanctions; and
- **Contractual documents** – It's important to check contractual documents to make sure they don't list a sanctioned or embargoed person or entity. If the documents are unmarked or to the order of the counterparty, you should investigate further.

It's worth keeping in mind that the person you're dealing with may have a vested interest in the transaction. So be careful not to accept advice from anyone who isn't qualified to provide it.

Can I get a licence or permit to carry out an activity?

Licences and permits are often available and are, in some cases, mandatory. But they can be complex, so we recommend you get independent legal advice (DFAT does not provide legal advice).

Also, be aware that DFAT may only provide clearance for the Australian jurisdiction and currency, not all sanctions.

A few points to remember:

- Sanctions refer to economic coercive measures taken by one or more countries towards another country, specific person or legal entity organisation;
- An embargo is a unilateral or collective restriction on the import or export of goods, materials, capital or services into or from a specific country or group of countries;
- The sanctions and embargoes environment is complex, volatile and dynamic, and international legislation is subject to change without notice;
- Sanctions and embargoes do not only affect banks; everyone must ensure they meet these requirements. Governments regularly take action against exporters, importers and trading companies;
- If you're an exporter, there are separate export regulations that may fall under a sanctioned or embargoed regime, which you'll need to be aware of;

- It's not just the Australian Government's sanctions and embargoes regime that you need to understand – other regimes may also apply;
- Obtain independent legal advice on all sanctions regimes that may impact your intended business;
- Make sure you have the necessary authorisations and/or licence(s) required to facilitate the intended transaction;
- Keep up to date with international developments by reading media reports and relevant websites;
- Where appropriate, develop your own internal expertise in the application of international sanctions (this may be prudent for industries where the threat of sanctions is higher, such as petroleum or energy); and
- Speak to your NAB Business Banker to understand how we can assist you in managing the complexities of overseas trade. Advise your Banker immediately if there are any changes in your business activity.

Important: The information contained in this brochure is general in nature and has been prepared by National Australia Bank Limited (NAB) to assist its Business Banking customers in understanding sanctions and embargoes. It is not intended to act as advice nor does it purport to contain all matters relevant to your circumstances or any specific transaction. As the environment relating to sanctions and embargoes is dynamic and evolving, this information is subject to change without notice. We are not under any duty to update or correct it. All information should be checked for accuracy, currency and completeness. Current information can be obtained from the Department of Foreign Affairs and Trade website www.dfat.gov.au and Department of Defence website www.defence.gov.au/deco/embargos.htm. If sanctions or embargo issues arise in your business, we recommend that you obtain independent legal advice.