

# FAQ for Implementation of the Counter-Terrorism Financing Act (Insurance Enterprises)

Acknowledged by the Financial Supervisory Commission per letter No. Jin-Guan-Bao-Zong-Zi-10701903890 dated February 7, 2018

Q&A	Remarks
I. General Rules	
<p>1. The Counter-Terrorism Financing Act requires financial institutions to report and freeze the properties or property interests of designated sanctioned individuals, legal persons or entities (referred to as “designated sanctioned persons” hereunder). Where to find the latest sanctions list or information on related measures?</p> <p>Answer:</p> <p>1. The sanctions list is published on the counter terrorist financing website of the Ministry of Justice and the Investigation Bureau, Ministry of Justice (“MJIB”) (<a href="http://www.mjib.gov.tw/mlpc/">http://www.mjib.gov.tw/mlpc/</a>). The sanctions list covers mainly four types of individuals, legal persons or entities:</p> <p>(1) Individuals, legal persons or entities implicated in acts or plans that are carried out to intimidate the public or coerce the government, foreign governments, institutions, or international organizations by causing death or injury of unspecified persons, in connection with certain criminal offenses set forth in the subparagraphs, Paragraph 1, Article 8 of the Counter-Terrorism Financing Act;</p> <p>(2) Individuals, legal persons or entities required to be put on the sanctions list in accordance with an international treaty or agreement on the prevention of terrorist financing or the relevant United Nations resolutions;</p> <p>(3) Individuals, legal persons, or entities designated by the relevant UNSCRs and any successor resolution on TF ; and</p> <p>(4) Individuals, legal persons, or entities</p>	

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<p>designated by the relevant UNSCRs and any successor resolution on the prevention of proliferation of weapons of mass destruction.</p> <p>2. Other measures relating to the Counter-Terrorism Financing Act (e.g. delisting, making reservations for expenses or making specific payments) are also posted on the MJIB counter terrorist financing website.</p>	
<p>2. How often is the sanctions list updated?</p> <p>Answer:</p> <p>The sanctions list will be frequently updated. But there are no fixed dates for the updates. Financial institutions are advised to visit the counter terrorist financing website often and watch closely the list updates. The website will soon add an update notice function for use by the visitors.</p>	
<p>3. What does “property or property interest” mean?</p> <p>Answer:</p> <p>1. In the Counter-Terrorism Financing Act, “property” and “property interest” are mentioned together. The meaning of “property” should be comparable to the “property” mentioned in the Criminal Code in connection with property crimes. That is, it should be in principle a thing with property value. “Property interest” could be interpreted as “rights or interests other than the property itself that carry all economic values.”</p> <p>2. Examples of property or property interest include cash, checks, bills of exchange, bank deposits, savings accounts, notes, stocks, bonds, coupons, mortgages, liens or other secured property rights, warehouse receipts, bills of lading, depository receipts, sales orders, or any other ownership certificates or bond obligations, loans or credit extended, options, negotiable instruments,</p>	<p>1. In reference to Point 3 of the Directions for Seizure of Properties by Prosecutorial Offices in Criminal Cases, for the purpose of preserving payment demands, tax payment demands or compensations, properties that may be seized also include real properties, marketable securities, claims and other rights with property value in addition to movable properties.</p> <p>2. Under Article 1 “Definitions” of the 1998 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (“Vienna Convention”):</p> <p>p) “Proceeds” means any property derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with</p>

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<p>commercial acceptance bills, accounts payable, insurance policies, safe deposits and contents therein, annuities, or any financial service of similar nature.</p>	<p>article 3, paragraph 1;  q) "Property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;</p> <p>3. In reference to the legislative intent of Paragraph 4, Article 38-1 of Taiwan's Criminal Code, it says "(1)...it is pointed out in Article 2. (d) and (e) of the UN Convention against Corruption, Palermo Convention and Vienna Convention that proceeds of crime shall mean any property and interests derived from or obtained, directly or indirectly, through the commission of an offence, whether corporeal or incorporeal, movable or immovable, tangible or intangible. Thus Paragraph 4 is added in reference to Paragraph 2, Section 73 of German Criminal Law, Article 19 (1) (iv) of Penal Code of Japan, Article 2 (3) of Japan's Anti-terror Conspiracy Law, Article 2 (4) of Japan's Narcotics and Psychotropics Control Act. Paragraph 4 stipulates that the proceeds of crime, including the property or the benefits and interests of the property obtained or derived from the commission of an offence, can all be confiscated. (2) The benefits of property referred to in the Criminal Code include active benefits and passive benefits. Active benefits include, for example, the benefit of using other's house without permission or receiving sexual favors; derived</p>

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	<p>interests refer to interest income and rental income; passive benefits include, for example, costs saved from not installing equipment when the installation is legally required.”</p> <p>4. In reference to Singapore’s Terrorism Suppression of Financing Act Cap 325, United States’ 31 CFR 597.302 and UK’s Terrorist Asset-Freezing etc. Act 2010, properties or property interests owned by sanctioned individuals, legal persons or entities are all broadly defined, which include all properties or interests with economic value of the designated sanctioned persons, and derived interests, which practically cover all services provided by financial institutions.</p>
<p>4. If a financial institution has questions on the application of Counter-Terrorism Financing Act and relevant regulations, which government agency can it make inquiry with?</p> <p>Answer:</p> <p>If a financial institution has question on the application of relevant regulations, it can call the Ministry of Justice, which is the competent authority for the Counter-Terrorism Financing Act (02) 2191-0189 or the Financial Supervisory Commission, which is the central competent authority (02) 8968-0899 or make inquiry by mail, fax or any other feasible means. With regard to the application procedure and method, please contact MJIB.</p> <p>Telephone: (02)29189746</p> <p>Address: No. 74, Zhonghua Road, Xindian District, New Taipei City, 23914</p> <p>Fax: (02)29131280</p> <p>Email: <a href="mailto:amld@mjib.gov.tw">amld@mjib.gov.tw</a></p>	
<p>5. How often should a financial institution check</p>	<p>In reference to US OFAC FAQs: Sanctions</p>

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<p>whether a customer is on the sanctions list?</p> <p>Answer:</p> <p>A financial institution can set its own checking frequency based on its internal policies and risk assessment results. Keep in mind, however, that if a financial institution fails to effectively identify and freeze the property or property interest of a target account (of a terrorist, for example), there could be serious consequences that the financial institution may face disciplinary actions pursuant to the Counter-Terrorism Financing Act and related financial regulations and negative publicity.</p>	<p>Compliance – Q28.</p>
<p>6. When a domestic financial institution discovers that an account transaction or financial dealing of its overseas branch/subsidiary has a situation provided under Paragraph 2, Article 7 of the Counter-Terrorism Financing Act, is the financial institution required to report the finding to ROC authority? Does the Regulations Governing Reporting on the Properties or Property Interests and Locations of Designated Sanctioned Individuals or Entities by Financial Institutions (referred to as the “Regulations” hereunder) apply in such a case?</p> <p>Answer:</p> <p>When a domestic financial institution discovers through business relationship that an account transaction or financial dealing of its overseas branch/subsidiary has a situation provided under Paragraph 2, Article 7 of the Counter-Terrorism Financing Act, the financial institution is not required to report the matter to MJIB, but should ensure compliance with local laws and regulations.</p>	<p>In reference to Subparagraph 6, Point 5 of the Directions Governing Internal Control System of Anti-Money Laundering and Countering Terrorism Financing of Insurance Sector.</p>
<p>7. What is the relationship between reporting on designated sanctioned persons and suspicious transaction reporting?</p> <p>Answer:</p> <p>Where the ultimate beneficiary or transaction party is a</p>	<p>Paragraph 2, Article 7 of the Counter-Terrorism Financing Act stipulates that when a financial institution discovers through business relationship the properties, property interests and the</p>

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<p>terrorist or terrorist group as advised by the Financial Supervisory Commission, Executive Yuan based on information provided by foreign governments, or a terrorist organization identified or investigated by an international organization against money laundering; or where funds involved in the transaction is suspicious or there is reasonable cause to suspect that the transaction is linked with a terrorist activity, terrorist organization or financing of terrorism, a financial institution shall verify the identity of the customer and keep the transaction record, and file a suspicious transaction report (STR) thereof with the MJIB.</p> <p>The time when a financial institution discovers that a customer or transaction party is a designated sanctioned person may not be the time when the transaction takes place. Thus the reporting requirement under the Counter-Terrorism Financing Act and the criteria for determining whether to file a suspicious transaction report under the Money Laundering Control Act and the required information to be reported differ under the two acts. The reporting matters should be handled as required separately that making a report according to the former does not mean the institution is not required to file a report according to the latter and vice versa.</p>	<p>locations thereof of designated sanctioned individuals, legal persons or entities, the institution shall immediately report the discovery to MJIB. The reporting requirement and content differ somewhat from the requirement under the Money Laundering Control Act that if a financial institution discovers signs of suspicious transaction, the institution must verify customer's identity and file a suspicious transaction report to the MJIB. The due diligence obligation of a financial institution under the two regulations also differ. Thus a financial institution should handle the reporting according to the Money Laundering Control Act and the Counter-Terrorism Financing Act separately.</p>
<p>8. Pursuant to the Regulations Governing Reporting on the Properties or Property Interests and Locations of Designated Sanctioned Individuals or Entities by Financial Institutions, when a financial institution discovers a situation under Paragraph 2, Article 7 of the Counter-Terrorism Financing Act, it shall promptly report the case to the Investigation Bureau (MJIB) within ten (10) business days following the date of discovery. When is the "date of discovery"?</p> <p>Answer:</p> <p>The "date of discovery" is the date on which the financial institution confirms after conducting watch list filtering that there is a true match between the identity</p>	

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<p>or background of the customer and/or other transaction parties and the data of the designated sanctioned persons. A financial institution shall promptly report the case to MJIB within ten business days from that day.</p>	
<p>9. What should a financial institution do when it suspects that a customer's transaction involves a designated sanctioned person but cannot be sure because of incomplete data?</p> <p>Answer: When a financial institution cannot confirm whether a transaction party is a designated sanctioned person due to incomplete data, it should halt the transaction before a confirmation is made. Meanwhile the financial institution should confirm again with the customer to determine whether the transaction party concerned (i.e. insurance applicant) is a designated sanctioned person under the Counter-Terrorism Financing Act. If a positive identification is made, the institution should decline the transaction and freeze related proceeds and make a report to MJIB in accordance with the Counter-Terrorism Financing Act.</p>	
<p>10. When a financial institution holds or manages the property or property interests of a customer whose beneficial owner is a designated sanctioned person, should the institution freeze the customer account or make a report according to Article 7 of the Counter-Terrorism Financing Act?</p> <p>Answer: Pursuant to an interpretation letter of the Ministry of Justice (No. Fa-Jian-Zi-10600018240) dated April 14, 2017, in reference to the legislative intent of targeted financial sanctions under Article 7 of the Counter-Terrorism Financing Act and Recommendations 6 and 7 of FATF 40, when a financial institution holds or manages the property or property interests of a customer whose beneficial owner is a designated sanctioned person, the institution should freeze the account assets</p>	<p>Pursuant to an interpretation letter of the Ministry of Justice (No. Fa-Jian-Zi-10600018240) dated April 14, 2017, in reference to the legislative intent of targeted financial sanctions under Article 7 of the Counter-Terrorism Financing Act and Recommendations 6 and 7 of FATF 40, when a financial institution holds or manages the property or property interests of a customer and the customer's beneficial owner is a designated sanctioned individual or entity, the institution should freeze the account assets and make a report according to Article 7 of the Counter-Terrorism Financing Act.</p>

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and make a report according to Article 7 of the Counter-Terrorism Financing Act.	
<p>11. When a financial institution holds or manages the property or property interests of a designated sanctioned person, it should promptly report the case and freeze the customer assets in accordance with Paragraph 1, Article 7 of the Counter-Terrorism Financing Act. But what should the institution do if it finds that it is necessary to retain some funds to cover management expenses, pay the debts to the financial institution or other third parties, or make offsets, or take other timely actions in association with the account?</p> <p>Answer:</p> <p>(1) When there are needs to pay necessary expenses or debts, make offsets or take other actions in association with the property or property interests of a designated sanctioned person held or managed by a financial institution, the financial institution may proceed after making a request and obtaining the approval of the terrorism financing review committee in accordance with Article 6 of the Counter-Terrorism Financing Act.</p> <p>(2) If any of the aforementioned actions is necessary when a financial institution makes a report to MJIB in accordance with Paragraph 2, Article 7 of the Counter-Terrorism Financing Act, the institution may provide relevant information in the fields of “Potential third-party rights and obligations”, “Taxes assessment”, and “Immediate actions needed” of the case report form. MJIB will promptly submit the report to the terrorism financing review committee for decision.</p> <p>(3) Please see Section III –Freezing Practices of this Q&amp;A for explanations of account or assets freeze.</p>	
II. Reporting of Properties or Property Interests of Designated Sanctioned Persons	
1. When a financial institution makes a report in	



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<p>accordance with Paragraph 2, Article 7 of the Counter-Terrorism Financing Act, does the action constitute a breach of its legal obligation of confidentiality to the customer?</p> <p>Answer: No. Pursuant to Paragraph 3, Article 7 of the Counter-Terrorism Financing Act, a financial institution making report on the properties or property interests and location of designated sanctioned persons discovered through business is exempted from its legal obligation of confidentiality.</p>	
<p>2. Is there a dollar amount threshold for reporting properties or property interests under the Counter-Terrorism Financing Act?</p> <p>Answer: No. Properties or property interests that require reporting should be reported in accordance with the Counter-Terrorism Financing Act, regardless of dollar amount involved.</p>	<p>In reference to US OFAC FAQs: Sanctions Compliance – Q44.</p>
<p>3. How do financial institutions make a report?</p> <p>Answer: A financial institution should fill out a case report form (fill in the name of reporting institution and the name of contact person on the cover page of the report and affix the chop of institution thereon) and enclose relevant information, then send the report to MJIB by mail, fax or other feasible means, and follow it up by phone. Address: No. 74, Zhonghua Road, Xindian District, New Taipei City, 23914 Fax: (02)29131280 Email : <a href="mailto:amld@mjib.gov.tw">amld@mjib.gov.tw</a> Telephone: (02)29189746</p>	
<p>4. For staff who make a report to MJIB after learning the property or property interest of a designated sanctioned person or the location of such property through business, should they be ordered to keep the reporting confidential and prevent the leakage of the</p>	

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<p>reported information and the news?</p> <p>Answer:</p> <p>When an insurance company discovers the property or property interest of a designated sanctioned person or the location of such property through business and makes a report to MJIB, its staff shall observe Paragraph 3, Article 9 of the Model Guidelines for Life Insurance Enterprises' Anti-Money Laundering and Countering Terrorism Financing Policies and Procedures and Paragraph 3, Article 9 of the Model Guidelines for Non-Life Insurance Enterprises' Anti-Money Laundering and Countering Terrorism Financing Policies and Procedures that they should keep the reporting information confidential and shall be subject to criminal liability if the staff is implicated in leakage.</p>	
<p>5. If a financial institution did not make any report in a year, should it still submit an annual report to MJIB?</p> <p>Answer:</p> <p>Pursuant to Subparagraph 3, Article 3 of the Regulations Governing Reporting on the Properties or Property Interests and Locations of Designated Sanctioned Individuals or Entities by Financial Institutions, financial institutions shall produce an annual report according to the format set out by MJIB as of December 31 every year (the “settlement record date”). The report shall state all properties or property interests of designated sanctioned persons managed or held by the financial institution as of the settlement record date and the report shall be submitted to the MJIB for recordation before March 31 the following year. As confirmed by the MJIB, a financial institution is not required to provide an annual report if it did not report any case for the year.</p>	
<p>III. Freezing Practices</p>	
<p>1. How do we explain to a customer if we freeze customer’s funds or reject a transaction?</p> <p>Answer:</p> <p>An insurance company may notify its customer that it</p>	<p>In reference to US OFAC FAQs: Sanctions Compliance – Q41.</p>

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<p>has frozen his/her funds or rejects a transaction in accordance with the Counter-Terrorism Financing Act. The customer may apply for delisting, reserving funds for expenses or approval to make specific payments with funds in the frozen account in accordance with Article 5 or Article 6 of the Counter-Terrorism Financing Act.</p>	
<p>2. What should we do if a designated sanctioned person tries to buy an insurance policy from us? Should we take the money?</p> <p>Answer:</p> <p>Pursuant to Subparagraph 3, Paragraph 1, Article 7 of the Counter-Terrorism Financing Act, an insurance company may not collect or provide any property or property interests for designated individuals, legal persons or entities. Thus an insurance company may not enter into an insurance contract with any designated sanctioned person. In addition, if an insurance company holds or controls any property or property interest of a designated sanctioned person, it must immediately freeze such property or property interest. In short, when an insurance company processes the application of a designated sanctioned person to purchase a policy and receives advanced premium payment, the insurance company should refuse to underwrite the policy and immediately freeze the payment without returning it to the applicant.</p>	<p>In reference to US OFAC FAQs: Sanctions Compliance – Q62.</p>
<p>3. What should an insurance company do if a customer instructs wire transfer of insurance proceeds to a designated sanctioned person?</p> <p>Answer:</p> <p>The insurance company should freeze the funds and make a report to MJIB.</p>	
<p>4. What should an insurance company do if it discovers during the policy period that a policyholder is a designated sanctioned person?</p> <p>Answer:</p> <p>Pursuant to Subparagraph 1, Paragraph 1, Article 3 of</p>	<p>In reference to US OFAC FAQs: Sanctions Compliance – Q63.</p>

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<p>the Regulations Governing Reporting on the Properties or Property Interests and Locations of Designated Sanctioned Individuals or Entities by Financial Institutions, once a policyholder becomes a designated sanctioned person, the insurance company should make a report to MJIB in ten business days from the date of discovery. However, to prevent the insurance contract from being suspended or voided due to non-payment of premium, the insurance company may provide relevant information in the field of “Immediate actions needed” of the case report form. MJIB will submit the report to the terrorism financing review committee to decide whether the collection of renewal premium is allowed.</p>	
<p>5. If the insured of an insurance policy is a designated sanctioned person, when the insured passes away and a person who is not a designated sanctioned person claims benefit, can the insurance company pay the claim?</p> <p>Answer: If the applicant and the insured of an insurance policy are the same person and a designated sanctioned person under the Counter-Terrorism Financing Act, when the insured passes away and the beneficiary who is not a sanctioned person claims benefit, the insurance company should not pay the claim to the non-sanctioned person until after obtaining the approval of the terrorism financing review committee.</p>	<p>In reference to US OFAC FAQs: Sanctions Compliance – Q63.</p>
<p>6. When an insurance company discovers that an insurance applicant is a designated sanctioned person, can it notify the applicant that his policy is frozen?</p> <p>Answer: Yes, an insurance company can notify a designated sanctioned person that his policy is frozen.</p>	<p>In reference to US OFAC FAQs: Sanctions Compliance – Q68.</p>
<p>7. Can an insurance company suggest a designated sanctioned person to stop paying premiums or indicate that the company will not accept additional</p>	<p>In reference to US OFAC FAQs: Sanctions Compliance – Q68 and Articles 6 and 8 of Regulations Governing the Operation of</p>

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<p>premiums in the notice of policy freeze to the designated sanctioned person?</p> <p>Answer:</p> <p>An insurance company can indicate in the notice that “Pursuant to the Counter-Terrorism Financing Act, our company is required to freeze all of your insurance policies issued by us and prohibit you from making any transfer, change, disposition, use, or engaging in any other activities that may change the value of your policy. If you have any question, please contact the Ministry of Justice.” The insurance company should also refer to the measures and restriction procedures decided by the terrorism financing review committee and explain to the customer accordingly.</p>	<p>Terrorism Financing Review Committee, Exception Measures and Restrictions.</p>
<p>8. If a borrower is a designated sanctioned person, how should an insurance company handle the credit or loan agreement with the borrower? How should the collateral be handled?</p> <p>Answer:</p> <p>(1) The insurance company should immediately report the case to MJIB in accordance with the Counter-Terrorism Financing Act and describe in the case report form main legal rights and obligations under the credit or loan agreement and the credit extension status. If collateral is involved (whether or not it is provided by the designated sanctioned person), the insurance company should also describe the collateral and scope of rights.</p> <p>(2) The insurance company should stop the performance of all lending activities associated with the credit or loan agreement (e.g. allowing loan drawdown or disbursement).</p> <p>(3) If the insurance company intends to exercise its right over the collateral, it should apply for and obtain the approval of the terrorism financing review committee before auctioning, offsetting the collateral or taking other actions on the collateral.</p>	

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<p>In addition, if it is necessary for the insurance company to obtain ground of execution in order to auction or dispose the collateral, it should first obtain the ground of execution before applying for the approval of TF review Committee in accordance with Paragraph 1, Article 6 of the Counter-Terrorism Financing Act.</p>	
<p>9. In a compulsory execution process, if the debtor (including the owner of collateral) subject to compulsory execution is a designated sanctioned person, what should an insurance company do as a creditor?</p> <p>Answer:</p> <p>(1) In a court's compulsory execution process following the request of an insurance company, if the debtor subject to compulsory execution is a designated sanctioned person, the insurance company should apply for and obtain the approval of the terrorism financing review committee as soon as possible in accordance with Paragraph 1, Article 6 of the Counter-Terrorism Financing Act.</p> <p>(2) At the same time, the insurance company should notify the court that the subject matter of compulsory execution should be frozen before the terrorism financing review committee gives its approval according to Paragraph 1, Article 6 of the Counter-Terrorism Financing Act and request the court to hold the compulsory execution process. The insurance company should ask the court to proceed with the execution process after obtaining the approval of the terrorism financing review committee.</p>	
<p>10. Under a trust structure, who are subject to the freeze provisions of the Counter-Terrorism Financing Act?</p> <p>Answer:</p> <p>Pursuant to Paragraph 1, Article 7 of the Counter-Terrorism Financing Act, an insurance company should</p>	

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<p>freeze the property or property interest of a designated sanctioned person. Property interest under the trust structure established according to the Trust Act should include all rights and interests to claim administration, disposal, benefits and control of trust property in accordance with the Trust Act. Thus when the settlor, trustee, trust supervisor, or trust beneficiary of a trust or other persons who can have effective control over the trust property is a designated sanctioned person, the insurance company should freeze the trust property.</p>	

