
STATUTORY INSTRUMENTS

2020 No. 279

The Nicaragua (Sanctions) (Overseas Territories) Order 2020

PART 1

Freezing of funds etc.

Dealing with funds and economic resources

4.—(1) It is an offence for a person (“P”), including the designated person, to deal with funds or economic resources belonging to, or owned, held or controlled by, a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.

(2) In paragraph (1), “deal with” means—

(a) in relation to funds—

(i) use, alter, move, allow access to or transfer,

(ii) deal with the funds in any other way that would result in a change in volume, amount, location, ownership, possession, character or destination, or

(iii) make any other change that would enable use, including portfolio management, and

(b) in relation to economic resources, use to obtain funds, goods or services in any way, including by selling, hiring or mortgaging the resources.

(3) It is an offence for a person (“P”) to make funds or economic resources available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect, that—

(a) P is making the funds or economic resources so available, and

(b) in the case of economic resources, the designated person would be likely to exchange them, or use them in exchange, for funds, goods or services.

(4) It is an offence for a person (“P”) to make funds or economic resources available (directly or indirectly) to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or economic resources so available.

(5) For the purposes of paragraph (4)—

(a) funds or economic resources are made available for the benefit of a designated person only if that person obtains, or is able to obtain, a significant financial benefit from the funds or economic resources, and

(b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

(6) No liability arises for any person concerned in the freezing of funds or economic resources in accordance with this article unless it is proved that the funds or economic resources were frozen or withheld as a result of negligence.

(7) This article is subject to articles 5, 7 and 8.

Credits to a frozen account

- 5.—(1) Nothing in article 4 prevents a person from crediting a frozen account with—
- (a) interest or other earnings due on the account,
 - (b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account, or
 - (c) payments due under judicial, administrative or arbitral decisions rendered in the Territory or enforceable in the Territory.
- (2) Nothing in article 4 prevents a relevant institution from crediting a frozen account where it receives funds transferred to the account.

Information relating to funds etc.

- 6.—(1) The Governor must take such steps as the Governor considers appropriate to cooperate with any international investigation relating to the funds, economic resources or financial transactions of—
- (a) a designated person,
 - (b) a person owned or controlled by a designated person, or
 - (c) a person acting on behalf of, or at the direction of, a designated person.
- (2) A relevant institution or relevant business or profession must inform the Governor as soon as practicable if it knows or suspects that a customer—
- (a) is a designated person, or
 - (b) has committed an offence under article 4 or 7(10).
- (3) When informing the Governor under paragraph (2), the relevant institution or relevant business or profession must state—
- (a) the information or other matter on which the knowledge or suspicion is based,
 - (b) any information it holds about the customer by which the customer can be identified, and
 - (c) if the customer is a designated person, the nature and amount or quantity of any funds or economic resources held by the relevant institution or relevant business or profession for the customer since the customer first became a designated person.
- (4) A relevant institution must inform the Governor as soon as practicable if it credits a frozen account in accordance with article 5(1)(b) or (c) or 5(2).
- (5) It is an offence for a relevant institution or relevant business or profession to fail to comply with a requirement of paragraph (2), (3) or (4).
- (6) Anything done by a relevant institution or relevant business or profession in accordance with this article is not to be treated as a breach of any restriction imposed by statute or otherwise.
- (7) For the purposes of this article, “customer”, in relation to a relevant institution or relevant business or profession, includes—
- (a) a person who is or has been a customer of the relevant institution or the relevant business or profession at any time since the coming into force of this Order, and
 - (b) a person with whom the relevant institution or the relevant business or profession has had dealings in the course of its business at any time since the coming into force of this Order.
- (8) In this article, a “relevant business or profession” means any of the following operating in the Territory—
- (a) an auditor,
 - (b) a casino,

- (c) a dealer in precious metals or stones,
- (d) an external accountant,
- (e) an independent legal professional,
- (f) a real estate agent,
- (g) a tax adviser, and
- (h) a trust or company service provider.

(9) For the purpose of paragraph (8)—

“auditor” means a firm or sole practitioner who by way of business provides auditing services to other persons, when providing such services;

“casino” means the holder of a licence to operate a casino in the Territory;

“dealer in precious metals or stones” means a person engaged in the business of making, supplying, selling (including selling by auction) or exchanging—

- (a) articles made from gold, silver, platinum or palladium, or
- (b) precious stones or pearls;

“external accountant” means a firm or sole practitioner who by way of business provides accountancy services to other persons, when providing such services;

“independent legal professional” means a firm or sole practitioner who by way of business provides legal or notarial services to other persons, when providing such services;

“real estate agent” means a firm or sole practitioner, who by way of business provides real estate agency services to their client in relation to transactions concerning the buying or selling of real estate by their client, when the work is being carried out;

“tax adviser” means a firm or sole practitioner who by way of business provides advice about the tax affairs of other persons, when providing such services;

“trust or company service provider” means a firm or sole practitioner who by way of business provides any of the following services to other persons, when that firm or practitioner is providing such services—

- (a) forming companies or other legal persons;
- (b) acting, or arranging for another person to act—
 - (i) as a director or secretary of a company,
 - (ii) as a partner of a partnership, or
 - (iii) in a similar capacity in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;
- (d) acting, or arranging for another person to act, as—
 - (i) a trustee of an express trust or similar legal arrangement, or
 - (ii) a nominee shareholder for a person.

(10) In paragraph (9), “firm” means any entity that, whether or not a legal person, is not an individual, and includes a body corporate and a partnership or other unincorporated association.