
Getting aid to Syria

Sanctions issues for banks and humanitarian agencies

This paper is a collaborative effort by the British Bankers' Association, the Disasters Emergency Committee and Freshfields Bruckhaus Deringer LLP

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This paper provides background information and practical tips on how banks and humanitarian agencies can work together to ensure aid can reach civilians in need of assistance in and around Syria in compliance with UK, EU and US sanctions.

The crisis resulting from the Syrian conflict is severe and has been the target of significant aid commitments from the UK, the EU and the US, which are discussed further in Section 1. Alongside these commitments, concerns about Syria have also resulted in a complex network of ‘economic sanctions’ – laws and regulations that restrict or prohibit trade and other activities involving Syria.

For humanitarian agencies already dealing with the logistical challenges posed by the Syrian conflict, these sanctions present additional difficulties. In particular, humanitarian agencies have struggled to find safe and effective means of sending funds to their programmes in Syria. A number of Syrian banks are subject to asset freezes or other financial prohibitions; others are undertaking limited banking activity due to the impact of the conflict, and have been reported to lack liquidity and operational capacity.

While the current US and EU sanctions regimes specifically envisage the possibility of licences to allow otherwise sanctioned activities in the context of humanitarian work, these licences are often complex to apply in practice and there are serious risks for any entity or body that gets it wrong.

Banks are understandably cautious about transferring funds to Syria. They need to consider the increasing enforcement of sanctions; other regulatory concerns such as anti-money laundering requirements; and the risk of humanitarian payments being used to disguise the movement of funds to support terrorist activity. Many banks headquartered in the UK have also implemented internal policies requiring compliance with US sanctions given the multinational nature of banking operations and transactions, as well as the active extra-territorial enforcement of US sanctions.

Many banks are therefore operating an ‘exceptions only policy’ for transactions involving Syria (ie transactions will automatically be held for further scrutiny). As the situation deteriorates, transparency over arrangements with partners within Syria is reducing and satisfying due diligence will be increasingly challenging. Both aid agencies and banks need to consider how best to mitigate these risks.

This paper is divided into three sections:

- Section 1 provides an overview of the current humanitarian crisis in Syria and the extent of the Disasters Emergency Committee (DEC) and government funding for humanitarian action;
- Section 2 explains in broad terms the impact of UK, EU and US sanctions on payments by humanitarian agencies from the UK into Syria, and summarises the key regulatory concerns which arise for the UK banking sector; and
- Section 3 suggests practical steps that humanitarian agencies and banks can take to co-operate more effectively to make safe and effective payments into Syria.

While the information in this paper is accurate to the best of the authors' knowledge, it is not advice or guidance. If you have specific questions relating to UK, EU or US sanctions, you should seek appropriate legal advice on your own position.

Section 1 – the humanitarian situation in Syria

Syria's humanitarian crisis

Syria is in the grip of a grave humanitarian crisis. Almost one-third of the population of Syria has been forcibly displaced; at least 4.25 million people have been displaced inside Syria and 2 million to other countries in the region.¹

- 2 million children have dropped out of school – 40 per cent of all pupils registered in grades 1 to 9.
- Health services have been destroyed and health workers are reported to have left the country.
- Massive inflation is making commodities that are available in the market difficult for people to afford.
- The major cities of Homs and Hama are experiencing a severe water crisis with limited access to safe drinking water.
- In spite of the critical circumstances, large areas are inaccessible to humanitarian agencies.

The UN has launched an international appeal for the Syria crisis to which many governments have donated. The UK government has also allocated £500 million to the aid efforts of which £150 million is specifically for work inside Syria. Additionally, the EU has committed over €1 billion. Some of this funding has been allocated to humanitarian agencies.

'the great tragedy of this century'

António Guterres, the UN's High Commissioner for Refugees.²

¹ 'Syrian Arab Republic: Humanitarian Bulletin Syria Issue 33', UN Office for the Coordination of Humanitarian Affairs, 9 September 2013.

² António Guterres, the UN's High Commissioner for Refugees, UNHCR 3 September 2013.

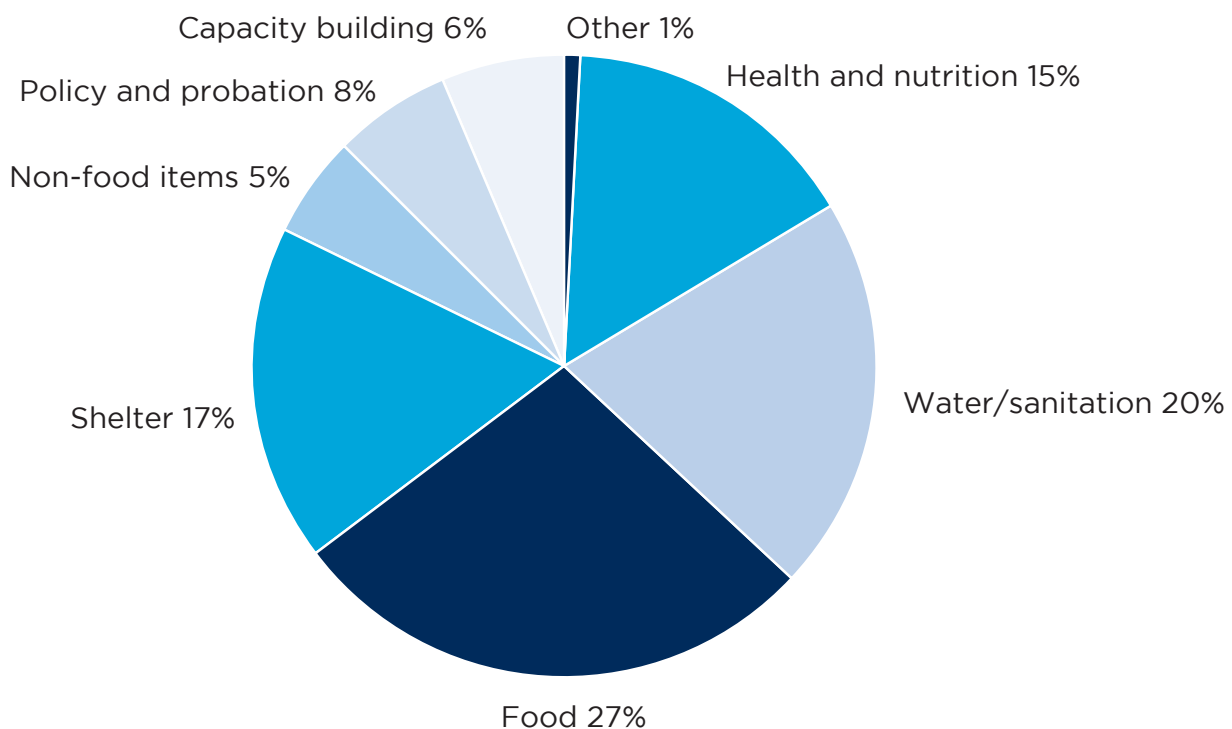
DEC Syria Crisis Appeal

DEC launched a fundraising appeal for Syria on 21 March 2013, co-ordinated with its 14 member agencies. Public appeals were broadcast on the BBC, ITV, Sky, Channel 4 and Channel 5 alongside intensive press and digital activity.

£23m has been raised since the launch of DEC's Syria Crisis Appeal and has been committed to urgent relief work by member agencies, including:

- **Food parcels** – this accounts for a majority of DEC funds. British Red Cross, CAFOD, Islamic Relief and Oxfam are working with local partners in Syria to deliver food parcels to help families displaced from their homes.
- **Water and sanitation** – Save the Children has used DEC funds to improve sanitation; Oxfam is working to repair the water and waste infrastructure.
- **Household items** – Christian Aid is working with local partners using DEC funds to provide essential household items, including cooking sets, to people who have fled their homes.

DEC Syria Crisis Appeal – humanitarian spending by agencies



How humanitarian agencies work

Given the urgent humanitarian needs in Syria and the funds available to agencies from various sources (including DEC appeal funds, their own fundraising, UN and government funds), humanitarian agencies are working hard to implement relief programmes. Agencies typically have areas of specialism to contribute to the emergency response (for example shelter, water supply or sanitation), which enable the fast delivery of aid and avoid duplication of efforts.

Humanitarian agencies either work directly to deliver humanitarian aid or through partner organisations in Syria (or possibly a mixture of both). Most agencies already undertake due diligence on partners with regard to their capacity, status and ability to deliver programmes as well as security assessments for staff and operational programmes. Some agencies are already enhancing these existing systems to ensure compliance with sanctions regimes. These steps can help reassure banks that agencies are operating control frameworks, which may satisfy many of the banks' own due diligence requirements.

Section 2 – Syria sanctions: legal and regulatory issues

Banks are also understandably concerned about sanctions.

Over the past two years, a number of non-US banks have paid well over \$1bn in sanctions-related penalties, mostly to US regulators. It is no surprise that banks maintain strict internal compliance policies and have invested in sophisticated 'screening' software to help them spot potential sanctions as well as terrorist financing issues.

Of all the sectors targeted by economic sanctions, the banking sector is the most heavily affected and bears the heaviest burden with respect to the implementation of the sanction regimes. Even UK-headquartered banks take great care to ensure they comply with US sanctions; this is necessary given the international and integrated nature of banking operations and the breadth of US sanctions which are actively enforced.

Humanitarian agencies working in Syria also need to comply with sanctions. For many UK-headquartered agencies, the focus will be on compliance with EU/UK sanctions.³ However, in some cases, US sanctions will also be applicable (for example to a US national working for a UK agency or to exports of US-origin goods) or relevant (such as when dealing with international banks that are committed to compliance with US sanctions; when transferring US dollar funds; and when receiving US funding).

When a humanitarian agency approaches a bank to assist with the transfer of Syrian related funds, the bank is likely to have a number of broad, sanctions-related concerns. These are also the key questions agencies should be thinking about to ensure their programmes comply with EU/UK sanctions:

- who are the funds going to and who will they ultimately benefit (directly or indirectly)?
- how are the funds going to reach their target?
- what will the funds ultimately be used for (eg exporting goods)?
- what risk assessments and due diligence has the agency undertaken?

³ The UK maintains its own export control regime and also implements penalties for breaches of the EU sanctions and export control regimes (which apply directly in the UK). We refer to the EU and UK regimes together as the EU/UK sanctions.

The sanctions considerations – who are the funds going to?

The EU maintains a list of individuals, companies and organisations that are subject to an ‘asset freeze’ under EU sanctions (the ‘Asset Freeze List’). Effectively, EU sanctions prohibit any dealings with persons on the Asset Freeze List. The Asset Freeze List includes some state-owned and privately owned Syrian banks, Syrian government ministries and other individuals, organisations and companies both in and outside Syria (called ‘Designated Persons’). These are usually state institutions and individuals with close links to the Assad regime.

In advance of making payments into Syria, humanitarian agencies and banks must therefore check whether the people or organisations they are planning to deal with are Designated Persons on the Asset Freeze List, or if their work could benefit any Designated Person. This will require some due diligence – we discuss this in more detail below. If this due diligence does produce a ‘match’ (ie there is a link with a Designated Person), then the payment is likely to be prohibited under EU and UK law. There are, however, licences available which can authorise certain dealings with persons on the Asset Freeze List for humanitarian purposes. Agencies need to apply to HM Treasury to take advantage of such licences.

Practical tips for humanitarian agencies

Check any potential partners in Syria against the consolidated list of Designated Persons which is available on the ‘Embargoes and Sanctions’ page of the UK government’s website ([available here](#)).

Further information on the UK’s financial sanctions regime can be found in the list of Financial Sanctions FAQs published in August 2013 and available on the UK government’s website ([available here](#)).

US sanctions (important to UK-headquartered banks and agencies for the reasons described above) are broader. Like EU sanctions, US sanctions include a list of targeted individuals, entities, vessels and aircraft (called ‘Specially Designated Nationals’ or ‘SDNs’), but US sanctions also include broad prohibitions on dealings with any person located within, doing business in, or operating from, Syria. The relevant US agency, the Office of Foreign Assets Control (OFAC) has helpfully issued a general licence authorising US persons to provide humanitarian services to Syria and authorising US banks to transfer funds in support of humanitarian activities in Syria, provided that funds are not transferred by, to or through the government of Syria or a SDN. As a result, due diligence is also necessary for US sanctions compliance. In contrast to the licence applications required under the EU/UK Syria sanctions, the US general licence is designed so that humanitarian agencies do not need to apply specifically for a licence in many cases, provided that the agency’s work falls within its scope.⁴

⁴ Broadly, there are two types of financial licences which government authorities might issue in a sanctions-context: (i) general licences which authorise entire categories of transactions subject to conditions specified in each general licence; and (ii) individual or specific licences which are granted to individual parties and permit specific transactions or types of spending only. While general licences are publically available (although there are no UK general licences to date for the Syrian sanctions regime), specific licences are not usually published.

Practical tips for humanitarian agencies

Check potential partners in Syria against the consolidated list of SDNs which is available on the website of the US Department of Treasury ([available here](#)).

OFAC provides an electronic search function in respect of the SDN list which is available on its website ([available here](#)). Guidance on the use of this function is also available on the website of the US Department of Treasury ([available here](#)).

A word of warning – although the availability of the EU/UK licences and the US general licence are helpful and demonstrate a commitment to ensuring humanitarian aid reaches Syria, they are unfortunately not the end of the story. Obtaining a licence can be a time consuming task. Moreover, even when a licence is clearly available, banks may still be reluctant to process a payment, due to risks under other sanctions rules, or other laws and regulations. Risk appetite for engaging in Syrian related transactions may vary considerably from bank to bank and will be largely based upon the legislation each bank is required to abide by and its internal compliance policies, which international banking groups often apply on a global basis.

Practical tips for humanitarian agencies

Engage relationship banks in early dialogue in order to understand the risk appetite and willingness of that bank to process Syrian related transactions at all.

The sanctions considerations – how are funds going to get to Syria?

It is important for humanitarian agencies to communicate clearly to banks how they envisage that the funds they hold will be transferred into Syria. This requires clarity as to the nature of the transactions: for example, will the agency be making a one-off payment or regular transfers?

Practical tips for humanitarian agencies

Consider the following:

- does the agency already have a bank account in Syria?
- if not, is it going to open a bank account?
- if so, will this be with a Syrian bank or a Syrian branch of an international bank?
- are the funds going into a partner's account?
- if so, what due diligence has the agency done on the partner and its bank (see due diligence below)?

The sanctions considerations – what are the funds for?

For a number of reasons, including the restrictions under the OFAC general licence, due diligence requirements under anti-money laundering regulations and counter-terrorist financing requirements, banks will want to know how humanitarian agencies will use the funds they are transferring to, or otherwise applying towards humanitarian programmes in Syria.

Humanitarian agencies should therefore consider carefully, both for their own purposes and to provide comfort to their banks, whether their actions in, or otherwise relating to providing relief to, Syria are subject to the sanctions regime. If they are, the agency may be able to apply for a licence, on humanitarian grounds, for permission from the appropriate sanctions regulator. Agencies do not need to concern themselves with licences if their actions are not subject to sanctions in the first place.

Humanitarian agencies should take particular note of both EU/UK and US export controls – ie restrictions on the goods, software and technology that can be exported to Syria.

The EU/UK controls work by listing specific items, including goods, software and technology, that cannot be exported to Syria without a licence. If humanitarian agencies are exporting goods to Syria, they should check these lists carefully. While the majority of listed items are very unlikely to be used by humanitarian agencies (eg military items), some items may be (eg chlorine of a high concentration for sanitary purposes) or it may be unclear (eg the lists include certain types of communications equipment).

Where the situation is unclear, agencies can turn to the UK Export Control Organisation (ECO), which provides guidance through its Control List Classification Advice Service.⁵ If an item is listed or it is otherwise considered that an export licence is required, a licence application can be made through the ECO's SPIRE service. These services are not limited to Syria, so agencies may find them useful in other areas too.

Practical tips for humanitarian agencies

Check the lists of controlled items in Council Regulation 36/2012 (as amended), as well as the consolidated UK Strategic Export Control List which is available on the 'Embargoes and Sanctions' page of the UK government's website ([available here](#)).

This list is periodically updated. Subscribe to the ECO's Notice to Exporters for updates ([available here](#)).

SPIRE, the ECO's online export licensing system, can be found on the website of the Department for Business, Innovation and Skills ([available here](#)).

UK humanitarian agencies should also be aware that they will require a specific licence from the US Bureau of Industry and Security (US BIS) in some circumstances, including if they plan to export to Syria goods, software or technology containing 10 per cent or more US-origin content or components (by value). These restrictions apply to both exports and also 're-exports' to Syria from anywhere in the world, by both US and non-US persons.

A more detailed list of the key prohibitions, the licences, and the relevant licence granting authority under the Syrian sanctions and exports control regimes is set out in table 1.

⁵ Items that are not on any of the UK's export control lists may still potentially need a licence if there are concerns that they might be used for the production of weapons of mass destruction.

Table 1: key prohibitions, licences and licence granting authorities under the EU and US Syrian sanctions and exports control regime

Prohibition	Nature of prohibition
EU sanctions and export controls	
<p>‘Dual-use items’ Articles 2a, 3(1) and (2) and Annex IA of Regulation (EU) 36/2012</p>	Prohibits (i) the export into Syria of certain ‘dual-use’ items including detection systems for identifying explosives; and (ii) financing and brokering services in respect of such items.
Articles 2b, 3(3) and Annex IX of Regulation (EU) 36/2012	Imposes a requirement to obtain prior authorisation for (i) the export of other ‘dual-use’ items into Syria, principally chemicals (eg chlorine if at 90 per cent concentration or greater); and (ii) financing and brokering services in respect of such activities.
<p>Asset freeze Articles 14–22, Annexes II and IIA of Regulation (EU) 36/2012</p>	Freezes all funds and economic resources belonging to, owned, held or controlled by a Designated Person. Also prohibits making funds or economic resources ‘available, directly or indirectly, to or for the benefit of’ a Designated Person.
<p>Banking services Articles 25 and 25a⁶ of Regulation (EU) 36/2012</p>	Places restrictions on the banking services which EU banks can offer in Syria including establishing a new correspondent banking relationship with any Syrian credit or financial institution.
US sanctions and export controls	
<p>Asset block Executive Order 13582 2005 Syria Regulations and Lebanon Sanctions Regulations (31 CFR § 542.201 and 549.201)</p>	Has the effect of ‘blocking’ (ie freezing) all property of any Syrian governmental persons, SDNs or agents of the foregoing that comes within the US, or within the possession or control of US persons anywhere in the world. Also prevents all US persons: (i) doing business with; (ii) engaging in any transaction with; or (iii) dealing in any property of, any SDN or any subsidiary of an SDN, whether in or outside the US.
<p>Blanket export embargo Executive Order 13582</p>	Imposes a blanket embargo on exports of both services and goods to Syria, including bans on: (i) the export, re-export, sale or supply, whether directly or indirectly, from the US or by a US person located anywhere in the world, of any type of services to any person in Syria and; (ii) the export or re-export to Syria by any person (with or without any ties to the US) of essentially all goods, technology or software that originated in the US or which contain more than 10 per cent (by value) of US components or US content, subject to exceptions for food and most medicine.
Export Administration Regulations (15 CFR § 736.2(b)(6) and § 746.9)	

⁶ HM Treasury published guidance in July 2013 in relation to the application of Article 25(a) which can be found on the UK government’s web pages ([available here](#)).

This table will only be of relevance where a humanitarian agency's activities do fall within the scope of an applicable sanctions regime. Where they do not, it will not be necessary to apply for a licence or obtain prior authorisation for the activities in question.

Circumstances where a licence/prior authorisation may be available	Licensing agency
Where items are intended for 'food, agricultural, medical or other humanitarian purposes' or are for the benefit of UN, EU or Member State personnel.	Export Control Organisation
Where there are no reasonable grounds to determine that the items will or might be used for internal repression.	Export Control Organisation
Where making funds available is 'necessary for humanitarian purposes such as delivering or facilitating the delivery of assistance' or 'to ensure human safety and environmental protection'.	HM Treasury
Some services can be authorised where they will assist 'the Syrian civilian population' such as 'meeting humanitarian concerns, assisting in the provision of basic services, reconstruction or restoring economic activity, or other civilian purpose'.	HM Treasury
General License 11A authorises non-governmental organisations to engage in certain transactions with the government of Syria that relate to humanitarian activities including, among other things, the payment of taxes, fees and import duties (available here).	OFAC
General License 11A authorises exports by US persons of services related to certain humanitarian activities as well as fund transfers by US banks in support of such activities, provided that the transfer is not by, to, or through the government of Syria or an SDN.	OFAC (services and payments)
The US BIS has also announced that it is prepared to grant applications for specific licences to export to Syria certain goods of US origin or containing US-origin content for use in reconstruction activities. This includes, among other things, items for water supply, sanitation and agricultural production.	US BIS (goods, software and technology)

Due diligence

Due diligence is important for several reasons and many humanitarian agencies will already have detailed procedures in place to ensure their programmes are robust and effective. Due diligence also plays an important role in helping to get payments or relief into Syria safely and effectively: it helps humanitarian agencies to ensure their own compliance with sanctions and the information gathered can reassure banks that payments are compliant or else, as necessary, support licence applications.

Carrying out appropriate due diligence will also help to protect humanitarian agencies in case things go wrong. This is because the EU/UK sanctions on Syria provide what is effectively a 'defence', in cases where EU/UK sanctions are breached inadvertently, provided that the agency can demonstrate that it 'did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibitions in question'.⁷

The level of due diligence required for these purposes is not set out in legislation and therefore it is for each agency to risk-assess its own situation on a case-by-case basis. Many agencies will be very familiar with this approach to risk assessment of programmes, but there is also some specific sanctions guidance available. Agencies may wish to review Section 7 of Part 1 of the Financial Conduct Authority's Financial Crime: A Guide for Firms, which provides helpful advice on sanctions due diligence. Humanitarian agencies may find – and be able to reassure their banks – that they are already doing a significant amount of the due diligence required (especially if they are following Recommendation 8 of the Financial Action Task Force Recommendations).⁸

Similarly, due diligence is important for US sanctions compliance. The US State Department issued guidance in November 2012 ([available here](#)) concerning the level of due diligence expected in relation to the Iranian sanctions regime, which is informative for the Syrian context. The guidance recommends different levels of due diligence depending on the circumstances suggesting that a risk-based analysis is also a reasonable approach to take for compliance with US sanctions. Humanitarian agencies can consult with OFAC as needed; they may also find it beneficial to sign up for OFAC alerts to keep abreast of US developments.

Section 3 – humanitarian agencies and banks: working together to transfer funds to Syria

As the humanitarian situation in Syria continues to deteriorate, the need for collaboration between banks and humanitarian agencies has never been greater. Banks must ensure that while they do their utmost to assist in the humanitarian effort, this need is balanced with adherence to their own regulatory and legal obligations.

The risks and other key considerations for banks and other agencies

The proposal to send financial aid directly to Syria presents new challenges for banks and increases the need for full transparency from humanitarian agencies. Humanitarian agencies may be required to provide additional supporting information to ensure there are no associated sanctions risks to the bank in processing the transaction.

⁷ Article 28, Council Regulation 36/2012 (as amended).

⁸ Specifically, 'to make best efforts to confirm the identity, credentials and good standing of their beneficiaries and associate [Non-Profit Organisations]'.

The flow of funds to Syria is likely to involve the use of correspondent banks, which introduces a further element of risk for any UK-headquartered bank as outlined in the Wolfsburg AML Principles for Correspondent Banking. The risks include but are not limited to the following.

The jurisdiction where the correspondent banking client is domiciled

Syria is ranked 144 out of 174 in the Transparency International Corruption Perceptions Index 2012 and the potential for misappropriation of funds is high. Banks will need to ensure that the due diligence undertaken by humanitarian agencies and correspondent banks on their local Syrian partners meets with their regulatory requirements.

The correspondent banking clients' ownership and management structures

The location of owners, their corporate legal form and the transparency of ownership structure may present greater risks. Similarly, the location and experience of management may raise additional concerns. The involvement of politically exposed persons (including Designated Persons or SDNs) in the management or ownership of certain correspondent banking clients may also increase the risk.

Practical tips for humanitarian agencies making transfers relating to Syria to reassure banks that the transfers are lawful and appropriately risk mitigated

- Provide banks with a one-page briefing on proposed programmes in Syria. This should include intended beneficiaries, how they are selected, the programme to be delivered, who will deliver the programme (eg the agency itself, or its partner in Syria), and the procurement procedures for purchases to be made in Syria.
- Explain how due diligence on local partners is conducted – including the frequency of screening, the sanctions lists used for screening, and the criteria to be met prior to the commencement of a relationship.
- Consider the currency in which payments are to be effected, as this will have an impact on the applicable sanctions legislation.
- Provide banks with a detailed explanation of the purpose of each transaction and include a contact number of a person at the agency who is familiar with the transaction and can assist in providing additional information if required.
- Also provide: the payment amount and currency; the name of the Syrian bank where the account is held; the name the account is held in; the name of the local partner; a description of any links to the Syrian government or a sanctioned party; and details of any specific or general licence which permits the transaction.
- Engage with regulators to ensure actions are, if necessary, covered by general or specific licences (as described in Section 2) and make reference to any licences in payment instructions. This will assist the bank in ascertaining the legality of the payment and prevent potential delays in processing.
- Take responsibility for determining the legality of the payment. Banks can advise on the applicable legislation and the agency should then consult with its legal team prior to processing.

Contacts



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The British Bankers' Association (BBA) is the UK's leading association for the banking and financial services sector, representing the interests of more than 240 member organisations with a worldwide presence in 180 countries. If you have questions in relation to its sanctions work contact Justine Walker, Director of Financial Crime (Sanctions and Bribery) at justine.walker@bba.org.uk or +44 20 7216 8826. For more information on the BBA please visit its website: www.bba.org.uk.



Now in its 50th year, the Disasters Emergency Committee (DEC) unites 14 of the UK's leading humanitarian agencies to respond jointly in the face of large scale natural disasters and other humanitarian crises.⁹ With the support of all the major broadcasters the DEC launches fundraising appeals to engage the UK public – £1.1 billion has been raised by the DEC since 1963, including £23 million for the Syria Crisis Appeal. For more information, please visit the DEC website – www.dec.org.uk, email info@dec.org.uk or call +44 20 7255 9100.

Freshfields Bruckhaus Deringer

Freshfields Bruckhaus Deringer LLP is an international law firm with over 2,500 lawyers in 28 offices around the world. It has a dedicated sanctions practice which advises on all areas of sanctions law, in particular on asset freezes, sale and supply prohibitions and the consequences of any sanctions violations. If you have questions in relation to Freshfields' sanctions practice or capabilities please contact Sarah Parkes, a partner in Freshfields' Dispute Resolution team, at sarah.parkes@freshfields.com or +44 20 7936 4000. For further information please visit Freshfields' website: www.freshfields.com.

Further relevant contacts:

The Charity Commission

www.charitycommission.gov.uk

Charity Finance Group

www.cfg.org.uk

policy@cfg.org.uk

+44 845 345 3192

Muslim Charities Forum

www.muslimcharitiesforum.org.uk

info@muslimcharitiesforum.org.uk

⁹ DEC's members comprise ActionAid, Age International, British Red Cross, CAFOD, Care International UK, Christian Aid, Concern Worldwide, Islamic Relief, Merlin, Oxfam, Plan UK, Save the Children, Tearfund, World Vision.