



ADVISORY
Industry Information

Bermuda Sanctions Regime

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This advisory provides an overview of the Bermuda sanctions regime, gives an update on how the regime has been impacted by the United Kingdom's recent exit from the European Union and outlines some practical steps that we would recommend taking to comply with the regime.

What are financial sanctions and why are they used?

Financial sanctions are enforcement measures used by the international community to achieve, maintain or restore international peace and security in a specified regime. The effect of sanctions is to limit the provision of certain financial services and to restrict access to financial markets, funds and economic resources.

The range of sanctions available include comprehensive economic and trade sanctions, as well as more targeted measures (such as arms embargoes) and financial restrictions (such as asset-freezing measures). Sanctions may be implemented against countries, targeted entities and individuals, targeted terrorist organisations (including their financiers and sponsors) and lastly, sectoral sanctions connected to a government designed to impact a sector of a national economy.

Financial sanctions are usually imposed as punitive measures where international security objectives are threatened; to compel financial sanctions targets to improve their conduct.

Overview of the Bermuda Sanctions Regime

As a British Overseas Territory, Bermuda implements the international sanctions obligations of the United Kingdom (the "UK"), the majority of which are derived from the UN Security Council, and prior to 31 December 2020, the European Union (the "EU").

The UK extends sanctions measures to Bermuda by way of Overseas Territories Orders in Council ("OT Orders") for the various sanctions regimes. However, due to policy reasons, not all OT Orders extend to Bermuda and are therefore brought into force under the International Sanctions Act 2003 of Bermuda (as amended) (the "Act").

In accordance with Recommendations 6 and 7 of the Financial Action Task Force on Combating Money Laundering and the Financing of Terrorism and Proliferation, Bermuda is required to have an effective sanctions regime in place to combat terrorism and proliferation financing, and subsequently the



Act empowers the Minister of Legal Affairs (the “Minister”) to make regulations necessary to give effect in Bermuda to the international sanctions obligations of the UK. The International Sanctions Regulations 2013 (as amended) (the “Regulations”) were made in accordance with the Act; Schedule 1 of the Regulations provide a list of all the sanctions-related OT Orders in force in Bermuda and is amended on an on-going basis to ensure the Regulations remain up to date (together the Act and the Regulations are collectively referred to as the “Bermuda Sanctions Regime”).

Under each of the OT Orders, the Governor of Bermuda has certain powers and duties in relation to the administration of financial sanctions measures, which include the power to designate persons, the duty to publish certain lists, the power to gather information and the power to issue and revoke licences. Effective 25 September 2018, the Governor delegated certain powers to the Minister, in accordance with the International Sanctions (Delegation of Governors Functions) Notice 2018.

Who must comply with the Bermuda Sanctions Regime?

The Bermuda Sanctions Regime applies to all individuals and legal entities who are within or undertake activities within Bermuda. The OT Orders apply to persons in Bermuda, any person elsewhere who is a British Citizen, a citizen of a British overseas territory, a British subject, an overseas British National or a British protected person ordinarily resident in Bermuda. The financial sanctions also apply to any person on board of a ship or aircraft that is registered in Bermuda.

What steps should be taken to comply with the Bermuda Sanctions Regime?

All persons (or their service providers) who are subject to the Bermuda Sanctions Regime should assess their proposed business activities, transactions and dealings against:

1. the provisions of the OT Orders in force in Bermuda;
2. the list of financial sanctions issued by the UK’s Foreign, Commonwealth & Development Office (operative post 31 December 2020);
3. the Consolidated List of Financial Sanctions Targets in the UK issued by the UK’s HM Treasury’s Office of Financial Sanctions Implementation; and
4. the list of designated persons of Bermuda’s Financial Sanctions Implementation Unit (the “FSIU”) published by the Governor of Bermuda.

In particular, ‘regulated financial institutions’ as defined under section 42A of the Proceeds of Crime Act 1997 of Bermuda (“POCA”) and any ‘relevant business or profession’ as defined under the Act (together, the “Reporting Entities”), have an obligation to report to the FSIU as soon as practicable, if they know, or have reasonable cause to suspect, that a person: (a) is a designated or listed person; or (b) has committed an offence under the licensing, contravention or circumvention provisions of the sanctions.

All Reporting Entities must comply with POCA and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2018, amongst others, and are required to establish and maintain risk-sensitive policies and procedures that include the application of customer due diligence, ongoing monitoring of the customer relationship, and maintaining adequate records of their clients and their business activities against sanctions lists applicable to Bermuda. Reporting Entities must apply enhanced customer due diligence in instances where a person or a transaction is from or in a country subject to international sanctions.

Reporting Entities must maintain records for any potential matches to names and sanctions lists, whether the match turns out to be true or a false positive. There are minimum standards of record keeping on true matches and false positives and if these records are not adequately maintained, the Reporting Entity will be in breach of the Bermuda Sanctions Regime.

Although such persons retain ultimate responsibility for their compliance with the regime, in practice they are likely to have appointed a service provider to maintain such systems, policies and procedures on their behalf, so they should take steps to verify that the service provider is also fully compliant with the Bermuda Sanctions Regime.



What about the US Treasury's Office of Foreign Assets Control ("US OFAC") sanctions in the United States?

The US OFAC sanctions regime is not directly applicable in Bermuda and 'OFAC screening' alone will not satisfy compliance with the Bermuda Sanctions Regime. However, Bermuda persons should note the 'extraterritorial' effect of the US OFAC sanctions regime, particularly as it relates to ownership of a foreign corporation, transactions involving a US entity or any transactions that are conducted in US dollars, and should take appropriate advice from US counsel.

Where and how do you report sanctions issues in Bermuda?

The Bermuda Sanctions Regime places a general obligation on natural and legal persons to supply the FSIU, as soon as possible, with any information that would 'facilitate compliance' with the OT Orders.

In addition, the Act and the Regulations require that Reporting Entities, must as soon as practicable, report to the FSIU where they know or have reasonable cause to suspect that a person is a designated person or has committed an offence under the Bermuda Sanctions Regime.

Where an email notification is received from the FSIU or the Bermuda Monetary Authority (the "BMA") advising of the addition of any natural or legal person to the consolidated list, and an entity knows or has reasonable cause to suspect that the entity is in possession or control, or is otherwise dealing with the funds or economic resources of a designated person, the entity must:

1. take certain actions to freeze the funds and/or economic resources of the designated person;
2. not enter into any financial transaction or provide financial assistance to the designated person or any third party;
3. immediately file a report with the FSIU; and
4. complete and file a Compliance Reporting Form ("CRF") as soon as possible.

When is a licence required and how do you apply for a licence?

Licences allow certain activities or transactions to take place that would otherwise be prohibited by the Bermuda Sanctions Regime. A licence is a written authorisation from the Minister, with the consent of the UK Secretary of State, permitting an otherwise prohibited action.

The Minister is permitted to issue a licence where there are specific and relevant licensing grounds and where specific conditions have been met. Some of the common grounds for obtaining a licence in Bermuda include applications in respect of: (i) the basic expenses of the designated person or dependent family members; (ii) reasonable professional expenses and disbursements incurred in relation to legal services; (iii) fees or services charged for the maintenance of frozen funds or economic resources; and (iv) obligations under a contract entered into or an obligation that arose prior to the designation of the person.

A successful application for licensing must demonstrate that all criteria of the relevant licensing grounds have been met. A complete application will be processed within four weeks of receipt and any incomplete applications will be sent back or a request for additional information will be made of the applicant, until the FSIU is satisfied that the application is complete. All licensing applications must be submitted online using the online form on the FSIU website.

Reporting Entities must ensure that they do not engage in any activities prohibited by the Bermuda Sanctions Regime until a successful licensing application has been received.

What are the penalties for non-compliance?

There is a range of penalties for any breach of an OT Order. The specific provisions are set out in each OT Order and may include imprisonment of up to seven years, a fine, or both.



The relevant OT Orders provide for both corporate and personal liability for offences. Furthermore, persons who infringe international sanctions and hold other offices (such as directorships), risk being disbarred from performing such functions.

Additionally, it is also important to note that many regulatory acts take into account compliance with the Bermuda Sanctions Regime specifically as a factor in evaluating whether an entity is conducting business in a 'prudent manner' in accordance with the minimum licensing criteria. Any failure to comply may result in the BMA taking enforcement action against a licensed undertaking.

How has the Bermuda Sanctions Regime changed following Brexit in the UK?

Now that the UK has left the EU, the UK Sanctions and Anti-Money Laundering Act 2018 ("SAMLA"), has been brought into force to transpose existing EU sanctions into UK law and to provide the UK with the ability to establish its own autonomous sanctions regime.

Pursuant to SAMLA and in preparation of the UK exit from the EU, over 30 new OT Orders were laid by the UK Government to extend the application of new UK sanctions regulations to its overseas territories. Most of the existing OT Orders contained in Schedule 1 of the Regulations will be repealed and new OT Orders will be brought into force and the FSIU will publish a new sanctions notice accordingly. Whilst it is intended that the SAMLA regulations will deliver substantially the same policy as the existing regimes, the FSIU is advising all persons that they should not assume they are identical and that persons should review the OT Orders to ensure that their activities remain compliant. The FSIU has also indicated that it will shortly be updating its Guidance Notes to reflect the changes to the Bermuda Sanctions Regime.

What practical next steps are recommended?

The changes to the Bermuda Sanctions Regime present a timely opportunity for all persons, and specifically Reporting Entities to evaluate their current sanctions compliance arrangements.

Walkers has a dedicated global Regulatory & Risk Advisory practice group that can offer legal advice and assistance in connection with all aspects of international sanctions and other regulatory compliance matters. Walkers is also able to assist with the development of written policies and procedures, completing of the CRF and with licensing applications.

Contact

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