



BERMUDA MONETARY AUTHORITY

GUIDANCE NOTES

SANCTIONS

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I. EXECUTIVE SUMMARY

Purpose, Scope and Content of the Guidance Notes

1. The purpose of these Guidance Notes is to assist institutions licenced or registered with the Bermuda Monetary Authority (the Authority)¹ to implement policies and procedures to help ensure that they meet their legal obligations under the “Bermuda Sanctions Regime” (the international sanctions measures in force in Bermuda are the United Nations (UN), European Union (EU) and United Kingdom (UK) sanctions measures – see Section II below). Institutions should note that it is not a defence, in determining whether a person is in breach of the Bermuda Sanctions Regime, to consider whether a person has followed these Guidance Notes. Any failure by an entity or person to comply with the requirements of the Bermuda Sanctions Regime will lead to criminal and/or civil liability.
2. This guidance outlines the legal and regulatory framework, and recommends good industry practice to assist in the design and implementation of the systems and controls necessary to mitigate the risks of breaching the Bermuda Sanctions Regime. Section II provides background information on sanctions measures and specifically the Bermuda Sanctions Regime. Section III provides a summary of the types of requirements necessary for compliance with the sanctions measures. The sanctions measures do not set down specific sanctions policy and procedure requirements. These Guidance Notes do not provide a list of mandatory activities to be followed but rather assist in the design of sanctions compliance policies and procedures.
3. The sanctions in force in Bermuda are essentially the same as those in effect in the UK. As of May 2016 there are 26 UN/EU sanctions regimes in force in the UK.² The sanctions measures in force in Bermuda apply to all natural and legal persons, located in Bermuda, operating in or from Bermuda or formed under the relevant Bermuda laws. Accordingly, the sanctions measures apply to all of the institutions licenced or registered with the Authority. The Bermuda Sanctions Regime requires absolute compliance and any person in breach of an obligation under a relevant sanctions measure will be guilty of an offence and liable to a maximum of seven years imprisonment, a fine or both. In addition to this, a failure to comply with international sanctions in force in Bermuda may lead to regulatory action by the Authority that can result in the

¹ Institutions licenced or registered with by Authority: banks, trust companies, investment businesses, investment funds, fund administrators, money service businesses, corporate service providers, insurance companies and Non Licensed Persons. For further information see: www.bma.bm.

² UK HM Treasury Sanctions Regimes: <https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>.

cancellation of registration of a licensed entity, public censure and a civil fine of up to BMD \$500,000.

4. In 2012, most of the regulatory Acts administered by the Authority were amended.³ These amendments specifically include a reference to compliance with international sanctions as one of the criteria for assessing whether the entity is conducting its business in a prudent manner (the Minimum Criteria). The Authority will now evaluate compliance with the Bermuda Sanctions Regime as part of its general supervisory role. Any failure to satisfy the supervisory expectations of the Authority in relation to the policies and procedures,⁴ systems and controls⁵ and staff training and awareness⁶ required to meet the Bermuda Sanctions Regime may lead to regulatory action.

5. Each institution must ensure it has adequate policies and procedures and systems and controls to comply with the sanctions measures which are properly documented, reviewed and endorsed by senior management including the Board. The primary aim of any sanctions policies and procedures is to know your business and make sure the sanctions are not breached. Such procedures should include: an assessment of the institution's sanctions risks; due diligence and screening to ensure compliance with the sanctions restrictions; staff awareness and training in sanctions-related matters; appropriate recordkeeping; and an ongoing review of the effectiveness of the sanctions compliance procedures. Furthermore, institutions should harmonise their sanctions compliance procedures with their Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) procedures and other regulatory procedures. Institutions should base their sanctions compliance procedures on the sanctions measures and appropriate sanctions guidance (e.g., these Guidance Notes, HM Treasury guidance, Lloyd's sanctions guidance, Joint Money Laundering Steering Group Guidance).⁷

³ Regulatory Acts: Second Schedule paragraph 4(10)(c) Banks and Deposit Companies Act 1999, Schedule paragraph 4(2)(d) Insurance Act 1978, Second Schedule paragraph 5(2)(d) Investment Business Act 2003, First Schedule paragraph 5(2)(d) Trust (Regulations of Trust Business) Act 2001.

⁴ See section III.

⁵ See section III.

⁶ See section III.

⁷ See Annex 1 for useful sanctions guidance websites.

II. BACKGROUND

Sanctions

6. *What are sanctions:* Sanctions are enforcement measures used by the international community to maintain or restore international peace and security without the use of armed force or international military action. Sanctions are also used to apply pressure on specified regimes, institutions to comply with certain objectives set by the international community. 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. Certain specified restricted activities are however permitted if the Governor of Bermuda (the Governor) has granted a licence.⁸
7. *Who makes sanctions:* The preeminent sources of sanctions are the UN⁹ and the EU.¹⁰ Some persons and institutions may also have obligations to other countries that have their own unilateral sanctions regimes, notably for example institutions with ties to the United States (US).¹¹

Bermuda Sanctions Regime (legal basis)

8. The UK government requires that its Overseas Territories implement the UN and EU sanctions contained in UK Statutory Instruments known as Overseas Territories Orders in Council (“Orders”). The majority of sanctions contained in the Orders are brought into force in Bermuda through domestic legislation: the International Sanctions Act 2003 (the Act) and the associated International Sanctions Regulations 2013 (the 2013 Regulations).¹² The Act empowers the Minister responsible for Legal Affairs in Bermuda (the Minister) to make regulations necessary or expedient to give effect in Bermuda to the international sanctions obligations of the UK.
9. The 2013 Regulations provide that every Order listed in Schedule 1 to the Regulations (Schedule 1) applies in Bermuda. Schedule 1 is then amended by a regulation made by the Minister to ensure that any new sanctions regimes are in force in Bermuda e.g. the International Sanctions (Ukraine) Amendment Regulations 2014. The 2013 Regulations also provide that the Governor’s

⁸ See paragraph 16 for further information on licence applications.

⁹ UN sanctions: <http://www.un.org/sc/committees/>.

¹⁰ EU sanctions: http://eeas.europa.eu/cfsp/sanctions/index_en.htm.

¹¹ Office of Foreign Assets Control ("OFAC") of the US Department of the Treasury administers and enforces economic and trade sanctions. <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

¹² See Bermuda Laws Online: www.bermudalaws.bm.

obligation to maintain and publish a list of “designated” or “listed” persons (persons and entities that are the target of international sanctions) and “restricted goods” is satisfied by the publication of a web address providing links to such lists.¹³

10. The scope of the restrictions contained in each Order varies, however there are some key common provisions that most of the Orders contain. These provisions include:

- i. *Common asset-freezing prohibitions:* There is a general broad prohibition against dealing with or making available, directly or indirectly, funds, economic resources and financial services to a person or entity that is the target of international sanctions. This includes repatriating funds held on behalf of the identified party, or using such funds to complete transactions on their behalf. In the various Orders, the word “funds” is usually very widely defined to include financial assets and benefits of every kind; economic resources are similarly defined in wide terms. “Dealing” is also defined widely and includes using, altering, moving or allowing access to or transferring.
- ii. *Reporting requirements:* There is an obligation to report to the Governor as soon as practicable if an entity knows, or has 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 Orders. As the regulator of the entity, the Authority would expect to be informed of any such report made to the Governor with a copy of the report, unless specific confidentiality issues arise.¹⁴
- iii. *Licences:* There is a power given to the Governor to grant a licence authorising an activity that would otherwise be prohibited.
- iv. *Penalties:* There is a package of penalties for any breach of an Order. The specific provisions are set out in each Order and may include imprisonment of up to seven years, a fine or both. Under many of the Orders, it is an offence to: breach any of the financial and/or trade prohibitions; attempt to circumvent any of the prohibitions; fail to disclose information to the Governor; and fail to comply with information requests from the Governor. The relevant Orders provide for both corporate and personal liability for offences. Furthermore, where those infringing international sanctions hold other offices (such as Directorships), they risk being disbarred from performing such functions. It should also be borne in

¹³ For further information and web links see the Office of NAMLC international sanctions section at: www.namlc.bm.

¹⁴ See paragraph 16 for further contact information.

mind that breaches of sanctions may also trigger enhanced regulatory scrutiny by the Authority.

- v. *Information gathering powers*: A package of information-gathering powers enabling authorised officers, such as police officers to, among other things, conduct investigations, copy documents and request search warrants.

III. MEANS OF COMPLIANCE

Policies and procedures

11. Each institution must invest adequate resources to implement policies and procedures to achieve compliance with the Bermuda Sanctions Regime. These policies and procedures should be properly documented, reviewed and endorsed by senior management including the Board. Such sanctions compliance procedures should include: due diligence and screening to reflect the institution's sanctions risks; systems and controls to ensure compliance with the sanctions restrictions (e.g. reporting, licensing, freezing procedures); staff awareness and training in sanctions-related matters; appropriate recordkeeping; and an ongoing review of the effectiveness of the sanctions compliance procedures.

Risk-based approach

12. Each institution should determine their risk profile with reference to the following non-exhaustive list of risk factors relevant for any assessment of the risk profile of an institution:
 - a. Customer, product and activities
 - b. Distribution channels
 - c. Complexity and volume of transactions
 - d. Processing and systems
 - e. Operating environment
 - f. Screening processes of intermediaries
 - g. Geographic risk
 - h. Any other applicable sanctions regulations e.g. US sanctions

The adoption of a Risk Based Approach cannot be relied upon as a defence in determining whether there has been a breach of an obligation under a sanctions measure.

Due diligence and screening

13. Each institution should determine reasonable and proportionate due diligence and screening measures that are properly documented, reviewed and endorsed by senior management, including, for example, reasons for frequency of screening. The purpose of due diligence is to understand who your customer is (including ownership and control information) and the activities undertaken by your customer. Due diligence and screening is reasonable and proportionate when it is commensurate with the nature of the transaction or activity concerned and there is the likelihood that it may otherwise give rise to an infringement of sanctions. Due diligence should be conducted wherever possible at the commencement of any business relationship and thereafter on an ongoing basis. The frequency of screening will depend on factors such as the type of customer, business relationship, product or transaction.
14. The following is a list of best practices on due diligence and screening to assist in the prevention of sanction breaches. Each institution should:
 - i. Develop and maintain adequate policies and procedures and systems and controls to remain up to date with all applicable sanctions measures;¹⁵
 - ii. Check the following information obtained through due diligence against the relevant sanctions lists (either manually or using screening software):
 - a. Named customers to determine if they are designated or listed persons e.g. ownership and control information such as beneficial owners, signatories and powers of attorney etc.;¹⁶ and

¹⁵ For Orders, check: www.legislation.gov.uk. For Bermuda legislation, check: www.bermulalaws.bm. Subscribe to the UK sanctions list and corresponding alert e-mail notifications: <http://engage.hm-treasury.gov.uk/fin-sanc-subscribe/>. Subscribe to the NAMLC alert e-mail notifications: info-namlc@gov.bm. For further information see the Office of NAMLC international sanctions section at: www.namlc.bm.

¹⁶ *UK HM Treasury "Consolidated List of Financial Sanctions Targets"*: This Consolidated List provides the names of all of the sanctions targets under the UN, EU and UK sanctions. This list forms the basis for the list of relevant sanctions targets under the Bermuda Sanctions Regime. However, there are a number of issues that should be kept in mind in relation to the Consolidated List and the Bermuda Sanctions Regime; i.e. this list is potentially broader than the relevant sanctions targets under the Bermuda Sanctions Regime and there might also be a short delay in a new sanctions regime coming into force in Bermuda.¹⁶ If a customer match is identified against the Consolidated List, it is strongly recommended that cross-reference be made to the relevant Order in force in Bermuda (i.e., the relevant Orders (as amended) listed in Schedule 1 of the 2013 Regulations, and the Annexes to the relevant UN and/or EU measures referred to in the definition of "designated persons" or "listed persons" in the Order). This will verify whether in fact the target match is also subject to the prohibitions under the Bermuda Sanctions Regime.

- b. Goods, equipment, activities or services to which the transaction relates to determine if any trade sanctions apply.¹⁷

Systems and controls

15. Each institution should establish systems and controls to prevent any participation in prohibited activities with designated or listed persons and restricted goods and services etc. In addition to this, where relevant, to mitigate sanctions risks institutions should consider including appropriate “exclusions and warranties” into certain contracts.

16. Where a transaction is affected by sanctions measures, institutions should take the following actions:

If the exposure is identified ***before*** commencing the business relationship

- a. do not undertake any business with the sanctions target,
- b. apply (where relevant) specific terms and/or exclusions to the contract concerned, and/or
- c. apply for a licence to proceed.

If the exposure is identified ***after*** commencing the business relationship

- a. freeze the account,
- b. ensure no sums are transferred to the person/entity concerned and no transactions are made in relation to any sanctions measures whilst sanctions are in place; and
- c. report to the Governor the asset-freezing action;

and

Take any additional necessary steps to manage the risk moving forward by carrying out any or all of the following steps

- a. terminate the business relationship or ensure that increased vigilance is exercised on the account concerned,

¹⁷ *List of restricted goods and prohibited goods*: There is no equivalent consolidated list of restricted and prohibited goods. In the majority of the applicable Orders the definition of “restricted goods” means the Common Military List of the EU and Schedule 2 of the UK Export Control Order 2008. However, there are a number of Orders that include in the definition of “restricted goods” an additional list of goods as set out in the relevant annexes to certain EU Regulations (as specified in each relevant Order). Each institution must therefore check goods, equipment, activities or services to which a transaction etc. relates against these relevant lists (for further information see the Office of NAMLC sanctions website). The most frequently applied measures in relation to restricted or prohibited goods are embargoes on exporting or supplying arms and associated technical assistance, training and financing.

- b. mark in the systems that the account is subject to sanctions,
- c. transfer funds to a separate account, and/or
- d. direct relevant staff not to process any further payments/transactions.

Reporting requirements

If after checking the customer/transaction against the relevant Order (and associated UN Resolution or EU Regulation) the target is found to be a confirmed target match under the relevant Order, the institution must immediately comply with the terms of the Order, e.g. stop any further transactions and/or freeze any assets under the control of the institution. The institution must then immediately make to the Governor any necessary notifications, report any asset-freezing action and/or make any necessary licence/authorisation applications. The Governor should be contacted at:

The Governor of Bermuda
Government House
11 Langton Hill
Pembroke, HM13
Bermuda

As the regulator of the entity, the Authority would expect to be informed of any notification, report and licence/authorisation applications, unless specific confidentiality issues arise. The Authority should be contacted at:

The Bermuda Monetary Authority
AML Unit
43 Victoria St, P.O. Box 2447
Hamilton HM JX
Bermuda

E-mail: aml@bma.bm

It is also advised that the Office of NAMLC be notified at:

Office of the National Anti-Money Laundering Committee
Ministry of Legal Affairs
4th Floor, Global House
43 Church Street
Hamilton, HM12
Bermuda

E-mail: info-namlc@gov.bm

Staff awareness and training

17. Each institution should ensure that all relevant staff are taught, and assessed on, how to comply with sanctions compliance procedures. Such procedures should be recorded, audited and updated. Regular training should focus on the due diligence and screening measures it is taking to ensure sanctions compliance.

IV. FURTHER ENQUIRIES

18. Further enquiries in relation to these Guidance Notes and the role of the Authority in the Bermuda Sanctions Regime should be referred to the AML Unit at aml@bma.bm and/or one of the phone numbers [listed here](#) on the BMA website.

ANNEX 1

Useful web links

BERMUDA

Bermuda Monetary Authority

www.bma.bm

Bermuda Laws Online

www.bermulaws.bm

Office of NAMLC

www.namlc.bm

INTERNATIONAL

European Union

http://eeas.europa.eu/cfsp/sanctions/index_en.htm

Office of Foreign Assets Control ("OFAC") of the US Department of the Treasury

<http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>

United Nations

<http://www.un.org/sc/committees/>

UNITED KINGDOM

UK legislation

www.legislation.gov.uk

UK HM Treasury

<https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>

Examples of UK Sanctions guidance:

Lloyd's

<https://www.lloyds.com/the-market/operating-at-lloyds/regulation/economic-trade-and-financial-sanctions>

Joint Money Laundering Steering Group

<http://www.jmlsg.org.uk/>

SUBSCRIPTIONS

- Subscribe to the UK sanctions list and corresponding alert e-mail notifications: <http://engage.hm-treasury.gov.uk/fin-sanc-subscribe/>
- Subscribe to the NAMLC alert e-mail notifications: info-namlc@gov.bm