

The sanctions regime in the British Virgin Islands

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Introduction

This guide provides a summary of the British Virgin Islands (**BVI**) sanctions regime and why it is more important than ever for relevant persons to comply with their obligations. Relevant persons under the BVI anti-money laundering regime, including trust company services providers and financial institutions, need to continually ensure that they comply with their regulatory obligations, both to ensure regulatory compliance and to protect their reputation and mitigate the risk of their businesses being used for the purpose of financial crime.

Following the publication by the Caribbean Financial Action Task Force of the Fourth Round Mutual Evaluation report for the BVI earlier this year and its recommended actions,¹ a dedicated sanctions unit (the **Sanctions Unit**) is being established within the Attorney General's chambers. The BVI Financial Services Commission (the **Commission**) has also confirmed in its 2024-2025 inspection plan² that sanctions compliance will be one of the priority themes for its desk-based reviews for the 2024-2025 inspection cycle.

Therefore, all BVI financial services licensees should ensure that they have robust policies and procedures in place (including in relation to targeted financial sanctions), commensurate to the risks posed by their business, and that those policies and procedures are implemented in practice. This will demonstrate effective implementation of controls and reduce the risk of any breach, leading to potential enforcement action and penalties.

What are sanctions?

Sanctions are measures that are put in place with the aim of maintaining international peace and security. They are also implemented to prevent terrorist and proliferation financing by seeking to prevent funds or other assets from being made available, directly or indirectly, for the benefit of designated persons and entities. These measures come in many forms, including travel bans, import and export restrictions and embargoes, diplomatic measures, shipping and financial sanctions. Over the last few years, we have seen a continually intensifying programme of sanctions by, among others, the UK, the US and the United Nations (**UN**) with the most active regime being in relation to Russian sanctions.

The BVI financial sanctions framework

The BVI is a British Overseas Territory and, as such, the financial sanctions in force in the BVI are essentially the same as those in force in the UK.

The UN imposes financial sanctions via UN Security Council resolutions. The UK implements the UN sanctions, and its own financial sanctions, via a combination of primary and secondary legislation. In the UK, the Foreign, Commonwealth and Development Office is responsible for the UK's international sanctions

¹ See page 49 of the BVI National Action Plan to address Fourth Round Mutual Evaluation recommended actions at https://bvi.gov.vg/sites/default/files/national_action_plan_for_publication.pdf.

² See https://www.bvifsc.vg/sites/default/files/bvifsc_inspection_plan_-_april_2024.pdf.

policy, including the sanctions regimes and designations³. The Office of Financial Sanctions Implementation of HM Treasury (**OFSI**) is the authority responsible for implementing the UK's financial sanctions. It also publishes the consolidated sanctions list of designated persons (known as the **Consolidated List**⁴). An entity that is owned or controlled⁵ by a designated person is subject to the same sanctions as the designated person themselves.

UK sanctions are extended to the BVI as a British Overseas Territory, with certain modifications, by Overseas Territories Orders in Council (**Sanctions Orders**) made by the UK Privy Council. The Sanctions Orders in force in the BVI can be found on both the BVI Financial Investigation Agency (**FIA**) and Commission websites. Domestic legislation also provides for the BVI to identify and suggest persons for designation through the Governor of the BVI, although there have been no such designations to date.

In the BVI, the Governor is the competent authority responsible for enforcing international sanctions under both the domestic and the UK frameworks, and for ensuring the implementation of financial sanctions measures. The Financial Sanctions Guidelines⁶, issued by the Governor's Office, provide further details to assist those persons responsible for ensuring compliance with financial sanctions in meeting their obligations. The Sanctions Unit, under the leadership of the Attorney General, will ensure the effective implementation and enforcement of sanctions issued and applicable in the BVI.⁷

Who is subject to financial sanctions?

UK and UN financial sanctions

In the BVI, UK financial sanctions (implementing both UN and domestic UK sanctions regimes) apply to:

- any person in the BVI;
- any person who is a British citizen, a British Overseas Territories citizen, a British subject, a British National (Overseas) or a British protected person who is ordinarily resident in the BVI;
- a body incorporated or constituted under the laws of the BVI; and
- any person onboard a ship or aircraft that is registered in the BVI.

EU and US financial sanctions

EU financial sanctions are no longer directly applicable to BVI entities but, as with the UK/BVI sanctions legislation, apply to EU nationals wherever they are located and also to persons conducting business in the EU.

Even though US financial sanctions are not legally binding in the BVI, financial sanctions imposed in the US by the Office of Foreign Assets Control (**OFAC**) of the US Treasury Department are often taken into account due to close commercial ties and correspondent banking relationships with US entities, and the reputational implications for the territory. Therefore, even if an institution is not operating or incorporated in the US, OFAC sanctions may still apply and should be taken into consideration where the institution conducts business with US persons or entities.

Local legal advice may also be needed (eg, in relation to any notification to be made to OFAC or in relation to an EU member state).

Who is responsible for ensuring compliance with financial sanctions?

The following are responsible for ensuring compliance:

- an entity registered, incorporated or constituted under BVI laws and supervised by the Commission (this will include all trust company services providers/registered agents and financial institutions).

³ For updates on designations, subscribe to FCDO e-alerts at <https://public.govdelivery.com/accounts/UKFCDO/subscriber/new>.

⁴ See <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>.

⁵ See part 5 of the Financial Sanctions Guidelines (linked below) for more information on the ownership and control and the criteria set out at paragraph 78. If any of these criteria are met and the person owning or controlling the entity is a designated person, financial sanctions will apply to the entity.

⁶ See <https://www.fiabvi.vg/Portals/0/ThemePluginPro/uploads/2023/3/27/Virgin%20Islands%20Sanctions%20Guidelines%20-2023.pdf>.

⁷ From April 2024, there will be a six-month transition period from the Governor's Office to the Sanctions Unit to allow for a smooth transition for the delegation of certain functions of the Governor in relation to sanctions, including licensing, reporting, outreach, training and oversight.

- an entity registered, incorporated or constituted under BVI laws and supervised by the FIA (this will include all non-profit organisations and designated non-financial businesses and professions); and
 - any person onboard a ship or aircraft that is registered in the BVI,
- (collectively, **Relevant Persons**).

Relevant Persons are prohibited from making any funds, economic resources, other assets or financial or other related services, available, directly or indirectly, wholly or jointly, for the benefit of:

- designated persons and/or entities;
- entities owned, held or controlled, directly or indirectly, by designated persons or entities; and
- persons and/or entities acting on behalf of, or at the direction of, designated persons or entities, unless licensed, authorised or otherwise notified in accordance with the relevant UN Security Council resolutions.

AMLTF Code obligations

Under the Anti-Money Laundering and Terrorist Financing Code of Practice (Revised Edition 2020), as amended (the **AMLTF Code**), Relevant Persons must ensure that their risk-based policies, procedures and systems are adequate and appropriate to determine if their existing and potential new customers are subject to any of the sanctions regimes that apply in the BVI. In particular, Relevant Persons should:

- **Review** on an ongoing basis whether their existing sanctions compliance mechanisms are **effective** in promptly mitigating and prohibiting financial sanctions evasions⁸ by designated persons, Russian elites and enablers⁹;
- **Check** that their ongoing due diligence/customer screening systems are able to **detect** where a customer (including its beneficial owner(s)) has become subject to applicable sanctions¹⁰ (eg, by monitoring and screening against the Consolidated List and notices and information published on the UK Government¹¹, Commission¹² and FIA's¹³ websites). Relevant Persons may also wish to have measures in place to monitor for situations where individuals and legal persons have been listed on other sanctions lists such as OFAC and EU;
- **Comply** with their **reporting** provisions (eg, failing to make a report where there has been a breach of financial sanctions, or failing to submit a report in the proper form, is an offence¹⁴. An individual failing to report a suspicious activity/transaction report (**SAR**)¹⁵ may be liable to a penalty of up to US\$80,000¹⁶).

What do Relevant Persons need to do?

If a Relevant Person's systems and checks show a customer (including its beneficial owner(s)) is a designated person subject to an applicable sanctions regime, or where a Relevant Person suspects that it is dealing with a designated person using techniques in order to evade sanctions in breach of Sanctions Orders, they must:

- **Check** if they maintain any accounts or hold any funds or economic resources for the designated person and, if so, **freeze** them;

⁸ Failing to comply with the requirements of section 11 of the AMLTF Code (which includes having a written a system of internal controls that include (i) *establishing policies and procedures to ensure compliance with sanctions obligations* and (ii) *implementing systems and procedures for sanctions screening, monitoring and reporting*) is an offence liable to a fine not exceeding \$200,000 or to a term of imprisonment not exceeding 3 years, or both.

⁹ See <https://www.bvifsc.vg/news/industry-updates/industry-circular-no-4-red-alert-financial-sanctions-evasion-typologies>.

¹⁰ Failing to comply with the requirements of section 21 AMLTF Code is an offence with the penalty of up to US\$75,000 for a corporate and US\$70,000 for an individual.

¹¹ See <https://www.gov.uk/guidance/uk-sanctions>.

¹² See <https://www.bvifsc.vg/international-sanctions/financial-sanctions-notices>.

¹³ See <https://fiabvi.vg/International-Sanctions/Guidance-and-Forms>.

¹⁴ Section 55 of the AMLTF Code. The penalty for a corporate or an individual is up to US\$60,000.

¹⁵ See <https://fiabvi.vg/Analysis-Investigation/Documents-and-Forms> for prescribed form.

¹⁶ Section 18 of the AMLTF Code.

- **Cease dealing** with the accounts, funds and/or economic resources, or making them available (directly or indirectly), to the designated person unless licensed by the Governor (either under a general licence¹⁷ or a specific licence) to do so under the applicable sanctions regime;
- **Report** any findings and relevant information, including:
 - filing a Compliance Reporting Form (CRF) in the prescribed form with the Governor's Office (eg, for asset freezes and suspected breaches of sanctions under the applicable sanctions regime)¹⁸;
 - filing a SAR with the FIA (eg, if there is a suspicion of criminal conduct such as an attempt to circumvent applicable financial sanctions or as otherwise may be required under the Counter-Terrorism Act, 2021) and reporting to the FIA in relation to the holding of an asset of a designated person or entity¹⁹; and
 - if carrying out an activity or transaction in reliance of a licence:
 - reporting the details required under the provisions of the relevant licence to the Governor's Office in the prescribed form; and
 - keeping complete and accurate records for at least six years of such activity carried out.

Where the designated person is no longer subject to an applicable sanctions regime (and the Relevant Person should ensure that it has verified that this is the case), the Relevant Person should notify the FIA and the Commission that it proposes to unfreeze the relevant accounts, funds and/or economic resources and unfreeze them (if no objection or contrary instruction is received).

Consequences of breaches of financial sanctions

Contravening or circumventing a sanction is a serious criminal offence which includes the following penalties:

- on summary conviction, up to 6 months' imprisonment, or a fine of the US\$ equivalent of £5,000, or both; and
- on conviction on indictment, up to 7 years' imprisonment, or a fine, or both.

In addition, vicarious liability provisions apply where an offence is committed by a body corporate with the consent, connivance or neglect of a director or officer, or any person purporting to act in such capacity.

Other penalties may also be applicable; for example, a person who contravenes a provision under the AMLTF Code commits an offence and is liable on summary conviction to a fine of up to US\$200,000 or up to 3 years' imprisonment or both. The Commission may also impose administrative penalties on Relevant Persons of up to US\$100,000 per breach for non-compliance with the provisions of the AMLTF Code.

How can we help?

Mourant has a wealth of experience in assisting clients in complying with the various aspects of their sanctions obligations. Our services include:

- identifying whether an entity is owned or controlled by a designated person to determine if it is in scope of the sanctions regime;
- providing guidance on, and assisting with, reporting obligations to the applicable authorities, including in relation to SARs and CRFs;
- preparing, reviewing and updating sanctions policies and procedures, including compliance, screening and monitoring;
- assisting with reporting under general licences to the applicable authorities;
- advising funds, their administrators and directors on the freezing of assets (where required), investor communications and the approach in relation to minority investors;

¹⁷ See <https://www.bvifsc.vg/virgin-islands%E2%80%99-general-licences>.

¹⁸ See <https://fiabvi.vg/Portals/0/ThemePluginPro/uploads/2023/4/6/Compliance%20Reporting%20Form.pdf>. A CRF is required to be filed under the relevant sanctions regimes (eg, under the terrorist financing sanctions regime/Counter-Terrorism Act, 2021 and/or the proliferation financing sanctions regime /Proliferation Financing (Prohibition) Act, 2021).

¹⁹ Under the Proliferation Financing (Prohibition) Act, 2021. This reporting is required in addition to the reporting of the suspicious transaction.

- conducting an audit of effectiveness of sanctions screening systems (including timing of screening, ongoing monitoring of customers and steps taken to freeze assets without delay once a designated person has been identified);
- assisting with preparation for a regulatory inspection; and
- assisting with any remediation exercise following a regulatory inspection by the Commission and/or on an ongoing basis.

Contacts

A full list of contacts specialising in regulatory law can be found [here](#).

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](https://www.mourant.com). © 2024 MOURANT ALL RIGHTS RESERVED