

International Comparative Legal Guides



Practical cross-border insights into sanctions law

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

The Cayman Islands is a British Overseas Territory (OT) and, as such, takes its sanctions regime from the United Kingdom (OTs are self-governing domestically, but matters of defence and foreign relations are the responsibility of the United Kingdom).

The UK sanctions regime is governed by the *Sanctions and Anti-Money Laundering Act 2018*. Under this Act, sanctions in relation to particular nations, entities or individuals are enacted through secondary regulations (for example, the *Russia (Sanctions) (EU Exit) Regulations 2019*). These regulations are in turn applied in the British Overseas Territories, including the Cayman Islands, by a number of Orders in Council (for example, the *Russia (Sanctions) (Overseas Territories) Order 2020*).

The Orders in Council apply the relevant regulations to the Overseas Territories, usually with a number of modifications or amendments to adapt the regulations to the Overseas Territory. As in the UK, these sanctions can be country-specific, or may target issues which are not specific to a particular country (for example, terrorist activities, or serious human rights violations). These sanctions are implemented by designating particular entities or individuals, or categories of entities or individuals, as “designated persons”. The UK maintains a list of those entities and individuals which it has sanctioned (and which by extension are sanctioned in the Cayman Islands).

The Act defines six types of sanctions: (i) financial sanctions; (ii) immigration/travel sanctions; (iii) trade sanctions; (iv) aircraft sanctions; (v) shipping sanctions; and (vi) other sanctions for the purposes of UN obligations.

The primary financial sanction is the imposition of an asset freeze. This prohibits dealing with the funds or economic resources of a designated person, including by that person, and also making funds or economic resources available to or for the benefit of the designated person. These sanctions are broadly drafted, and capture any entities majority held or controlled by a designated person.

Trade sanctions include measures which prohibit the export or import of certain goods, prohibit the transfer of specified technology, or prohibit the provision of certain services to designated persons.

Aircraft and shipping sanctions include restrictions on disqualified aircraft or ships, and restrictions on owning, chartering, operating or registering certain aircraft or ships.

Finally, a person to whom the sanctions regime applies is prohibited from circumventing the sanctions regulations by participating in activities knowing that the object or effect of

them is (including indirectly) to circumvent those regulations or to enable or facilitate their contravention. Any person who does so is subject to the same penalties as they would be for a primary breach of the regulations (addressed below).

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

The Financial Reporting Authority (the FRA) is responsible for the administration of sanctions in the Cayman Islands. Sanctions licences (addressed below) are the responsibility of the Governor of the Cayman Islands, who takes advice from both the FRA and the Attorney General's Chambers (the AGC) in conjunction with the Sanctions Coordinator.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

The imposition of sanctions following the Russian invasion of Ukraine has been unprecedented in scope, and has had a significant practical impact on the administration of the Cayman Islands sanctions regime.

In addition, in July 2022 two new sanctions provisions were imposed by the United Kingdom which also apply to the Cayman Islands via the mechanism set out above. The first prohibits the provision of accounting services, business and management consulting services or public relations services to any person connected with Russia. The second prohibits investments in relation to Russia, which include directly or indirectly: (i) acquiring any ownership interest in Russian land; (ii) acquiring any ownership interest in or control over a Russian corporation; (iii) establishing any joint venture with a person connected with Russia; (iv) opening a representative office, branch or subsidiary in Russia; or (v) providing investment services in relation to any of the above. “Person connected with Russia” has a broad definition for the purpose of these sanctions, and includes persons ordinarily resident, located, or incorporated in Russia.

Prior to these changes, the entire UK sanctions regime was revamped in 2019 and 2020 following Brexit.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

Sanctions are imposed under the authority of the *Sanctions and Anti-Money Laundering Act 2018* as applied to the British Overseas Territories by a number of Orders in Council.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

The United Kingdom implements UN sanctions, and these are in turn implemented in the Cayman Islands through the process set out above.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

The Cayman Islands impose sanctions only by extension of the sanctions imposed by the United Kingdom.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

The United Kingdom maintains a list of entities and individuals subject to sanctions. Persons will be designated either by way of specific powers conveyed on a Minister of the United Kingdom (in general, the Secretary of State) by the relevant Regulations or because they are named by or under a UN Security Council Resolution (for example, this is the case for sanctions in relation to Libya). In the former case, a designation may be varied or revoked by the relevant United Kingdom Minister. The power to designate persons or vary or revoke a designation is specifically excluded from the powers that are granted to the Governor in the relevant Orders.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

As persons are sanctioned in the United Kingdom, the power to vary or revoke a designation lies with the relevant United Kingdom Minister. The *Sanctions and Anti-Money Laundering Act 2018* provides for a designated person to request that the Minister vary or revoke their designation. The Governor of the Cayman Islands does not have any equivalent power.

2.6 How does the public access those lists?

A list of persons designated by the United Kingdom is maintained by the Foreign, Commonwealth & Development office and is available at: <https://www.gov.uk/government/publications/the-uk-sanctions-list>.

The Office of Financial Sanctions Implementation also maintains a list of persons subject to financial sanctions, which is available at: <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>.

The FRA maintains links to both of these lists, which are available (along with other relevant notices and guidance) at: <http://fra.gov.ky/contents/page/1>.

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

No, neither the United Kingdom nor the Cayman Islands have in place any comprehensive sanctions or embargoes against

any particular country or region. The full extent of applicable sanctions varies between countries and other persons, but the restrictions fall short of full embargoes.

2.8 Does your jurisdiction maintain any other sanctions?

In addition to country and person-specific sanctions, the United Kingdom (and as such the Cayman Islands) also impose sanctions which target issues which are not specific to a particular country or person. These include sanctions relating to chemical, biological and nuclear weapons, cyber-attacks, terrorism and terrorism financing, and serious human rights violations.

2.9 What is the process for lifting sanctions?

As set out above, a designated person can request that sanctions imposed on it be lifted. In addition, the *Sanctions and Anti-Money Laundering Act 2018* contains a mechanism for periodic review of both imposed sanctions and on the Regulations under which they are imposed.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Yes. Certain exports are subject to the United Kingdom *Export Control Act 2002* which is likewise applied in the Cayman Islands in some respects by an Order in Council.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

The United Kingdom *Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996* and the *Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) (Amendment) Order 2018* apply to British Overseas Territories citizens although they are not extended to the Cayman Islands.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

No, the Cayman Islands sanctions regime applies only to Cayman Islands persons or to conduct within the Cayman Islands.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

The Cayman Islands sanctions regime applies based on both the nationality of the parties to a transaction and to the location where a transaction takes place. The relevant Orders impose restrictions on: i) transactions within the territory or territorial sea of the Cayman Islands; and ii) any Cayman Islands person. A Cayman Islands person is: i) a body incorporated or constituted under the law of any part of the Cayman Islands; or ii) an

individual ordinarily resident in the Cayman Islands who is: a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen; b) a person who under the *British Nationality Act 1981* is a British subject; or c) a British protected person under the *British Nationality Act 1981*.

In respect of ships and aircraft, sanctions also apply to any Cayman Islands ship or Cayman Islands aircraft. This means a ship or aircraft registered in the Cayman Islands, or not registered outside of the Cayman Islands but which is wholly owned by Cayman Islands persons.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

Yes. A person to whom the Cayman Islands sanctions regime applies must not deal with funds or economic resources that are owned, held or controlled by a designated person if they have reasonable cause to suspect that they are dealing with such funds or economic resources. A person that holds funds or economic resources of a designated person must freeze those assets and make a report to the FRA.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

Yes. A number of the relevant Orders provide for the Governor to issue licences in relation to some of the relevant sanctions. The Governor can do so only if certain purpose requirements are met (for example, to provide for the basic needs of a designated person, or to deal with an extraordinary situation), and can impose conditions and reporting requirements on any licence. The Governor may generally only issue a licence with the consent of the United Kingdom Secretary of State; however, in practice granting this consent is delegated to either the Office of Financial Sanctions Implementation or the Foreign, Commonwealth & Development Office in the United Kingdom.

Licence applications should be made as early as possible. Prior to this year licences were generally dealt with rapidly (i.e. within two to three months), however, in light of the significant increase in sanctions imposed following the Russian invasion of Ukraine, at the time of writing this chapter the timeframe for issuing a licence is significantly longer.

The Cayman Islands authorities and United Kingdom authorities both prioritise humanitarian applications, and will process urgent applications in life-threatening circumstances.

Applicants are required to provide a full explanation of a transaction for which they need a licence. This will obviously include the value of any transaction, the purpose of the transaction, the route for any payment(s) to be made (including the sender and receiver of any funds or assets, and any intermediaries or other beneficiaries), and how any funds or assets will be accounted for. Applicants for a Financial Sanctions Licence must submit a licence application form, and it is strongly advisable to also submit a detailed explanation as to why the licence is sought. The licence application form is available here: [http://fra.gov.ky/app/webroot/files/ASSET%20FREEZE%20LICENCE%20APPLICATION%20FORM\(1\).doc](http://fra.gov.ky/app/webroot/files/ASSET%20FREEZE%20LICENCE%20APPLICATION%20FORM(1).doc).

A breach of Cayman Islands sanctions is a strict liability offence.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

Yes. There are reporting obligations and financial institutions and others (including banks and law firms) to file a Compliance

Reporting Form with the FRA as soon as practicable if they know or have reasonable cause to suspect: that a person is a designated person; and/or the existence of affected assets or certain offences under the sanctions regime. The Compliance Reporting Form is available at: [http://fra.gov.ky/app/webroot/files/COMPLIANCE%20REPORTING%20FORM%20\(21%20Jul%202021\).doc](http://fra.gov.ky/app/webroot/files/COMPLIANCE%20REPORTING%20FORM%20(21%20Jul%202021).doc).

Such a report must contain the information on which this knowledge or suspicion is based, and any other information the reporting party knows about the designated person and their funds or economic resources.

Every sanctions licence issued by the Governor will have reporting requirements that require the licensee to provide information to the FRA.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

The FRA has published both a Quick Guide to Financial Sanctions in the Cayman Islands and a more comprehensive Financial Sanctions Guidance, both of which are available at: <http://fra.gov.ky/contents/page/1>.

The FRA does not mandate any specific compliance programme in relation to sanctions; however, a number of regulated sectors in the Cayman Islands (in particular, the banking and investment funds sectors) are subject to separate regulatory requirements which may include maintenance of a compliance programme.

The FRA expects Cayman Islands persons and persons conducting transactions in the Cayman Islands to comply with the law, including the sanctions regime. Beyond this, it is the responsibility of each person to whom the sanctions regime may apply to assess what compliance steps are appropriate for them in their circumstances.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Yes. The applicable penalties are set out in the relevant Order. In general, the maximum penalties are a fine at the discretion of the Grand Court of the Cayman Islands (which may be unlimited but cannot be excessive) and up to seven years' imprisonment.

These penalties are specifically extended to the directors or controllers of a company that has breached the sanctions regulations and, as noted above, also apply to any conduct which circumvents or is intended to circumvent the regulations.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The primary authority responsible for investigating sanctions offences is the FRA. However, where the FRA concluded that a breach may have occurred, it is likely that the Royal Cayman Islands Police Service may be called upon to undertake further investigations.

Prosecution of offences in the Cayman Islands is undertaken by the Director of Public Prosecutions (the DPP). The DPP is responsible for determining whether a particular case should be

prosecuted, based on the available evidence and whether a prosecution is in the public interest.

4.3 Is there both corporate and personal criminal liability?

Yes, fines can be imposed on any person to whom the sanctions regime applies, including both individuals and companies.

As noted above, where a company has committed an offence, a director (or equivalent) of that company can also be prosecuted for the offence if the offence by the company was committed with the director's consent or connivance, or is attributable to the director's neglect. This may be in addition to, and not in substitution for, prosecution of the company.

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

There is no maximum to the financial penalty which may be imposed for breach of the Cayman Islands sanctions regime. However, as a general matter of Cayman Islands law, any penalty which is fundamentally unreasonable or irrational may be subject to appeal.

4.5 Are there other potential consequences from a criminal law perspective?

Yes. Breach of the Cayman Islands sanctions regime can be penalised with up to seven years' imprisonment (for each breach in the case of multiple breaches) for individuals.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

No, civil penalties are not applicable to breaches of the Cayman Islands sanctions regime. Only the criminal penalties set out above are applicable.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

This is not applicable.

4.8 Is there both corporate and personal civil liability?

This is not applicable.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

This is not applicable to civil liability. In respect of criminal liability, see above.

4.10 Are there other potential consequences from a civil law perspective?

Conviction for breach of the sanctions regime may trigger any consequences which stem from a criminal conviction in the

Cayman Islands. In general, this could be relevant to any licences or regulations which impose conduct or good character requirements in the Cayman Islands (including financial services licences, and legal practice). Conviction may also impact an individual's immigration status in the Cayman Islands or other jurisdictions.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

This is not applicable.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

To date there have not been any appeals of penalties imposed for breaches of the Cayman Islands sanctions regime. Such an appeal would follow the usual criminal appeal process in the Cayman Islands, and would require judicial proceedings in the Cayman Islands Court of Appeal.

In general, a person convicted of an offence in the Cayman Islands (including a breach of sanctions) must seek leave to appeal within 14 days of conviction; however, this deadline can be extended by the Court.

An appeal against conviction may be brought only on a ground which involves a question of law alone, or, with the leave of the Court, on a ground that involves only a question of fact or of mixed fact and law. An appeal against a sentence may only be brought with the leave of the Court.

The Cayman Islands Court of Appeal may allow an appeal against conviction only if it is unsafe or unsatisfactory, if it should be set aside on the grounds of a wrong decision on any question of law, or if there was a material irregularity in the course of the trial. It may allow an appeal against sentence and impose either a more or less severe sentence only if it considers that a different sentence should have been imposed by the trial court.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

The Cayman Islands only has a single national prohibition on breaches of its sanctions regime.

4.14 What is the statute of limitations for economic sanctions violations?

There is no limitation on the time period within which a prosecution for breach of the sanctions regime can be brought in the Cayman Islands.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

At the time of writing this chapter no General Licences (which permit all transactions of a specified kind) have been issued in the Cayman Islands. However, the authors understand that a General Licence relating to the Cayman Islands funds industry is contemplated in order to avoid ongoing impacts on non-sanctioned persons.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

- The *Sanctions and Anti-Money Laundering Act 2018* and relevant Regulations and Orders issued under that Act can be accessed at: <https://legislation.gov.uk>.
- The FRA's website contains links to guidance regarding sanctions in the Cayman Islands, the relevant sanctions lists, and the Sanctions Licence and Compliance Reporting forms. It can be accessed at: <https://www.fra.gov.ky/>.



Paul Kennedy is a Partner in our Litigation, Insolvency & Restructuring Group, based in the Cayman Islands office. He has particular expertise in complex cross-border disputes relating to funds and other offshore structures, asset recovery claims and fraud investigations and in breach of duty claims in relation to the managers, auditors, administrators and custodians of investment vehicles. Paul is one of the leading experts in the Cayman Islands on sanctions and asset freezing measures affecting offshore assets and has also written and spoken extensively on cross-border litigation and insolvency matters.

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