

Jersey likes EU sanctions too: a brief look at the implementation of EU sanctions in Jersey

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The largest of the Channel Islands, Jersey is a self-governing dependency of the United Kingdom and a well-known financial centre. While not a Member State of the European Union, the island has passed implementing regulations which enter EU sanctions in force.

The global regulatory focus on ensuring compliance by businesses and financial institutions with economic sanctions is just as significant in the island of Jersey as it is in major onshore jurisdictions. Robust sanctions compliance is of central importance to financial services businesses, a point made all the more important by the impact of recent EU sanctions on corporate and trust services providers on the island. Understanding the operation of various economic sanctions, and having systems in place to ensure that customer on-boarding and ongoing monitoring processes capture sanctions risks, is of the utmost importance in light of the severe penalties in place for either directly or indirectly committing sanctions offences. In this article we focus on how Jersey treats EU sanctions.

| Implementation of EU sanctions in Jersey

Jersey is not part of the EU, however EU sanctions are brought into force in Jersey by way of domestic legislation. On 31 October 2014, Jersey enacted the European Union Legislation (Implementation) (Jersey) Law 2014 ('the Implementation Law') to streamline the method by which EU sanctions were given effect in Jersey. Pursuant to the Implementation Law, EU sanctions are now given full force and effect by way of orders made by the Minister for External Relations ('the MoER'). The MoER is the Jersey competent authority for sanctions purposes.

Using the powers under the Implementation Law, the MoER made the EU Legislation (Sanctions) (General Provisions) (Jersey) Order 2014 ('the General Provisions Order') which came in to force on 31 October 2014. The General Provisions Order provides standard provisions that may apply to sanctions orders made by the MoER.

The General Provisions Order contains provisions detailing, inter alia, the territorial scope of sanctions orders, the functions of the Minister as the competent authority for Jersey, and the powers of the Minister to obtain information in relation to sanctions.

The General Provisions Order also sets out provisions regarding sanctions offences committed by a limited liability partnership, a separate limited partnership, an incorporated limited partnership or another body corporate.

Jersey has implemented all major EU sanctions in accordance with the Implementation Law and the General Provisions Order, including:

- Council Regulation 833/2014 as amended ('the Russian Sanctions') pursuant to the EU Legislation (Sanctions – Russia) (Jersey) Order 2014
- Council Regulation 267/2012 as amended ('the Iran Sanctions') pursuant to the EU Legislation (Sanctions – Iran) (Jersey) Order 2015
- Council Regulation 44/2016 as amended ('the Libyan Sanctions') pursuant to the EU Legislation (Sanctions – Libya) (Jersey) Order 2014

Territorial scope of sanctions in Jersey

Pursuant to article 3 of the General Provisions Order:

1. A reference in the relevant EU provision to Member States or the EU (however expressed) is to be construed as including Jersey.
2. A reference in the relevant EU provision to the competent authorities is to be construed as including the MoER.

Article 6 of the General Provisions Order facilitates a fluid process for implementing EU economic sanctions into Jersey law, setting out that a relevant EU provision applies as if, for any provision of the EU provision specifying the scope of its application in relation to the EU, there were substituted a provision applying the EU provision:

- to Jersey, including its airspace
- on board any aircraft or any vessel under the jurisdiction of Jersey;
- to any legal person, entity or body which is incorporated or constituted under the law of Jersey;
- to any legal person, entity or body in respect of any business done in whole or in part in Jersey.

The cumulative effect of the General Provisions Order is that the EU sanctions, as applicable in

Jersey, have the same territorial/extra-territorial scope as if Jersey were a Member State.

Once in force in Jersey, EU sanctions are capable of having effect both in and outside the Island and generally apply to:

1. Any legal person;
2. Body incorporated or constituted under Jersey law in respect of any business done in whole or in part in Jersey; and
3. Any legal person, body incorporated or constituted under Jersey law, regardless of where that person carries on business (i.e., a Jersey company with its management and control in Singapore).

Many of the sanctions orders made pursuant to the Implementation Law contain ambulatory provisions, the effect of which is that, if the EU amends the lists of persons or items subject to the restrictive measures under the regulation as amended, that change takes effect automatically in Jersey without the need for any amendment to the implementing order.

Penalties

A breach of financial sanctions in force in Jersey gives rise to two principal concerns:

1. Criminal prosecution for breaching sanctions.
2. Regulatory enforcement in respect of sanctions/AML systems and controls failings.

The General Provisions Order clarifies that where a person either:

1. Contravenes Articles 2, 2a, 3, 3a, 4, 5 or 12 of the July Order,
2. Intentionally furnishes false information or a false explanation to any person exercising powers under this Order; or
3. Destroys, mutilates, defaces, secretes or removes any document with intent to evade the provisions of this Order.

they will be guilty of an offence and liable to imprisonment for a term of two years and to a fine.

Although sanctions are primarily policed by the MoER, regulated businesses must also adhere to sanctions systems and controls requirements set out in guidance, rules and codes of practice issued by the Jersey Financial Services Commission ('JFSC') to industry. In circumstances where there has been a suspected sanctions breach, a registered person must be mindful of its duty to deal with the JFSC in an open and cooperative manner reporting on any systems failures at the earliest opportunity.

Although typically premised on breaches involving payments to targeted entities/individuals, the JFSC has issued industry guidance requiring regulated persons to notify the MoER of suspected breaches of financial sanctions. The MoER has also issued a proforma document for making such disclosures.

A breach of regulatory requirements in relation to sanctions compliance (such as adherence to the AML Handbook/codes of practice requirements) may give rise to regulatory sanction. Various sanctions could be imposed depending upon the seriousness of the breach.

Broadly speaking the JFSC has the ability to:

- issue public statements to identify breaches of regulatory obligations by a registered person;
- require a registered person to undertake remediation steps in order to address regulatory failings;
- revoke a registered persons registration permitting a registered person to undertake financial services business; and
- impose civil penalties pursuant to the Financial Services Commission (Financial Penalties) (Jersey) Order 2015.

Applying for authorisations/licences

In the event a business wanted to undertake an activity or transaction that would otherwise be prohibited under sanctions measures, it may, subject to the provisions detailed in the sanction instrument, be possible to apply to the MoER for a licence to undertake the activity prior to the transaction taking place. The MoER provides a standard form Asset Freeze Licence Application Form which can be used for such applications. A licence may have conditions attached to it, such as reporting obligations. The key points to note are:

- A request should be made in writing for a licence from the MoER prior to any action being taken; and
- The MoER publishes an Asset Freeze Licence Application Form which should be used by individuals or Jersey-regulated entities seeking a licence from the MoER to allow an activity or transaction to take place that would otherwise be prohibited under the sanctions measures.

The MoER may only issue a licence where there are grounds to do so and the grounds will be set out in the sanction instrument. Reference should therefore be made to the relevant licensing ground – failure to do this may result in the application being sent back. Helpfully, the template application makes explicit reference to an application for a licence to make funds or economic resources available, directly or indirectly, to or for the benefit of a designated person.

The future

Sanctions compliance is a prominent item on the regulatory agenda in Jersey. During the course of the last 12 months, both the JFSC and the MoER have provided a significant amount of guidance as to how they expect businesses on the island to conduct themselves in respect of their responsibilities in relation to sanctions compliance. This is of no surprise when considered against the backdrop of the recent Moneyval report issued in respect of Jersey, and the recent 'blacklist' announcement. Whilst the Moneyval report highlighted that Jersey continues to be a strong jurisdiction in relation to policing financial crime, it was keen to note that it would like to see more prosecutions of financial crime within the island.

Indeed, prior to the Moneyval report, the JFSC had demonstrated its appetite for pursuing regulatory action in respect of sanctions compliance failures by issuing a public statement against a business that had inadequately reported breaches of Jersey sanctions legislation.

The complexity of sanctions compliance, not to mention the continuously changing economic and political environment in which they are implemented, means that robust sanctions compliance is an area that can be easy to get wrong and very costly to correct. It is important that systems and controls, particularly those focused around onboarding and customer due diligence, are sufficiently capable of also being utilised to monitor and control sanctions risks.

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