

# NAMLC Q2

QUARTERLY

AUGUST 2024



**GOVERNMENT OF BERMUDA**  
**Ministry of Finance**

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A banner for 'SANCTIONS SOS' featuring a scale of justice and a globe. A QR code is visible in the top left corner.

## BERMUDA'S SANCTIONS TABLE TOP EXERCISE (TTX) JULY 16 - 17, 2024

The Governor in conjunction with the Foreign, Commonwealth & Development Office (FCDO) Team with the collaboration of the Financial Sanctions Implementation Unit (FSIU) held a Sanctions Table Top Exercise (TTX) at the Police Recreational Club.



# SANCTIONS TTX cont'd

The TTX was facilitated by the Sanctions SOS company which specialises in sanctions compliance, training and capacity building.



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**Agencies in attendance**

- Bermuda Police Service (BPS)**
- Customs Department (Customs)**
- Financial Sanctions Implementation Unit of the Ministry of Legal Affairs (FSIU-MOLA)**
- Registrar of Companies (ROC)**
- Bermuda Monetary Authority (BMA)**
- Financial Intelligence Agency (FIA)**
- Bermuda Civil Aviation Authority (BCAA)**
- Bermuda Shipping and Maritime Authority (BSMA)**
- Department of Immigration (DOI)**
- Ministry of National Security (MoNS)**
- Office of the National Anti-Money Laundering Committee (O/NAMLC)**



# SANCTIONS TTX cont'd

## Purpose of TTX

- The TTX was held over two days to examine how sanctions as adopted in the UK, are implemented, and enforced in Bermuda.
- On day one, the training began with a policy brief to ensure a basic level of knowledge regarding what sanctions are, why they are used, how they are used, and the implementation and enforcement of sanctions.
- Day one consisted of the introduction of a “scenario” in which participants were asked to react interactively to initial and continuous developments communicated throughout the day, such as the UK adopting a new sanctions regime, and exploring the implications it would have on Bermuda.
- The second day introduced more specific developments in which participants reacted to situations which included the arrival of designated persons, potential cargo subject to sanctions, maritime and financial related issues, including examining suspicious activity reports (SARs), and the arrival of vessels of unknown ownership. The session also addressed general enforcement of sanctions as situations develop.

## What are Sanctions?

- Sanctions are restrictive measures put in place in developing situations and foreign policy events. They are considered to be ‘negative incentives’ and a diplomatic tool used to reinforce policy, maintain peace and security.
- An individual, entity, body or ship listed as being subject to sanctions is referred to as a “Designated Person”.

## Why Sanctions are used?

- The purpose of sanctions is to get bad actors to change existing forms of behaviour through these negative incentives.
- The desire behind sanctions is to coerce targets into good behaviour through the increase of cost to them or to constrain the access of targets to resources, in order to disrupt their activities or to signal disapproval of a particular type of behaviour.

## What measures can be imposed?

- **Financial Sanctions** - which include asset freezes and restricting access to financial services (including insurance)
- **Travel bans** on individuals and entities - including access to airspace, ports, designation of vessels and aircrafts
- **Trade based sanctions** - restrictions on access to currency and trade finance, import, export, transshipment and denial of access to service based economies.



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## Sanctions Regimes

- A regime is a collection of sanctions measures put in place for a particular set of purposes.
- Regimes can be either 'thematic' (relating to a particular issue), or 'geographic' (relating to a particular country or region).
- Sanctions Regimes may emanate from:
  - (i) **Multilateral Sanctions** such as those in which the United Nations Security Council adopts "Resolutions" (UNSCRs) which all member states are obliged to implement;
  - (j) **Autonomous Sanctions** where a particular country imposes sanctions as part of its own foreign policy objectives, such as those which exist in the United States of America and the United Kingdom.

## Bermuda's Sanctions Obligations under the UK's Autonomous Regime

- Bermuda, as an Overseas Territory (OT) is obliged to enforce sanctions pursuant to the UK's sanctions regime as contained in their Sanctions and Anti-Money Laundering Act 2018 (SAML A) and associated regulations.
- The UK extends its sanctions legislation to the OTs via 'Orders in Council', however, Bermuda brings the UK Orders in Council into force via domestic legislation.
- The SAML A provides the main legal basis for the UK to impose, update and lift sanctions.
- The SAML A empowers an appropriate Minister to make sanctions regulations for a number of purposes which include, but are not limited to compliance with international obligations, to further the prevention of terrorism, the spread and use of weapons of mass destruction, as well as purposes in the interests of national and international peace and security.
- Bermuda's International Sanctions Act 2003 and International Sanctions Regulations 2013 implement the UK Orders in Council into Bermuda's domestic legislation. This is achieved by adding the OT Orders to the list of applicable Orders in the Schedule to the Regulations.



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## Sanctions Lists

- The Office of Financial Sanctions (OFSI) Implementation in HM Treasury is the authority for the implementation of financial sanctions in the UK.
- OFSI also maintain a Consolidated List of Asset Freeze Targets, which contains details of designations specifically for financial sanctions, where asset freeze measures apply. The consolidated list can be found at:  
<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>
- The FCDO is responsible for the UK's international sanctions policy, including all international sanctions regimes and designations. The FCDO's consolidated list of designations contains not only financial sanctions, but also the other types of sanctions which must be enforced. The FDCO's consolidated list can be found at:  
<https://docs.fcdo.gov.uk/docs/UK-Sanctions-List.html>
- Bermuda's Sanctions Regulations list every sanctions-related OT Order in Council issued by the UK and currently in force in Bermuda. This is amended regularly as new measures are extended and existing ones are repealed.
- Under Bermuda's Sanctions Regulations, the Governor has an obligation to maintain and publish a list of designated or listed persons constituting the target of financial sanctions under any of the Orders listed in the Regulations. This obligation is deemed fulfilled by the publishing of a web address that provides a link to the UK Sanctions List.
- The Governor delegates responsibilities to the Minister of Legal Affairs who is empowered to carry out functions necessary to give effect in Bermuda to the international sanctions obligations of the UK. The Minister has tasked the Financial Sanctions Implementation Unit (FSIU) with the administration of financial sanctions measures.

## Role of the FSIU

- Bermuda's FSIU is a unit of the Ministry of Legal Affairs Headquarters, which, pursuant to the Governor's delegation, is responsible for carrying out certain functions with respect to the effective implementation of financial sanctions obligations in Bermuda.
- The FSIU provides important and current information related to financial sanctions to assist individuals and entities to understand their compliance obligations. They also publish guidance which is applicable to all relevant firms, natural and legal persons, entities, and bodies, which can be found at:

<https://www.gov.bm/international-sanctions-measures>



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# SANCTIONS TTX cont'd

## Who Should Comply & Agencies Responsible for Effective Implementation

- Financial Institutions (FIs), Designated Non-Financial Businesses and Professions (DNFBPs) and other Competent Authorities have responsibilities for effective implementation of sanctions measures, depending on the type of sanctions.
- Persons and entities operating in Bermuda's regulated financial sectors are obliged to implement financial sanctions by doing the following:
  - (i) Checking whether they maintain any accounts or otherwise hold any funds or economic resources for designated or listed persons;
  - (ii) Freezing such accounts or other funds and refraining from dealing with or making available such funds or economic resources to the designated or listed persons or any third party; and
  - (iii) Notifying the Minister of these actions.
- Additionally, as sanctions measures are subject to change, ongoing screening should be carried out.
- FIs and DNFBPs must, upon knowledge or reasonable cause to suspect that a person is a designated person or has committed an offence under the relevant legislation, immediately freeze funds and/or economic resources of a designated person or entity and immediately report it to the FSIU.
- FIs and DNFBPs must also complete a Compliance Reporting Form. The FSIU is responsible for monitoring compliance with the various financial sanctions regimes and for assessing suspected breaches. The FSIU has the power to refer cases to law enforcement agencies for investigation and potential prosecution.
- Supervisors of FIs and DNFBPs have powers in relation to the supervision and monitoring of persons and entities within their respective sectors, ensuring that they have effective policies and processes in place to act in accordance with sanctions obligations, particularly in terms of financial sanctions.
- Other Competent Authorities are involved in the implementation of the other categories of sanctions. The Customs and Immigration Departments in tandem with the Bermuda Civil Aviation Authority (BCCA) and Bermuda Shipping and Maritime Authority (BSMA) play a role in the effective implementation of trade and travel based sanctions.
- Law Enforcement Agencies such as the Bermuda Police Service (BPS), Financial Intelligence Agency (FIA) and the Ministry of National Security (MoNS) are obliged to be proactive in the identification and prevention of sanctions evasion.
- The civil and criminal prosecutorial authorities, namely the Department of Public Prosecutions (DPP) and the Attorney-General's Chambers (AGC) have mandates to ensure that any sanctions breaches are dealt with in accordance with the relevant laws.



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## Penalties

- It is a criminal offence to breach an obligation under a relevant sanctions measure (subject to where there is an appropriate licence or authorization issued by the Minister of Legal Affairs).
- The penalties for breaching sanctions can vary across the various regimes. Generally speaking, any individual found guilty of an offence would be liable on conviction to imprisonment and/or a fine. There are specific penalties contained in the OT Orders in Council.
- Entities acting in breach of financial sanctions can also commit a criminal offence and be liable to a fine.
- If an offence is committed by a body corporate, partnership or other form of unincorporated association and is proven to have been committed with the consent of, or neglect on the part of, an officer or partner, as applicable, of the entity, that individual is guilty of an offence in addition to the entity,
- In addition to any criminal penalties, there may be regulatory action taken by the supervisory authorities against any entity which falls under their regulation. This can include cancellation of registration as well as civil fines.

## Key Takeaways

- Further guidance and training should be issued to the public sector and the private sector with regard to their responsibilities in relation to the enforcement of sanctions.
- It is imperative that the importance of financial sanctions and the obligations which exist under the UK's regime are understood by FIs and DNFBPs as it relates to screening against those designated persons who appear on the lists.
- The OFSI maintains a Consolidated List of Asset Freeze Targets, which contains details of designations specifically for financial sanctions, where asset freeze measures apply.
- The OFSI Consolidated List must be referred to regularly as part of the screening mechanism used by entities in the financial sector to identify sanctioned persons or entities.
- The FCDO publishes a broader list of designations under all sanctions categories in the UK. Competent Authorities are also encouraged to consult this list.



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# OTHER Q2 HIGHLIGHTS

## CFATF PLENARY

### Plenary Session

- The Financial Action Task Force (FATF) monitors the progress of its members and its FATF-style regional bodies (FSRBs) such as the Caribbean Financial Action Task Force (CFATF), of which Bermuda is a member.
- CFATF members endorse and implement the FATF Forty (40) Recommendations. The CFATF Plenary usually meets two (2) times per year.
- The objective of these meetings is to assess member jurisdictions' effective implementation of, and compliance with, the FATF Recommendations.
- At Plenary, Mutual Evaluation Reports (MERs) are produced from a mutual "peer review" system to determine the levels of compliance by the jurisdictions being assessed with the international AML/ATF measures.
- Each report separately analyses the level of compliance with the FATF 40 Recommendations, and the level of effectiveness of the AML/ATF systems of the each of the jurisdictions and also provides recommendations on how their respective systems could be strengthened.

## June 2024 CFATF Plenary

**Date:** June 2 - 7, 2024

**Venue:** Port of Spain, Trinidad & Tobago



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## Bermuda's Delegation

Bermuda's representatives were from the following agencies :

- Ministry of Finance
  - Office of NAMLC
- Registrar of Companies
- Bermuda Monetary Authority
- Financial Intelligence Agency
  - Registry General

## Plenary Discussions

- The June 2024 CFATF Plenary adopted the MERs of Anguilla and Guyana.
- The MERs summarised the AML/ATF measures in place in Anguilla and Guyana as of the date of the on-site visits conducted from the 26<sup>th</sup> June to 7<sup>th</sup> July, 2023 (Anguilla) and 4<sup>th</sup> to 15<sup>th</sup> September, 2023 (Guyana).
- Discussions on these reports were robust in terms of analysis of Key Issues and ratings as assigned to particular Recommendations and IOs.
- Discussions included whether ratings given by the assessors in respect of levels of technical compliance and effectiveness were to remain or be modified.
- A number of Key Issues were raised prior to Plenary in Working Groups on FATF Issues (WGFI) meetings and the CFATF membership decided which key issue would advance to Plenary for discussion and approval.
- Follow up Reports were also addressed in relation to other jurisdictions, some of whom sought re-ratings on specific FATF Recommendations and some of which solely provided status updates on remedial action taken in response to their previously adopted MERs.
- Case Studies were provided by jurisdictions highlighting achievements or lessons learnt in relation to AML/ATF measures.
- Guidance was also provided by the CFATF in relation to changes in FATF Recommendations and the upcoming 5<sup>th</sup> Round of ME.



Caribbean Financial  
Action Task Force

is an organisation of states and territories of the Caribbean basin which have agreed to implement common counter-measures against money laundering and terrorism financing.



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## Key Takeaways

- Guidance was given in relation to the various Mutual Evaluation follow up processes, namely:
  - (i) regular follow-up
  - (ii) enhanced follow-up - for countries that require major improvements for technical compliance and effectiveness; and
  - (iii) the International Co-operation Review Group (ICRG) process - for countries that need to make fundamental improvements.
- Jurisdictions involved in the ICRG process gave valuable insights on lessons learnt, including:
  - (i) the need for enhanced national coordination and cooperation through National Anti-Money Laundering Committees,
  - (ii) unwavering political commitment at Cabinet level,
  - (iii) Mechanisms to effectively monitor and drive the processes,
  - (iv) Ensuring that sufficient resources are allocated.
- Case examples were given in relation to the need to maximise the reach of the Financial Intelligence Unit (FIU) dissemination, with an emphasis on quality over quantity.
- An overview was given of the achievements and challenges of FIUs in the Fourth Round of Mutual Evaluations (ME) as well as preparation required by FIUs for the Fifth Round ME.
- Changes to the 5<sup>th</sup> Round Mutual Evaluation Procedures were discussed, noting that there were more stringent criteria associated with the Fifth Round Process and that robust regimes will have to be in place in jurisdictions in order to satisfy these criteria.
- It was noted that the 5<sup>th</sup> Round process would involve an earlier scoping exercise to ensure that there is a focus on the risks of the jurisdiction.
- In addition to any revised FATF Recommendation, the ME technical compliance review will consider recommendations where country has changed its legal, regulatory, or operational framework since its previous ME and FURs with technical compliance rating. These will be referred to as Recommendations Under Review (RURs).
- It was also noted that a number of changes to the Fifth Round have to do with Asset Recovery and that it is important to ensure that Asset Recovery Agencies have the sufficient resources, necessary coordination and cooperation frameworks in place.



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# CDs and OTs AML Forum

**Date:** May 14 –16, 2024

**Venue:** Online Forum

- **The participants were** representatives from the Joint Anti-Corruption Unit, London, UK, the Crown Dependencies (CDs) and the British Overseas Territories (OTs).
- Bermuda's delegation consisted of representatives from the Office of NAMLC, the Financial Intelligence Agency, the Registrar of Companies and the Bermuda Monetary Authority.

## Purpose of Forum

- The forum was to facilitate official-level collaboration to underpin the Ministerial-level International Finance dialogue, and to give the opportunity to share learning, best practice and expertise on International Finance. The sessions were held over the course of three (3) days and addressed:
  - (i) Financial Investigation Unit (FIU) outreach and cooperation activities
  - (ii) Trusts
  - (iii) FATF Recommendation 24 - Discrepancy Reporting

## Presentation by FIA

- Mr. Calon Hollis, Director of the Financial Intelligence Agency (FIA) of Bermuda gave a presentation in which he highlighted the effective cooperation mechanisms which exist within the jurisdiction. Mr. Hollis outlined the FIA's involvement in the National Anti-Money Laundering Committee (NAMLC), as well as the various sub-committees and joint working groups which exist within Bermuda's AML/ATF/CPF framework.

## Key Takeaways

- All discussions highlighted the importance of a coordinated and collaborated approach in providing outreach and improving the quality of suspicious activity reports (SARs.)
- It was noted that FIUs in conjunction with the regulators should identify greater touch points for the financial services businesses.
- The sessions underscored that jurisdictions must understand the risks associated with Trusts and Trust and Corporate Service Providers (TCSPs).
- It was noted that the revised FATF Recommendation 24 explicitly requires a multi-pronged approach for the collection of beneficial ownership information to more effectively achieve the goal of adequate, accurate and up-to-date information.
- It was also highlighted that risk assessments will have to be done with respect not only to legal persons in the jurisdiction but also to foreign created legal persons with sufficient links to the jurisdiction.



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**WE LOOK FORWARD TO  
CONTINUED COLLABORATION  
AMONG ALL STAKEHOLDERS!!!**

### **CONTACT US**

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