

SANCTIONS ACT 2019

April 2019

On the 28th March 2019 HM Government of Gibraltar published the Sanctions Act (the “Act”) to give effect to numerous international requirements relating to financial and other sanctions. This Act consolidates and makes it clearer for businesses to understand what international, and local, sanctions apply in given circumstances.

This newsletter provides a summary of the main provisions of the Act.

This newsletter is not, however, a substitute for seeking professional advice and has no legal standing.

The Act provides for a new regime to implement both international and domestic sanctions in Gibraltar. These sanctions include financial sanctions, immigration sanctions, trade sanctions, aircraft sanctions and shipping sanctions.

The Act creates two separate regimes. The first, contained in Part 2, provides for the automatic recognition and enforcement of international sanctions regimes in Gibraltar without the need for further implementing legislation. These include restrictive measures imposed by the UN Security Council, by the EU, and designations made in the UK under its anti-terrorism legislation.

The second regime, in Part 3, is for domestic sanctions that may be imposed by regulations for a number of different purposes including the prevention of terrorism, the financing of terrorism, the proliferation of weapons of mass destruction etc.

INTERNATIONAL SANCTIONS

The international sanctions regime comprises of Sections 6 to 14 of the Act (which is the Act’s Part 2).

Section 6 describes the purpose of that Part which is to provide for the automatic recognition of sanctions imposed by the UN, the EU, or the UK.

This means that international sanctions will not require implementing legislation in Gibraltar and will have effect immediately as soon as they are made by the UN, EU or UK.

Any restrictive measures imposed by the United Kingdom under the Sanctions and Anti-Money Laundering Act 2018 will have effect and that in relation to any restrictive measures that have been imposed by both the United Kingdom and the European Union, the restrictive measures imposed by the United Kingdom take precedence. Moving forward, therefore, Gibraltar and the United Kingdom’s sanctions regimes in relation to international sanctions are fully aligned.

Section 8 provides for judicial notice to be taken of the lists that are produced and imposes an obligation on persons undertaking relevant financial businesses to have procedures and policies in place which ensure that they are aware of the lists of persons to whom such sanctions apply and that they undertake the appropriate checks in respect of such sanctions when undertaking relevant business. There is also the inclusion of the United Kingdom’s lists in its scope.

Offences

Section 9 creates the offence of breaching international sanctions, whereas Sections 10 and 11 provide for licences to be issued where these are permitted under the terms of the international sanctions, and also create the offence of breaching the terms of the licence.

“9.(1) A person (P) commits an offence if P undertakes conduct that P knows or ought reasonably to know-

- (a) breaches or will cause a breach of any international sanctions;*
 - (b) assists in the breach of international sanctions.*
- (2) P does not commit an offence if P’s conduct was in accordance with any licence, permit or other authorisation issued in accordance with section 10.”*

Designations and Delisting

Sections 12 to 14 set out procedures for Gibraltar to make requests of the United Nations or other body for particular listings or delisting to be made.

The objective standard of proof that is required for such a designation proposal and that the designation proposal is not reliant on there being criminal proceedings instituted and also what needs to accompany such a proposal and the manner in which the proposals are to be made appears in these sections as does the manner in which such requests are sent to the appropriate bodies.

DOMESTIC SANCTIONS

Part 3 deals with domestic sanctions. The main power for imposing sanctions is contained in Section 16. This is a regulation making power which may be used in two different instances. The first is where the purpose of the sanctions falls within sub-section (2) of that Section. The second is where the purpose is compliance with an international obligation.

Although Part 2 provides for the direct recognition of international sanctions, the power in 16(2)(b) is included so that there is the opportunity to respond to any international sanctions by specific legislation where that might be considered appropriate particularly if the nature of the international sanctions are difficult to transpose otherwise into the Gibraltar context. Also there is an in built flexibility (future proofing) in case it is considered appropriate to impose sanctions as a result of obligations that may arise outside of the UN/EU context.

The list of purposes for which sanctions may be made is largely those available to HMG under the United Kingdom’s Sanctions and Anti-money Laundering Act. These include, the prevention of terrorism, the financing of terrorism, the proliferation of weapons of

mass destruction, the interests of security, providing accountability with respect to human rights etc.

Sections 17 to 19 build upon Section 16 including setting out procedures and tests to be followed where there is a request for a designation from outside Gibraltar. Sections 19 and 20 set out the evidentiary standard of proof to be applied in making a determination in respect of a request received from outside Gibraltar and the making of such requests from Gibraltar.

OTHER TYPES OF SANCTIONS

Sections 21 to 25 set out the types of sanctions that can be made, these are: financial sanctions, immigration sanctions, trade sanctions, aircraft sanctions and shipping sanctions.

Section 26 (as read with Section 16(5)(f) allows for domestic sanctions to be imposed as a result of any international obligations where these are required because the international sanctions cannot be complied with. Separately the CM’s may also invoke this power where he deems international obligations are better implemented or enforced by regulations.

Sections 27 to 30 are provisions that allow for persons, groups and ships to be designated.

Section 31 provides for exceptions and licences. Exceptions may be made in the regulations made under Section 16, for example to make provision for reasonable living and legal costs to be made. In addition regulations may provide for the issue of licences where this is an appropriate avenue to provide of particular exceptions.

Section 32 is an information gathering power that may be included in regulations made under Section 16. This is aimed at allowing for relevant information to be obtained and also to make information gathering through records and registers an obligation in relevant circumstances.

Section 33 provides for the enforcement powers that may be included in regulations under Section 16.

Section 34 allows for the extra-territorial application of regulations where conduct occurs in Gibraltar or outside Gibraltar by a Gibraltarian or a Gibraltar resident.

Sections 38 to 40 apply to persons that have been designated and to ships that have been specified and are the review procedures that are required to respect the constitutional and human rights of those who have been subjected to sanctions.

MEANING OF “FUNDS”, “ECONOMIC RESOURCES” AND “FREEZE”

In the Act “funds” means financial assets and benefits of every kind, including (but not limited to)-

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (b) deposits, balances on accounts, debts and debt obligations;
- (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products;
- (d) interest, dividends and other income on or value accruing from or generated by assets;
- (e) credit, rights of set-off, guarantees, performance bonds and other financial commitments;
- (f) letters of credit, bills of lading and bills of sale;
- (g) documents providing evidence of an interest in funds or financial resources;
- (h) any other instrument of export financing.

The term “economic resources” means assets of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services and includes legal documents or instruments evidencing title to, or interest in such assets.

References to “freezing” funds are to preventing funds from being dealt with; and for the purposes of this subsection funds are “dealt with” if-

- (a) they are used, altered, moved, or transferred or access is allowed to them,
- (b) they are dealt with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination, or
- (c) any other change is made that would enable their use, including portfolio management.

Whilst references to “freezing” economic resources are to preventing economic resources from being dealt with; and for the purposes of this subsection economic resources are “dealt with” if-

- (a) they are exchanged for funds, goods or services, or
- (b) they are used in exchange for funds, goods or services (whether by being pledged as security or otherwise).

MEANING OF “FINANCIAL SERVICES” AND “FINANCIAL PRODUCTS”.

“Financial services” means any service of a financial nature, including (but not limited to)-

- (a) insurance-related services consisting of-
 - (i) direct life assurance;
 - (ii) direct insurance other than life assurance;
 - (iii) reinsurance and retrocession;
 - (iv) insurance intermediation, such as brokerage and agency;
 - (v) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;
- (b) banking and other financial services consisting of-
 - (i) accepting deposits and other repayable funds;
 - (ii) lending (including consumer credit, mortgage credit, factoring and financing of commercial transactions);
 - (iii) financial leasing;
 - (iv) payment and money transmission services (including credit, charge and debit cards, travellers’ cheques and bankers’ drafts);
 - (v) providing guarantees or commitments;
 - (vi) financial trading (*see below*);
 - (vii) participating in issues of any kind of securities (including underwriting and placement as an agent, whether publicly or privately) and providing services related to such issues;
 - (viii) money brokering;
 - (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (x) settlement and clearing services for financial assets (including securities, derivative products and other negotiable instruments);
 - (xi) providing or transferring financial information, and financial data processing or related software (but only by suppliers of other financial services);
 - (xii) providing advisory and other auxiliary financial services in respect of any activity listed in subparagraphs (i) to (xi) (including credit reference and analysis, investment and

portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy).

“Financial trading” means trading for own account or for account of customers, whether on an investment exchange, in an over-the-counter market or otherwise, in financial products.

“Financial products” means—

- (a) money market instruments (including cheques, bills and certificates of deposit);
- (b) foreign exchange;
- (c) derivative products (including futures and options);
- (d) exchange rate and interest rate instruments (including products such as swaps and forward rate agreements);
- (e) transferable securities;
- (f) other negotiable instruments and financial assets (including bullion).

WHERE TO CHECK IF A PERSON IS SUBJECT TO INTERNATIONAL TARGETED FINANCIAL SANCTIONS

UK HM Treasury;

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

United Nations Security Council sanctions search list;

<https://scsanctions.un.org/search/>

EU Sanctions Lists;

https://ec.europa.eu/fpi/what-we-do/sanctions_en

What to do if I get a hit against a person on this list?

In order to prevent committing an offence under the Act you must do the following:

1. Freeze any transaction that may have been commenced and ensure that any of the “funds” (as defined above) are not able to be moved.
2. Where appropriate communicate immediately with the;

Gibraltar Financial Intelligence Unit;
Suite 832 Europort,
Gibraltar
GX11 1AA
Tel: (+350) 200 43618
If busy call: (+350) 200 70211
Fax: (+350) 200 70233
Out of Hours (Urgent calls only e.g.
Terrorist Financing): (+350) 56346000
Email: admin@gfiu.gov.gi

Await further instructions before proceeding any further.

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