

SANCTIONS

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INTERNATIONAL SANCTIONS

A Compliance Guide For Ugandan Businesses

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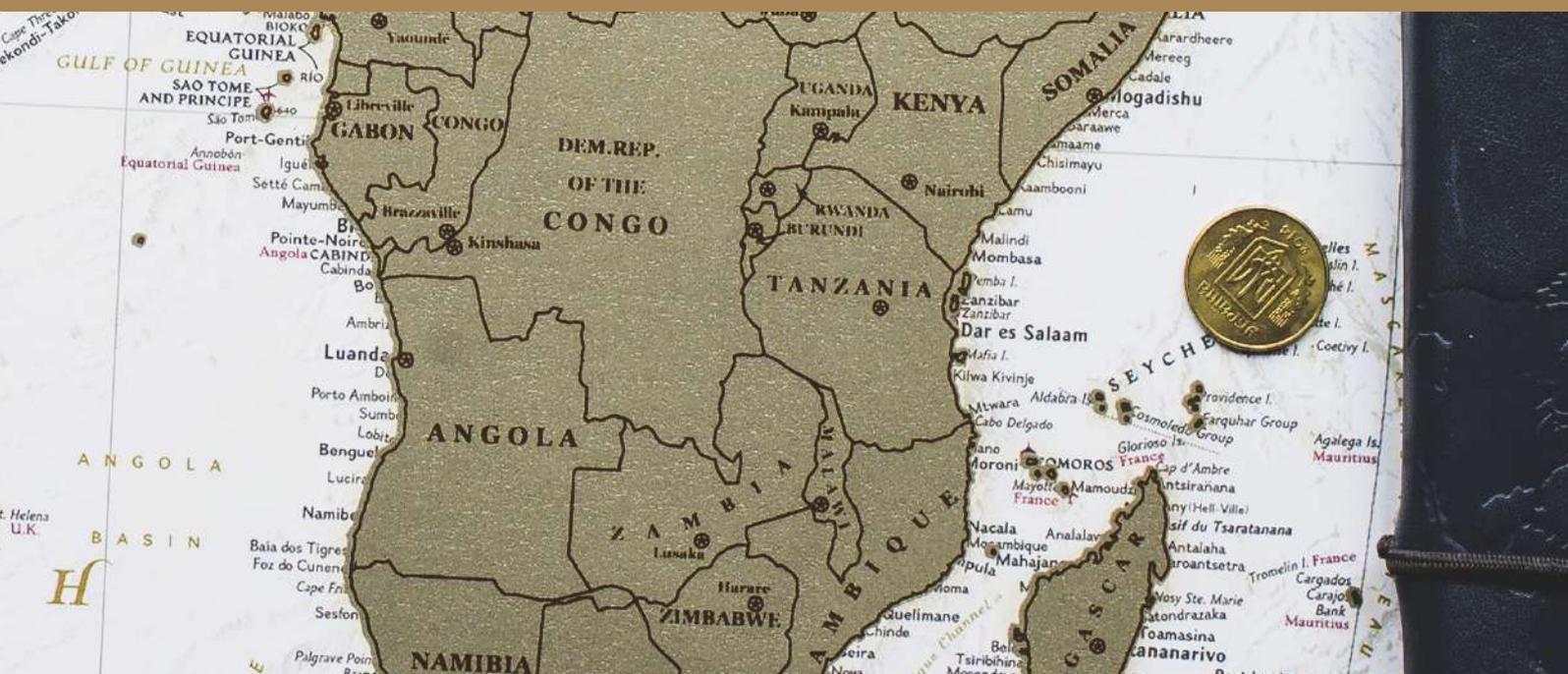
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Over the years, there has been growth in international sanctions regimes enacted by different entities such as states and multilateral agencies. Sanctions refer to non-military foreign policy measures adopted by states or international organisations designed, for among other reasons, to influence other states or non-state entities or individuals to change their behaviour or take a particular course of action.

1. Most notable international sanctions regimes

At a global scale, there are various jurisdictions under which sanctions can be visited on an individual or entity. These categories are mainly deployed under four major sanctions jurisdictions namely:

- a. **United Nations,**
- b. **European Union,**
- c. **United States and**
- d. **United Kingdom.**

There are also multilateral development institutions such as the World Bank Group which have a robust sanctions regime. Canada and Australia have also enacted sanctions regimes with extra-territorial reach beyond their borders.

1.1. United Nations (UN) sanctions

These sanctions are multilateral in nature and created by the resolutions of the UN Security Council. They are created under Chapter VII of the UN Charter to deal with threats, breaches to the peace and acts of aggression.

During their implementation, Member States have a small margin of discretion at a domestic level, although the EU and US normally go further than is required by adopting unilateral sanctions regimes. There is significant collaboration with other institutions such as the *Financial Action Task Force (FATF)* and the *International Atomic Energy Agency (IAEA)*.

With respect to listing of designated sanction targets, there is a regime-specific sanctions list which is consolidated to contain all names of persons and entities subject to UN restrictive measures. However, an application for de-listing by individuals can be made via the state of residence or citizenship or independently to the office of the Ombudsperson.

Some notable in-built exemptions to the UN Sanctions regime are in relation

to asset freezes where sanctioned persons are entitled to basic expenses. There is also a procedure for member states to request for extraordinary exemptions, allowing for deduction or addition of certain sums to and from financial accounts of designated persons.

1.2. European Union (EU) sanctions

These sanctions fall within the framework of the EU's Common Foreign and Security Policy (CFSP) and must be decided unanimously by all 27 Member States. These sanctions regimes are created under the *Treaty on the European Union (TEU)* and the *Treaty on the Functioning of the EU (TFEU)* to preserve international security, democracy and the rule of law.

In terms of jurisdiction, restrictive measures imposed cover the territory of the EU, aircraft or vessels of member states, nationals of member states, companies and other entities incorporated or with business in the member states.

The EU established the Global Human Rights Sanction Regime on 7th December, 2020 thus enabling the EU to sanction individuals, entities and bodies (both state and non-state actors), who in the opinion of EU, are deemed as responsible for, involved in or associated with serious human rights violations and abuses worldwide. The sanctions, inspired by the *US Global Magnitsky Act*, include imposition of visa bans and/or asset freezes on behalf of the entire Union.

Enforcement is governed by anti-circumvention provisions/clauses intended to capture the broad range of actions that may be taken by a designated person to evade or circumvent the sanctions imposed on them.

1.3. The United Kingdom (UK) international sanctions regime

The UK enacted the *Global Anti-Corruption Sanctions Regulations, 2021* which establish sanctions measures aimed at preventing and combating serious corruption by targeting individuals involved in serious corruption cases across the world. The most notable enforcement measures include asset freezes and travel bans to the UK.

An asset freeze prevents any UK citizen or any business in the UK from dealing with any funds or economic resources which are owned, held or controlled by the designated/sanctioned person and which are held in the UK.

The freeze further prevent funds or economic resources being provided to or for the benefit of the designated person or entity.

These sanctions may extend to persons who facilitate, profit from or try to cover up serious corruption, bribery, misappropriation of public assets, as well as obstruction of justice for these actions.

1.4. The United States international sanctions regime

The US has undoubtedly been the main user of sanctions instruments since the turn of the 20th century and as such, has a sophisticated and well-developed legal framework for the imposition of economic sanctions. The most common sanctions are overseen by the Office of Foreign Assets Control (OFAC) which has established a unilateral system as opposed to a multilateral sanctions system.

There are other sanctions provisions contained in the *Foreign Corrupt Practices Act (1977)*, the *International Emergency Economic Powers Act (1977)*, the *Global Magnitsky Human Rights Accountability Act (2016)*, and the *Department of State, Foreign Operations, and Related Programs Appropriations Act, (2024)*.

1.5. World Bank Group (WBG) sanctions

The World Bank Group Sanctions regime was established to help prevent and combat fraud and corruption in World Bank Group projects and programs. Some of the sanctionable practices include corrupt practices, fraudulent practices, collusive practices and coercive practices. The underlying legal basis of these sanctions is the fiduciary duty to protect the use of bank financing as set out in its *Articles of Agreement*.

The names of the targeted individuals and imposed sanctions are also made public and published in the World Bank Listing of Debarred Firms and Individuals. With respect to debarment, the sanctioned entity is ineligible to be awarded a World Bank Group financed contract or otherwise participate in Bank Group-financed activities for the minimum period of three years, after which the party may be released upon compliance with the conditions set out. Conditions include the sanctioned party implementing an integrity compliance program satisfactory to the Bank Group.

In the event that there is an abuse of discretion, respondents may challenge the determinations made with respect to sanctions.

2. Types of sanctions and their applicability

Across all the sanctions regimes, there are various types of sanctions imposed under their respective provisions. The table below provides a breakdown of these sanctions and their applicability.

Sanction regime	Type of sanctions and measures	Applicability	Comment
United States	Financial Sanctions	Property belonging to individuals or entities on the SDN List must be blocked from transfer, payment and export except if license is granted by OFAC. Human rights related sanctions are imposed under the Global Magnitsky Human Rights	These extend to entities owned 50% or more by blocked persons.
	Transaction Controls	Prohibit transactions with SDN-listed foreign persons, investments in certain states, direct and indirect exportation or re-exportation of US-origin goods and services to certain states,	OFAC takes into account the fact that a person had 'reason to know' that US-origin goods were intended for transshipment to an embargoed destination

Sanction regime	Type of sanctions and measures	Applicability	Comment
		importation of specified products and the approval, financing, facilitation or guarantee of transaction by foreign SDN-listed person.	
United Kingdom (UK)	Trade Sanctions: Import and export Controls	<p>There are currently three types of import restriction:</p> <ul style="list-style-type: none"> (i) bans (ii) quotas; and (iii) surveillance. <p>They relate to specific types of goods, or situations or conflicts.</p>	The UK recently enacted the <i>Global Anti-Corruption Sanctions Regulations, 2021</i> which have since their enactment, been strictly applied to persons indicted for corruption.
	Travel Bans: Domestic and International	Aimed at certain influential individuals linked to a sanctioned state under the office of the UK Border Force.	Subject to the exception of admission of a person carrying a valid national identity card issued by the European Economic Area (EEA)

Sanction regime	Type of sanctions and measures	Applicability	Comment
	<p>Financial Sanctions: International and Domestic.</p>	<p>Usually target designated persons to restrict resources available to them. Applied in various regimes such as terrorism financing under the <i>Terrorism Asset-Freezing Act, 2010 (TAFA)</i>. The most common measure is asset-freezing.</p>	<p>Subject to the exception of admission of a person carrying a valid national identity card issued by the European Economic Area (EEA)</p>
<p>European Union (EU):</p> <p>Terrorism Sanction regimes</p> <p>Chemical weapons sanctions regimes</p> <p>Sanctions regime targeting cyberattacks</p> <p>Human rights sanctions regime</p>	<p>Asset freeze</p> <hr/> <p>Travel or Visa Ban</p> <hr/> <p>Arms embargo and Dual-use items</p> <hr/> <p>Sectoral trade restrictions</p>		<p>Anti-circumvention clauses prevent actions to knowingly circumvent the sanctions</p> <p>Diligence defence clauses to exclude the liability for not knowing that their actions infringe sanctions.</p> <p><i>The EU Global Human Rights Sanctions Mechanism, 2020</i> was adopted by the Council of the European Union to punish non-EU citizens</p>

Sanction regime	Type of sanctions and measures	Applicability	Comment
United Nations (UN)	<p>Asset freezes</p> <hr/> <p>Arms Embargoes</p> <hr/> <p>Commodity interdictions</p> <hr/> <p>Travel Bans</p> <hr/> <p>Diplomatic Sanctions</p>	Applied through the UN Security Council resolutions as a multilateral body of the UN	
World Bank Group	<p>Debarment with conditional release</p> <hr/> <p>Debarment for a fixed term</p> <hr/> <p>Conditional non-Debarment</p> <hr/> <p>Letter of reprimand</p> <hr/> <p>Restitution</p>	Applied on the basis of the fiduciary duty to protect Bank financing from actions of corrupt practice which across all Multilateral Development Banks (MDBs) are sanctionable practice.	Borrowers, bidders, suppliers, contractors and their agents, sub-contractors, sub-consultants, service providers and any other personnel in Bank-financed contracts are subject to sanctions.

3. Notable regulated sectors and sanctions compliance expectations

3.1. Financial services

Financial sanctions are aimed at preventing financial firms from transacting with sanctioned individuals or organizations. Beyond banking, sanctions impact capital markets, asset management, insurance, payments, virtual asset service providers (VASPs), insurance, money lending entities, and

investment companies/funds. Usually, the financial assets of the designated person are frozen for the time the financial sanctions are in force. Financial institutions are expected to prevent any form of movement, transfer, change, use, or dealing with the impacted funds.

3.2. Payments and remittances

Cross-border payments and international remittances are usually made through correspondent banks. SWIFT's standardization of financial messages has become the most influential and widely-used in the financial industry globally. International sanctions involving SWIFT prevent sanctioned entities from accessing the SWIFT network/platform. Therefore, such platforms are expected to undertake transaction screening and block sanctioned entities and individuals from sending and receiving funds via such platforms.

3.3. Travel companies

These are expected to enforce travel bans by undertaking sanctions screening of travel bookings by cross-checking names of travellers and their travel trips against lists of individuals, organizations, or countries that are subject to sanctions or restrictions imposed by governments or international bodies.

3.4. Hotel industry

The travel, leisure and hospitality industry has a duty to ensure that funds or economic resources are not made available to designated persons through hotel services such as currency exchanges and cashing travellers' cheques. This may involve freezing credit cards or deposits provided by a designated person or entity. Furthermore, international hotel chain investors are not expected to have any dealings with sanctioned counterparties.

3.5 Technology and telecommunications

Telecommunications companies have the power to significantly aid international sanction objectives through effective compliance by not only cutting off support for designated individuals, and identifying corruption proceeds, but also ensuring that designated entities do not use their networks and digital services to move assets. In terms of anti-circumvention obligations, EU and U.S. sanctions regimes prohibit covered parties from engaging in direct violations of the applicable sanctions regulations. This would cover accepting or facilitating payments for sanctioned entities.

3.6. Casinos and betting houses

Gambling operators are obligated to always screen their players/punters

against financial sanctions lists. Particularly, the EU has created a “Sanctions Map”, in which details all persons directly sanctioned. Sanctioned persons subject to asset freezes are marked with a frost icon. If an operator finds that one of their players are subject to financial sanctions, the operator must freeze the player’s account.

3.7. Professional services

Professional firms such as legal, tax, accounting and audit firms may be barred from providing services to sanctioned entities and individuals. This challenge is compounded for firms that have international presence/links involving multi-jurisdictional and multi-service client engagements. Proactive sanctions screening on prospective clients and their directors, shareholders and affiliates recommended and such checks should be supplemented by appropriate terms of engagement that include immediate termination provisions in event the firm establishes that it is dealing with a sanctioned entity or individual.

3.8. NGOs and charities

Breaching financial sanctions is a criminal offence and can result in a civil monetary penalty being imposed on the charity or individuals in the designating country. Many NGOs and charities in Uganda source their grants, donations and some expatriate staff from abroad. Some local donors, beneficiaries, partners and contractors also have some contact with the sanctioning entities such as the UK and the U.S. Charities as with other sectors, are required to report any suspected breaches of financial sanctions as soon as they become aware of the same.

4. Sanctions risk management strategies for Ugandan entities

4.1. Undertake a sanctions risk assessment

Establishing a risk-based approach to sanctions screening, monitoring and reporting focused on high-risk areas is recommended. Regulated entities and non-regulated firms with international exposure are advised to generate a Sanctions Risk Matrix to assist in reviewing various compliance measures to determine if an entities’ level of compliance is up to global standards. Internal controls and systems should be subjected to regular sanctions stress testing benchmarked on the organizations sanctions due diligence checklist, policy and sanctions compliance strategy.

4.2. Automation of compliance procedures

Use of sanctions scanner software, systems and tools might be a more effective way of reduction of human errors in critical processes such as customer due diligence, transaction monitoring, and reporting.

4.3. Verification of third party and vendor relationships

The recent beneficial ownership filing requirements were meant to ensure that due diligence processes look beyond basic corporate data and go deeper into identifying connections to Politically Exposed Persons (PEPs) or individuals on sanctions lists. Screening multiple relationship types including associates and new affiliates to ensure that they are not linked to individuals or entities subject to sanctions is recommended. Subsidiaries, distributors, and partners are also subject to enhanced scrutiny due to the potential use of offshore structures for sanctions evasion.

4.4. Staff trainings and Sanctions Compliance Programs (SCPs)

Employees should be well-trained in sanctions monitoring, compliance and reporting, both at firm and industry level in order to understand the obligations of the entities they work for. Adequate compliance programmes will depend on factors unique to each organisation and sector including products, customers, geographical exposures and nature of their business.

5. Conclusion

Sanctions are part of the current international and domestic legal landscape. Whereas diplomatic engagements are usually the most preferred mechanisms of state interactions, sanctions are increasingly becoming common tools for governments to exert their international power and influence. While these targeted measures are primarily aimed at specific countries or individuals, they also have spill over effects on various industries, including the private sector. It is hoped that this toolkit will provide some guidance to Ugandan entities on how to navigate international sanctions risks.



FOR FURTHER INFORMATION, CONTACT:

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