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How Offshore Trustees and Beneficiaries Can Mitigate Serious Risks of a Sanctions Violation

Fresh developments have sparked renewed scrutiny on offshore trustees and trust service providers as governments look to sharpen enforcement of their sanctions regimes. As we explain below, a proactive, globally comprehensive strategy is crucial for trustees and beneficiaries to reduce risk and avoid a spiraling cross-border crisis.

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The impact of sanctions on offshore asset structures – particularly trusts – raises complex questions, most obviously for a trust's beneficiaries. But trustees, including professionals based in offshore jurisdictions such as the Cayman Islands and the British Virgin Islands, could also face risks, especially as scrutiny on them increases. A proactive, globally comprehensive strategy is, therefore, necessary to mitigate the serious risks of a sanctions violation.

There are already signs of increased scrutiny on trustees, from a December 2022 UK law extending the country's sanctions regime to the provision of trust services (and implemented in offshore territories) to recent revelations of extensive UK property owned by anonymous offshore entities and trusts following new disclosure requirements legislated in the wake of the Ukraine conflict.

Trusts face three main risks here: (1) a beneficiary or beneficial owner of the trust is directly sanctioned or otherwise a "prohibited" beneficiary due to their "*connection*" with Russia; (2) the settlor and/or trustees of a trust are sanctioned and/or accused of creating a sham trust; and (3) a reputational problem by association, even if trust assets are not directly affected by a sanctions regime. Additional complications arise based on factors that include the extent of the sanctioned person's interest, the terms of the trust, the involvement of multiple unsanctioned beneficiaries and the relevant jurisdiction and sanctions regime.

Given these complicating factors, trustees may wish to consider:

- Taking preventive measures by documenting thoroughly all management and decision-making structures, transactions and other decisions;
- Bringing proceedings to confirm the independence of the trustee and discounting any claims of *de facto* asset ownership on the part of the settlor;
- Obtaining a license – i.e., a written authorization from a sanctioning government that permits actions that are otherwise restricted by financial sanctions, such as covering basic living expenses or paying legal fees;
- In appropriate circumstances, retiring as trustee and transferring the role to a replacement more appropriately placed to navigate complex regulatory concerns, engage in litigation or otherwise challenge allegations of improper dealings with beneficiaries or involvement in a sham trust.

Offshore trustees and beneficiaries that do not consider these risks could find themselves at a significant disadvantage if accused of a sanctions violation. Finding on-the-ground counsel with a global network in the key jurisdictions that establish sanctions regimes becomes increasingly crucial as the use of sanctions grows. Coupling this with an understanding of how sanctions apply to different situations can mean the difference between well-protected assets and a rapidly spiraling cross-border crisis.

About Kobre & Kim

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- Provides offensive and defensive cross-border litigation and crisis management strategies in court and out-of-court;
- Brings together roughly two dozen former U.S. and UK government lawyers across Asia, EMEA, Latin America and the U.S., including former prosecutors from the U.S. Department of Justice (DOJ) and UK Serious Fraud Office (SFO);

Has deep experience with global foreign policy, national security and economic controls and regularly interfaces with regulatory agencies that impose these controls.