

Investigations, Compliance and Defense

Sanctions Compliance: Are You Ready for Brexit?

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When the clock strikes 11 pm on 31 December 2020, the UK will no longer apply EU sanctions and will implement its own autonomous regime. The central [message](#) delivered by the UK's Office of Financial Sanctions Implementation (OFSI) is that while the new UK sanctions are intended to deliver substantially the same policy effect as the existing EU sanctions, they are not identical. Importantly, UK sanctions may apply to non-UK companies and non-UK nationals, so it is important that all companies and individuals with any UK nexus consider the effect of the new UK sanctions.

The legal framework

In preparation for Brexit, the UK introduced The Sanctions and Anti-Money Laundering Act 2018 (the Sanctions Act or SAMLA). This provides the legal framework under which the UK is able to impose, review, and revoke sanctions autonomously. Under SAMLA, the UK government has already laid secondary legislation, known as regulations, for over 30 sanctions regimes (the UK Sanctions Regulations). Most of the UK Sanctions Regulations will come into force post-Brexit. The main exception to this is the UK's "Magnitsky-style" sanctions, the Global Human Rights Sanctions Regulations 2020, which was the first UK sanctions regime to come into force in July 2020.

Who does this affect?

UK sanctions will usually apply to any conduct within the UK and the territorial sea of the UK. In addition, all UK persons (i.e., UK nationals and legal entities incorporated in the UK) must usually comply with UK sanctions wherever they are in the world. This may include compliance by UK companies' branches irrespective of where their activities take place.

In the context of financial sanctions, OFSI [clarified](#) that it may enforce sanctions even where the breach does not occur in the UK. OFSI considers that a UK nexus might be created by "a UK company working overseas, transactions using clearing services in the UK, actions by a local subsidiary of a UK company (depending on the governance), action taking place overseas but directed from within the UK, or financial products or insurance bought on UK markets but held or used overseas".

Key areas of change

Although companies should consider how any regime which might be relevant to them has changed, we consider some of the general changes under the new UK sanctions regimes which companies should be aware of.

1. The new sanctions lists

After Brexit, OFSI will continue to maintain its [Consolidated List](#), and this will cover all those subject to UK financial sanctions. There will also be the new UK Sanctions List maintained by the UK Foreign, Commonwealth and Development Office (FCDO) which will be more extensive and will consist of all designations made under UK sanctions (financial or otherwise). The [UK Sanctions List](#) already includes those designated under Global Human Rights Sanctions Regulations 2020. Companies should refer to both lists for their sanctions screening processes.

Depending on how a company's screening system is set up, it may pick up a significant number of new

designation hits at 11 pm on 31 December 2020. It is likely that most of these hits will be as a result of the administrative changes (e.g., because the designations are made under UK sanctions as opposed to EU sanctions). However, it will be important for companies to distinguish between administrative changes and any substantive changes. In terms of substantive changes, some EU designations may be removed from the UK Sanctions List.

2. *Designations*

Linked to the above, in order for an EU designation to be maintained under UK sanctions, the UK legal test for designation must be met. Under SAMLA and the UK Sanctions Regulations the government can designate a person where there is reasonable grounds to suspect the person is involved in, or connected to, an activity set out in the regulations for a particular sanctions regime.

Another change relating to designations is the introduction of designations by description. This is a new facet of UK sanctions which can only be used when the government cannot practically “identify and designate by name all the persons falling within that description at that time”. However, the description must be “such that a reasonable person would know whether that person fell within it”. It remains to be seen how this will operate in practice. However, designations by description will present challenges to sanctions screening tools which commonly rely on name searches.

Finally, under SAMLA and the UK Sanctions Regulations an individual or an entity who wishes to dispute their UK designation can challenge their listing in the UK courts. However, in contrast to the position under EU sanctions, if a designation is made pursuant to UN sanctions the individual cannot challenge this in court but can only request the UK’s assistance to secure their removal.

3. *Ownership and control*

The UK Sanctions Regulations include asset freezing sanctions that are similar to the EU sanctions. Both EU and UK asset freezes prevent dealings with a person who is owned or controlled directly or indirectly by a designated person. While the EU does provide guidance on ownership and control, the UK Sanctions Regulations contain an express “ownership” and “control” test. The UK test is not identical to the EU guidance test. In addition, SAMLA grants the UK government a power to designate an entity on the basis that it is owned or controlled by another designated person and OFSI [indicated](#) that the UK “will look to designate owned or controlled entities/individuals in their own right where possible”.

4. *Licensing*

OFSI confirmed that the majority of licences (i.e., permission to act in a way that would otherwise breach sanctions) that have already been issued by OFSI under EU sanctions will remain valid until they expire or are revoked. However, after Brexit any new licences will need to be issued in the UK under licensing grounds (or derogations) under UK Sanctions Regulations. The licensing grounds in the UK Sanctions Regulations largely reflect the EU sanctions. Some important differences in the EU and the UK licensing grounds are as follows:

- A reasonableness test has been added to the UK licensing ground for the Routine Holding and Maintenance of funds or economic resources.
- The UK Sanctions Regulations add an “extraordinary situations” grounds which “enables anything to be done to deal with an extraordinary situation” (e.g., support of disaster relief) in relation to non-UN sanctions.
- The UK Sanctions Regulations allow the government to issue General Licences which allow multiple parties to undertake specified activities which would otherwise be prohibited by the UK Sanctions Regulations without the need for a specific licence.

5. EU Blocking Regulation

The EU's Blocking Regulation (2271/96/EC) (the EU Blocking Regulation) was created to protect EU operators from the extraterritorial application of third-country laws. At present, it protects EU operators from US secondary sanctions relating to Iran and Cuba. Although the Blocking Regulation makes it illegal for EU operators to comply with these proscribed sanctions, it does allow such persons to request an authorisation to comply with the proscribed sanctions. After Brexit, and subject to amendments made by UK secondary legislation, the EU Blocking Regulation will form part of retained EU law applying to the UK. The secondary legislation, together with the retained EU Blocking Regulations, are referred to as the UK's "Protection of Trading Interests Legislation" or the "Retained Blocking Regulation". The Department of International Trade published [guidance](#) on the application of Retained Blocking Regulation.

The guidance states that prior to Brexit, any authorisations to comply with the proscribed sanctions must be sought from the European Commission and that any such authorisations will be treated as if they were authorisations issued by the UK. However, post-Brexit, an authorisation granted in the EU will not be recognised by the UK.

Conclusion

Brexit will mean that a company that operates in the UK and the EU will be subject to at least two separate sanctions regimes. Companies who have any UK nexus should pay close attention to the development of UK sanctions. Although the UK government has done a lot of work to ensure that UK sanctions are in a good position prior to Brexit, there will be movement and clarifications to this area next year and companies are advised to keep a watchful eye.

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