

Client Alert: Brexit and Sanctions / Anti Money-Laundering

Date : September 3, 2018

What is this about?

Sanctions are applied in a variety of situations and are sometimes divided into:

1. those which restrict trade and business (also known as embargoes) regarding certain countries. Embargoes often impose prohibitions or licensing requirements; and
2. those in the sphere of finance which restrict dealings in money and providing financial services and funds to certain countries, individuals or entities.

In the UK sanctions may affect organizations in differing ways, e.g. criminal offences may be committed if financial dealings are undertaken with certain entities or individuals, or businesses may be asked to provide information about their accounts or assets. Offences may also be committed for failing to report breaches of sanctions.

Will Brexit have an impact?

Yes. Sanctions and Anti Money-Laundering are currently very much EU based and driven. Therefore Brexit will have a major impact, notably in enforcement.

The UK has in fact already put legislation in place (in May 2018) to be able to deal post-Brexit with both sanctions and money-laundering under the Sanctions and Anti-Money Laundering Act 2018 ("SAML 2018"). The main provisions of SAML 2018 will come into force in 2019 (probably around the time the UK is formally expected to leave the EU). Under this regime the UK has already adopted its own particular approach in some respects e.g. sanctions (in the form of an asset freeze) may be adopted on individuals by description rather than by specific name.

The purpose of SAML 2018 is to ensure that once the UK has left the EU that it can continue to impose, update and lift sanctions provided for by the United Nations ("UN") and pursuant to other international obligations, and effectively detect and prevent money-laundering and terrorist financing (including by implementing internationally recognised standards).

Under SAML 2018 UK Ministers will have the power to make (separate) sanctions regulations:

1. to comply with a UN or other international regulation; or,
2. to achieve one of a number of defined so-called "discretionary purposes" including preventing terrorism, promoting national and international peace and security, and responding to gross human rights violations.

Where a Minister seeks to introduce sanctions regulations for a discretionary purpose they must be satisfied that:

1. the purpose of the measure is one permitted under SAML 2018;
2. there are good reasons to pursue that purpose; and,
3. the imposition of sanctions is a reasonable course of action for achieving that purpose.

This power will enable the UK to continue to comply with its evolving international obligations and to use sanctions to meet challenging foreign policy and national security objectives post-Brexit. The different types of sanctions that can be imposed are set out and explained in SAML 2018 and cover financial, immigration, trade, aircraft, shipping and other sanctions. In territorial terms SAML 2018 will be enforceable against those within the UK and also UK individuals abroad.

Ministers also have powers under SAML 2018 to make regulations for the purposes of enabling or facilitating the detection, investigation or prevention of money-laundering and terrorist financing. These wide-ranging powers will allow a Minister to make, amend and repeal secondary legislation to anti-money laundering and counter-terrorist

financing post-Brexit to ensure that the UK can continue to comply with standards set by the Intergovernmental Financial Action Task Force and deal with emerging risks relating to money-laundering and terrorist financing.

SAMLA 2018 certainly allows for more flexibility to impose sanctions and may see the UK diverging from the EU. On a different tack, it will remain to be seen how the EU deals with sanctions post-Brexit because it is widely acknowledged that the UK has contributed significantly in the past in EU sanctions matters.

The upshot is that organizations will need to have compliance processes, procedures and policies in place to be able to deal with sanctions in the UK post-Brexit. This will include policies to try to identify clients falling with a given description, which may prove challenging. They will also still need to manage the EU process – there may well be situations where both UK and EU sanctions apply e.g. where UK nationals or UK entities are operating in the EU.

What has the UK government said?

The UK government has confirmed it will implement the EU's fifth Anti-Money Laundering Directive before it leaves the EU. It said that it will transpose the new rules into law as the deadline for adoption, January 2020, falls within the post-Brexit implementation period that was agreed in principle between UK and EU earlier this year.

The UK Government has said:

“The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 already require all express trusts (including those administered from outside the UK) which generate a UK tax consequence – such as when property held within the trust is purchased or sold - to register details of their beneficial ownership with HMRC. Information on this register is accessible to UK law enforcement. All such trusts, and all UK express trusts, are also required to maintain written, accurate and up-to-date records of their beneficial ownership and make these available to UK law enforcement upon request. The Fifth EU Anti-Money Laundering Directive (5AMLD) will expand the scope of the existing registration requirement to include all express trusts, and non-EU trusts which acquire real estate within the EU, with persons with a legitimate interest in information on the register having a right of access to it. The transposition deadline for this Directive will be in January 2020. As this falls within the Implementation Period on which the UK and EU reached agreement earlier this year, the UK will transpose this Directive. This will further strengthen the ability of UK law enforcement to access information on the beneficial ownership of trusts with a connection to the UK.”

Resources

We report about sanctions issues here: <http://www.corderycompliance.com/category/sanctions/>.

For our glossary on Brexit please see here: <http://www.corderycompliance.com/brexit-glossary/>. We've also written on other Brexit topics here - <http://www.corderycompliance.com/category/brexit/>. Cordery's Brexit task force includes lawyers experienced in dealing with UK & EU authorities on a wide range of compliance issues.

For more information

You can also find our alerts on other Brexit topics here (<http://www.corderycompliance.com/?s=brexit>). We also have a Brexit Newswire. If you are interested in our Brexit Newswire please email André Bywater on the address below.

See also our short film [here](#) on Brexit and Compliance where André Bywater & Jonathan Armstrong discuss how compliance might change post-Brexit. They look at a number of distinct areas of compliance including modern slavery, sanctions and data protection and walk through what businesses might want to do now to make sure they comply.

For more information please contact André Bywater or Jonathan Armstrong who are lawyers with Cordery in London where their focus is on compliance issues.

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