

ANTICIPATING COMPLIANCE NEEDS AS UK SANCTIONS REGIME TAKES SHAPE

Considerations in building a robust and nimble compliance programme as the international sanctions regime welcomes a new player

It is fair to say that the early days of the UK's new autonomous sanctions regime have laid out a clear intention – that sanctions are here to stay. The Office of Financial Sanctions Implementation (OFSI) has been extremely active in preparation for Brexit – implementing UK sanctions which are similar to (though not exactly the same as) EU sanctions, publishing a raft of guidance material to help businesses understand the changes, and issuing their first general licence (an exemption under the Russian sanctions regime). The UK has also implemented a human rights-based sanctions regime, some six months ahead of the EU announcement to do the same. Not bad progress, considering we are still just three months out of the EU. The freedom that the UK now has to act, without waiting for EU member state consensus, is clear.

OFSI also has, as of November 2020, a new Director, Giles Thomson. For the last 5 years Thomson has been responsible for the UK's anti money-laundering, counter terror-financing and sanctions policy. He was also head of the UK delegation to the Financial Action Task Force (FATF). His new role as director of OFSI has been expanded to include these responsibilities. This brings sanctions policy together with implementation and enforcement and in his words, “integrates them with the broader UK economic crime agenda”. That is reflective of how corporations organise themselves, where financial crime is housed under one umbrella.

Thomson has emphasised the importance of working with partners in the US, EU and elsewhere in making the imposition of sanctions effective. In particular, we expect to see greater coordination with the US, still an active user of sanctions. The more moderate approach likely to be adopted by the Biden administration will be welcomed by the UK, for example in respect of Iran.

The UK has reiterated commitment to the JCPOA and, while President Biden will be unable to immediately reverse the raft of measures imposed by President Trump, it is possible that we will see a return towards a more diplomatic approach. With respect to human rights sanctions, many of the names on the UK list are also US-designated, including Russian nationals implicated in the murder of Sergei Magnitsky, and Saudi nationals connected to the murder of Jamal Khashoggi. The UK has also followed the US lead in announcing measures to address apparent human rights violations in Xinjiang, China.

Thomson has also set out an intention to develop relationships with law enforcement agencies, other regulators and private sector bodies to take a holistic approach to economic crime compliance and enforcement. With relatively few, mainly low-value penalties issued by OFSI to date, we are likely to see increasing enforcement activity, including greater cross-border cooperation, following the trend towards international cooperation that we are already seeing in relation to AML and CTF. Inclusion of economic crime policy in Thomson's expanded role, and his AML and FATF responsibilities, make him in some ways more analogous to the US Treasury Department's Under Secretary for Terrorism and Financial Intelligence – who sits over US sanctions, AML, and financial crime efforts – than to the OFAC Director. This makes him even more important to the US as a partner in these matters.

An active UK sanctions regime will create additional challenges for entities with a global footprint. While the UK appears to be more broadly aligned with the US, there are still minor differences in designated names and major differences in policy, for example with respect to Cuba. The divergence with the EU regime is likely to increase.

Going forward, entities need to carefully assess:

- Whether, following Brexit, they are now subject to the UK or EU regime, or both.
- Whether their sanctions screening programme is sufficiently flexible to deal with these differences.
- If the UK sanctions lists are being effectively incorporated into sanctions screening and updated in a timely manner.
- Whether definitions of ownership and control are being applied correctly, where these differ between regimes.
- If existing EU licences will remain valid.
- If they are complying with OFSI's unique reporting requirements.



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