UK Steps Up Enforcement Efforts with New Global Anti-Corruption Sanctions Regime (Part I of II)

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This is Part I of a two-part post. This Part discusses the technical aspects of the UK's new Global Anti-Corruption Sanctions Regulations. For Part II, discussing practical ramifications of the regulations, click here.

On 27 April 2021, the UK implemented its new Global Anti-Corruption Sanctions Regime, enhancing its existing Global Human Rights Sanctions Regime, which came into force in July 2020. The new Global Anti-Corruption Sanctions Regulations 2021 (the Regulations) enable the UK Foreign Secretary to impose asset freezes and travel bans on designated individuals and entities linked to certain corrupt activities, and criminalises the breach of those sanctions within the UK, as well as any breach by any UK individual or UK entity wherever located. That includes UK subsidiaries of foreign companies.

The purpose of the regime is to prevent and combat serious governmental corruption, by stopping those involved from entering and channelling money through the UK. The system is broadly similar to those in place in the US and Canada. The regime has been implemented under the Sanctions and Anti-Money Laundering Act 2018 (SAMLA), which established the legal framework for the UK to introduce new sanctions regimes post-Brexit.

Territorial Scope

The prohibitions in the Regulations apply to conduct within the UK by any person, and to the conduct of all UK persons wherever located in the world. As UK persons include British nationals, as well as bodies incorporated or constituted in the UK, the requirements apply to all companies established in any part of the UK, and branches of UK companies operating overseas.

What Do the Regulations Do?

Under the Regulations, persons can be designated by the Foreign Secretary where there are reasonable grounds to suspect they are "involved persons" and that the designation is appropriate, given the purpose of the sanctions regime and the likely effect of the designation.

In an April 2021 policy paper on global anti-corruption sanctions, the UK government set out some of the factors it will take into account when designating individuals, including:

- Anti-corruption policy priorities.
- The scale, nature and impact of the serious corruption.
- The status, connections and activities of the involved person.
- Collective international action.
- Interaction with law enforcement agencies, with particular attention given to cases where the relevant jurisdiction's law enforcement authorities have been unable or unwilling to hold to account those persons involved in acts of serious corruption.
- Risk of reprisals.

An "involved person" is defined as a person who is or has been involved in "serious corruption." It also includes someone who is owned by, controlled by, acts on behalf of, at the direction of, or is associated with a person who has been involved in "serious corruption."

"Corruption" is defined as bribery or misappropriation of property involving foreign public officials. The word "serious" has not been defined within the Regulations.

The definition of "involved" is wide-reaching, including being responsible for, engaging in, facilitating, providing support for, profiting or benefiting from, and concealing or disguising serious corruption. It also includes concealing or disguising, transferring or converting (or the facilitation of) any profit or proceeds from serious corruption, as well as recklessly investigating or prosecuting serious corruption or interfering in any law enforcement or judicial process in connection with serious corruption. Those who contravene, or assist in the breach of, the Regulations are also included.

Designated persons under the Regulations will be subject to a targeted asset freeze and/or a travel ban. An asset freeze involves the freezing of funds and economic resources (e.g., nonmonetary assets, such as property or vehicles) of designated persons and ensuring that they are not made available to or for the benefit of designated persons, directly or indirectly. A travel ban prevents a designated person from travelling to or via the UK, and any permissions to stay in the UK are rescinded. (More information about asset freezes can be found in the Office of Financial Sanctions Implementation's guidance (PDF: 1.4 MB).)

The Regulations provide that it is a criminal offence to intentionally participate in any activities knowing that their object or effect is to circumvent the prohibitions and requirements imposed by the Regulations, or to enable or facilitate the contravention of the prohibitions. It is also prohibited to deal with funds or economic resources owned, held or controlled by a designated person and to

make them available to or for the benefit of a designated person, where the person doing so knows or has reasonable cause to suspect that this is the case.

Who Has Been Designated So Far?

The UK government has announced the designation of 22 individuals so far under the new regime, including 14 Russian nationals (some of them government officials) involved in a $230 million tax fraud scheme unearthed by the tax consultant Sergei Magnitsky, who died in police custody; three Indian businesspersons; and one businessperson from each of South Africa, Sudan, Guatemala, Nicaragua and Honduras.

Challenging and Reviewing Sanctions and Designations

There is no opportunity under SAMLA to challenge sanctions and designations prior to their imposition, nor is there any requirement that the subject of them be notified in advance of the designation taking effect.

However, SAMLA does allow designations to be revoked or varied after they have been made. Therefore, persons or entities who have been designated can challenge the basis of their designation. This is an administrative right of challenge, intended to allow quick redress. Under the law, the government has a duty to consider requests as soon as reasonably practicable, although no time limits are prescribed in the legislation or guidance. SAMLA also permits persons and entities to appeal the designation in the UK High Court once the administrative process has been exhausted.

Separate from the appeal routes, the government is required to reconsider designations within three years of the last review. There is also an annual review mechanism to assess whether designations are fit for their specified purpose.

Penalties

Any breach of the main financial prohibitions in the Regulations are offences that carry a maximum sentence of seven years imprisonment or a fine, or both.

The Regulations also place obligations on “relevant firms” to make a report if they know or suspect that a person is a designated person, or has committed an offence under specified provisions of the Regulations. The information or other matter on which the knowledge or cause for suspicion is based should have come to the “relevant firm” in the course of carrying on its business. Additionally, the Regulations grant the relevant authority the power to request information as well as pro-

duction of documents. Failing to comply with reporting or information obligations carries a maximum sentence of six months imprisonment or a fine, or both.

Directors and other company officers may also be held liable for offences committed by companies where they are committed with consent or connivance, or are attributable to neglect on the part of any such person. This could include a general counsel or chief legal officer who neglected to put in place sufficient systems and controls to prevent corruption being committed by the company.

Exceptions and Licensing

Limited exceptions to the prohibitions are set out in the Regulations. Those include, in certain situations, the crediting of a frozen account by a relevant institution, where funds are transferred to the account in discharge of an obligation which arose prior to the recipient becoming a designated person, and acts done for the purposes of national security or prevention of serious crime.

The Regulations also provide that a designated person may apply for a licence to use their funds or economic resources under certain circumstances, including for basic needs such as medical needs or food.

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