

Client Update

Professional Service Advisers in the United Kingdom Under New Obligations to Report Suspicious of Financial Sanctions Breaches

On 8 August 2017, the United Kingdom (“UK”) broadened the obligation to report known or suspected financial sanctions breaches to apply to a range of professional service providers and certain businesses, including lawyers, external accountants and auditors. This reporting obligation reflects a wider trend of the UK government taking a more proactive approach to enforcing sanctions compliance.¹

This reporting obligation is now similar in scope to the money laundering reporting obligations, as imposed by the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.²

As well as impacting the internal compliance policies of professional services firms operating in the UK, this new obligation may also impact the dealings of their clients, particularly in a mergers and acquisitions context. It is also likely to significantly increase the number of reports made to the UK’s Office of Financial Sanctions Implementation (“OFSI”).

FINANCIAL SANCTIONS REPORTING OBLIGATIONS

The UK imposes two types of reporting obligations in relation to EU financial sanctions: *First*, the EU regulations setting out financial sanctions regimes include a general reporting requirement for persons to provide, as soon as practicable, any information to relevant member

¹ For other major recent developments, see our client update on the Office of Financial Sanctions Implementation’s new power to levy civil fines for sanctions breaches and increased maximum criminal penalties for financial sanctions breaches (<http://www.debevoise.com/insights/publications/2016/04/uk-getting-more-serious-about-sanctions>).

² See our client update on the UK’s new money laundering legislation, which came into force on 26 June 2017 (<http://www.debevoise.com/insights/publications/2017/06/uk-implements-new-anti-money-laundering-rules>).

state authorities which would “*facilitate compliance*” with the relevant financial sanctions regime (the “General Reporting Obligation”). *Second*, the UK’s own EU financial sanctions implementing legislation, which imposes criminal penalties for breaches of EU financial sanctions, adds a specific reporting obligation on certain categories of businesses and professions (the “Regulated Sector Reporting Obligation”).

The General Reporting Obligation remains unchanged, and all businesses operating in the EU should remain aware of this requirement.

EXPANDED REGULATED SECTOR REPORTING OBLIGATIONS

Prior to 8 August 2017, the Regulated Sector Reporting Obligation only applied to certain categories of financial institutions. The European Union Financial Sanctions (Amendment of Information Provisions) Regulations 2017 (the “New Regulations”) have now expanded this obligation to apply to:

- auditors;
- casinos;
- dealers in precious metals or stones;
- estate agents;
- external accountants;
- independent legal professionals;
- tax advisers; and
- trust or company service providers (together, the “Relevant Businesses or Professions”).

The Regulated Sector Reporting Obligation requires a person from the Relevant Businesses or Professions to report to OFSI as soon as practicable whenever: (1) it “*knows, or has reasonable cause to suspect*” that it is dealing with a person subject to an asset freeze or that a person has breached financial sanctions; and (2) the information on which that knowledge or suspicion is based “*came to it in the course of carrying on its business.*”

Notably, EU financial sanctions are not just limited to asset freezes: the new reporting obligation also applies to, for example, the EU’s capital market restrictions on certain Russian companies (for further information on these restrictions, please see our client update: <http://www.debevoise.com/insights/publications/2014/09/eu-expands-sector-wide-sanctions-on-russia>).

Where the Regulated Sector Reporting Obligation is triggered, a person in the Relevant Businesses or Professions has to provide to OFSI the information on which its knowledge or

suspicion is based and any information it holds about the person to which the report relates. In contrast to the money laundering reporting obligations, there is currently no “tipping off” offence for informing a person that such an OFSI report has been made.

Failure to comply with the Regulated Sector Reporting Obligation is a criminal offence and OFSI may levy civil penalties where it is satisfied that, on a balance of probabilities, this offence has been committed.

EXEMPTIONS FOR PRIVILEGE

The UK’s legislation implementing EU financial sanctions includes a specific exemption to the Regulated Sector Reporting Obligation for privileged information obtained by a person in their capacity as “*counsel or solicitor*” to another person. This will mean that, in most circumstances, where a solicitor or counsel obtains information from a client in the course of advising that client, the information so obtained will likely be considered “*privileged information*” as defined in the New Regulations. However, information may not be privileged where it is provided from a party other than the client. For example, privilege may not apply where a law firm representing a buyer in a merger & acquisition scenario obtains information in the course of a due diligence exercise indicating that the target company or the seller has breached sanctions based on non-privileged documents.

The privileged information exemption also does not apply to other types of professional advisers, which may mean that where, for example, forensic accountants are working with lawyers on the provision of advice to a client, the forensic accountants may need to make a disclosure while the lawyers may be able to rely on the privilege exemption.

COMPLIANCE FOR AFFECTED PROFESSIONAL SERVICES FIRMS

Persons operating in Relevant Businesses or Professions will need to ensure that their compliance policies and training reflect these new reporting obligations. As the basis for a reportable suspicion is the existence of “*reasonable cause to suspect*”, which is an objective standard, affected Relevant Businesses or Professions will not be able to rely on a lack of knowledge of the relevant financial sanctions regimes. Given that there are currently around 30 EU sanctions regimes in force, this may mean a substantial amount of additional training being required for persons operating in the Relevant Businesses or Professions.

In addition, persons operating in the Relevant Businesses or Professions will need to review their contractual arrangements with clients to ensure that they are able to make these necessary reports and that their clients are aware of this possibility.

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Debevoise's market leading sanctions compliance and enforcement practice provides expert and practical advice on economic sanctions matters to a wide range of institutions—including professional services firms, multinational banks, securities broker-dealers, asset managers, consumer credit and travel-related service providers—as well as leading industry associations. Our attorneys draw upon extensive experience, both from the private sector and in government. We work with clients in all types of adversarial proceedings, ranging from contentious regulatory examinations to administrative enforcement actions to civil and criminal litigation. The team has been consistently recognised as a leading practice in the annual World ECR Awards, most recently picking up a “highly commended” accolade in the Sanctions Law Firm of the Year: Europe category.

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Please do not hesitate to contact us with any questions.

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