VAN BAEL & BELLIS

EU/UK/Swiss Russian Sanctions Reporting Obligations

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The Russian sanctions regimes of the European Union, the UK and Switzerland all contain reporting obligations. In this Client Alert we provide a reminder of the main reporting obligations in each of these jurisdictions. Of these jurisdictions, the European Union has the most extensive reporting obligations.

EU SANCTIONS REPORTING OBLIGATIONS

Who must report?

The very broad EU targeted and trade sanctions reporting requirements apply to individuals, companies, entities and bodies that are subject to EU jurisdiction. EU sanctions apply to all the activities of individuals, companies, entities and bodies who are EU nationals or are incorporated in the EU as well as all individuals, companies, entities and bodies who carry out activities inside the EU or conduct business in whole or in part within the EU. In practice, these provisions are broadly interpreted.

What reporting obligations apply?

These individuals, companies, entities and bodies are obliged to:

- **immediately report** to the competent authority any information which would facilitate the implementation of EU **targeted** sanctions (including information on funds and assets which are not being treated as frozen as required and transactions involving the funds and economic resources of listed individuals, companies, entities and bodies in the 2 weeks prior to their listing);
- **report within 2 weeks** to the competent authority any information which would facilitate the implementation of EU **trade** sanctions; and
- **cooperate with** competent authorities in any verification of this information.

The European Commission has interpreted these reporting obligations as requiring the reporting of any suspicious activity that might affect the implementation of EU sanctions legislation. Nonetheless, the reporting obligations do not apply to confidential lawyer-client communications and confidential information held by judicial authorities.

What are the consequences of non-compliance?

The competent authority is the authority in the Member State where the individual, company, entity or body is **resident or located.** A list of all competent authorities in the 27 Member States is available here. The penalties for breaching the reporting obligations differ in each Member State. For example:

- in Belgium, the violation of EU sanctions (including a breach of reporting obligations) is a criminal offence, carrying a maximum penalty of five years imprisonment and a criminal fine of up to €25,000, in addition to the possibility of an administrative fine of up to €2.5 million.
- in the Netherlands, breaches of EU sanctions also attract criminal liability and are categorised as "economic offences". Dutch law distinguishes between intentional violations and non-intentional violations, a distinction which determines the maximum penalties applicable in a given case. In addition to the possibility of a fine or community service order, intentional violations carry a maximum penalty of up to six years imprisonment, while non-intentional violations carry a penalty of up to one year imprisonment.

Are there any sector-specific reporting obligations?

In addition, there are EU reporting obligations applicable to (i) credit institutions concerning deposits directly or indirectly owned by Russian nationals or natural persons residing in Russia; (ii) individuals, companies, entities and bodies that hold, control or are a counterparty to reserves and assets of the Central Bank of the Russian Federation; (iii) transactions relating to the purchase, import or transport of natural gas condensates of subheading CN 2709 00 10 from liquefied natural gas production plants, originating in or exported from Russia; and (iv) persons, entities and bodies listed in Annex I to Regulation 269/2014.

UK SANCTIONS REPORTING OBLIGATIONS

Who must report?

UK sanctions reporting obligations are narrower in focus. Regulation 70(1) of the UK Russia Sanctions Regulations imposes reporting obligations on "relevant firms" only.

Definitions of "relevant firms" can be found in the "Information and records" part of the statutory instrument for each sanctions regime (see also OFSI's guidance at paragraph 5.1.2). In the Russia regime, the definitions can be found in Regulation 71. They include:

- a person that has permission under Part 4A of the Financial Services and Markets Act 2000 ("FSMA 2000") (Permission to carry on regulated activities);
- an undertaking that by way of business operates a currency exchange office, transmits money (or any representations of monetary value) by any means, or cashes cheques that are made payable to customers;
- a firm or sole practitioner that is a statutory auditor or local auditor;
- a firm or sole practitioner that provides by way of business accountancy services, legal or notarial services, advice about tax affairs or certain trust or company services;
- a firm or sole practitioner that carries out, or whose employees carry out, estate agency work;
- the holder of a casino operating licence;
- a person engaged in the business of making, supplying, selling (including selling by auction) or exchanging articles made from gold, silver, platinum, palladium or precious stones or pearls;
- a crypto-asset exchange provider; and
- a custodian wallet provider.

Relevant firms should ensure that they have processes in place to monitor and identify whether any reporting obligations arise; what should be reported and when; and, who will make the reports.

In addition, specific reporting obligations apply to "**relevant institutions**". A "relevant institution" is defined in Regulation 58(7) in the Russia regime to mean a person that has permission under Part 4A of the FSMA 2000 (Permission to carry on regulated activities).

What reporting obligations apply?

Relevant firms must inform HM Treasury (in practice the Office of Financial Sanctions Implementation ("OFSI")) **as soon as practicable** where they know, or have reasonable cause to suspect that a person:

- is a designated person; or
- has committed a specified offence under the UK Russia sanctions regime.

These reporting obligations are subject to an important qualification — they apply only to a relevant firm where the information or cause for suspicion has arisen in the course of carrying on its business.

The reporting obligations do not apply where information is subject to legal professional privilege. However, the assertion of legal professional privilege should be based on a careful consideration of the specific information in question. OFSI has indicated that it may challenge a blanket assertion of legal professional privilege where it is not satisfied that careful consideration has actually been undertaken.

Relevant firms must provide OFSI with:

- the information or other matter on which the knowledge or suspicion is based;
- any information held about the person or designated person by which they can be identified. This information will be used to help OFSI identify any new aliases or methodologies that might be used to circumvent sanctions. Examples include name, address, date of birth, passport or identity card details, company registration and International Maritime Organisation identification number;
- if a relevant firm knows or has reasonable cause to suspect that person is a designated person and that designated person is a customer, it must also provide OFSI with information on the nature and amount or quantity of any funds or economic resources held for that customer.

A relevant institution must inform OFSI without delay if it:

- credits a frozen account in accordance with Regulation 58(4) (finance: exceptions from prohibitions); or
- transfers funds from a frozen account in accordance with Regulation 58(6).

Reports of suspected designated persons, frozen assets, credits to frozen accounts and suspected breaches should be made to OFSI using the template form provided on GOV.UK and emailed to OFSI.

What are the consequences of non-compliance?

- Noncompliance is a criminal offence under UK sanctions legislation, which could result in criminal prosecution of relevant firms and/or any of their employees/officers who might be held to be personally liable for any non-compliance. This carries the risk of up to six months imprisonment and/or a fine.
- OFSI also has a variety of enforcement tools at its disposal which can have a lasting impact:
  - OFSI may impose a monetary penalty for non-compliance with reporting obligations, which could be as high as £1 million, or 50% of the estimated value of the breach — whichever is the greater.
  - OFSI also has the separate power to "name and shame" firms involved in breaches of obligations under UK financial sanctions legislation, its so-called "Disclosure" power.

Are there any sector-specific or other reporting obligations?

The UK's Russia Sanctions legislation imposes specific obligations on "involved persons" (essentially persons involved in the supply of oil products or the provision of financial services for this purpose) to inform OFSI as soon as practicable if they know, or have reasonable cause to suspect, that a person has committed a breach of UK sanctions relating to the maritime transportation of oil products. Failure to do so could result in criminal prosecution or a monetary penalty, as described above.

In addition, licences issued by OFSI come with conditions that often require information to be reported to OFSI within a specific time frame. Failure to comply with such requirements may result in the revocation, suspension or termination of a licence. It may also result in criminal prosecution or a monetary penalty. Finally, each year OFSI carries out a review of frozen assets to reflect any changes to these assets during the reporting period. As part of this review, OFSI requests all persons that hold or control funds or economic resources belonging to a designated person to complete a reporting form template and submit it to OFSI.

SWISS SANCTIONS REPORTING OBLIGATIONS

Who must report?

The Swiss sanctions against Russia set out a broad targeted sanctions reporting obligation on people or institutions, who hold or manage assets, or have knowledge of economic resources, that should be considered frozen.

What reporting obligations apply?

These people and institutions must report to the Swiss State Secretariat for Economic Affairs ("SECO") **without delay:**

- the name of the **beneficiary** as well as the **nature** and **value** of the asset or economic resource that is considered frozen (i.e., those assets and economic resources which are owned or controlled, directly or indirectly, by a listed individual, company or entity); and
- all the transactions which took place during the **two weeks before** the inclusion of the individual, company or entity in the Swiss sanctions list.

There are no exceptions to this obligation written in the Swiss sanctions against Russia. However, it is understood by SECO that the **professional secrecy obligations of lawyers** (when conducting activities specific to the legal industry) take precedence over the reporting obligation.

What are the consequences of non-compliance?

Failure to comply with this reporting obligation can result in a fine of up to 40,000 Swiss Francs if committed negligently and up to 100,000 Swiss Francs if committed intentionally.

Are there any sector-specific reporting obligations?

In addition, there are reporting obligations on (i) people and institutions that accept deposits or grant credit on a professional basis; (ii) people, entities and banks that hold, control or are a counterparty to reserves and assets of the Central Bank of the Russian Federation; and (iii) transactions relating to the purchase, import or transport of natural gas condensates of tariff heading 2709 00 10 originating in or coming from the Russian Federation.

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