

July 9, 2020

## **HUMAN RIGHTS ABUSERS (AND THOSE DEALING WITH THEM) BEWARE: UK INTRODUCES ITS FIRST “MAGNITSKY” SANCTIONS**

To Our Clients and Friends:

On 6 July 2020, the UK Government introduced into law the “Global Human Rights Sanctions Regulations 2020” (the “**Regulations**”), and designated the first individuals under the Regulations in connection with their involvement in gross human rights violations. The Regulations are made under powers in the Sanctions and Anti-Money Laundering Act 2018 (the “**SAMLA**”), which was enacted in order to empower the UK Government to introduce the UK’s own sanctions post-Brexit. EU sanctions will continue to apply in the UK until 11 pm on 31 December 2020, but the Regulations will apply alongside EU sanctions.

Secretary of State for Foreign Affairs, Dominic Raab, announcing the Regulations in Parliament, stated that the UK’s first autonomous human rights sanctions regime would impose travel bans and asset freezes against “*those who have been involved in some of the gravest human rights violations and abuses around the world.*” And that the new regime “*means the UK has new powers to stop those involved in serious human rights abuses and violations from entering the country, channelling money through UK banks, or profiting from our economy.*”

The Regulations came into force at 1 pm BST on 6 July 2020, with the Government simultaneously imposing sanctions against 49 individuals and organisations in Russia, Saudi Arabia, Myanmar and North Korea. These were described by the Government as the “*first wave*” of designations under the new regime, with further sanctions expected in the “*coming months*”.

Human rights-focussed sanctions are often referred to as “Magnitsky sanctions”, following the so-called “Magnitsky Act,” a U.S. law (the Sergei Magnitsky Rule of Law Accountability Act of 2012) (the “**U.S. Magnitsky Act**”) imposing sanctions on certain Russian officials alleged to be involved in the death of corruption whistleblower Sergei Magnitsky. In 2016, the U.S. Global Magnitsky Human Rights Accountability Act (“**U.S. Global Magnitsky**”) became effective, authorizing the U.S. Government to sanction foreign government officials implicated in human rights abuses anywhere in the world, including asset freezes and travel bans.

### **The Sanctions and Anti-Money Laundering Act 2018**

SAMLA empowers the UK Government to make sanctions regulations as it considers appropriate, *inter alia*:

- to comply with UN or any other international obligations;

- to further the prevention of terrorism, domestically or abroad;
- in the interests of international peace and security;
- to further a foreign policy objective;
- to promote the resolution of armed conflict or protect civilians in conflict zones;
- to provide accountability for or deter gross violations of human rights;
- to promote compliance with international human rights law;
- to promote respect for human rights;
- to promote compliance with international humanitarian law;
- to contribute to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction; or
- to promote respect for democracy, the rule of law and good governance.<sup>[1]</sup>

Under SAMLA, the UK Government can impose a range of sanctions that have financial, immigration, and trade implications. Prior to the passing of SAMLA, the UK introduced sanctions predominantly by virtue of its membership as a member of the UN or EU; domestic sanctions powers were generally used in connection with matters such as terrorism, nuclear proliferation or military aggression. The Government has indicated its aspiration that SAMLA would allow the UK to regain “*full control*” over its own sanctions policy.

## **The Global Human Rights Sanctions Regulations 2020**

The Regulations allow the Government to designate individuals and organisations who will be subject to asset freezes and/or travel bans, with such individuals being named in the “[UK sanctions list](#)”. The Regulations can be used to impose sanctions for serious human rights violations in three areas: the right to life; the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, and the right to freedom from slavery, servitude or forced or compulsory labour.

In conjunction with the Regulations, and to assist in their implementation, the Government has published [statutory guidance](#).

## **The Offences**

The Regulations create a series of substantive offences, which can be committed by natural or legal persons, similar to those contained in UK Regulations implementing EU sanctions regimes containing asset-freezes, namely offences of:

- dealing with funds or economic resources knowing, or with reasonable cause for suspicion, that they are owned, held or controlled by a designated person.[2]

This offence applies to funds or economic resources in which the designated person has a legal or equitable interest, whether solely or jointly with any other person, and to tangible property or bearer security in the person's possession.

For these purposes, "dealing" with funds is construed widely to mean using, altering, moving, transferring or allowing access to the funds, dealing with them in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination, or making any other change, including portfolio management that would enable use of the funds, "Dealing" with economic resources means exchanging for funds, goods or services or to use the economic resources in exchange for funds, goods or services, whether by pledging them for security or otherwise.

- knowingly, or with reasonable cause for suspicion, directly or indirectly making funds or economic resources available to (or for the benefit of) a designated person.[3]

The offence of making resources available to a designated person requires knowledge or cause for suspicion that the designated person would be likely to exchange or use the economic resources for funds, goods or services.

Funds are available to a designated person's benefit if the designated person thereby obtains, or is potentially able to obtain, a "significant financial benefit", including the discharge of a financial obligation, as a result of the availability of the funds.

Economic resources are available to a designated person's benefit if the designated person thereby obtains, or is potentially *able* to obtain, a "*significant financial benefit*", including the discharge of a financial obligation, from the availability of the economic resource.

## **Owned, held or controlled?**

The Offences extend to funds and economic resources that are "*owned, held or controlled*" by a designated person either "*directly or indirectly*".[4]

A legal entity (e.g., a company) is under such ownership or control if the designated person owns or holds, directly or indirectly, (i) more than 50% of its shares, (ii) more than 50% of the voting rights in it, or (iii) the right to appoint or remove a majority of its board of directors.[5] Schedule 1 to the Regulations sets out detailed rules for interpreting this provision.

Alternately, if "*having regard to all the circumstances*" a person otherwise has *de facto* control of a legal entity, it is deemed to be owned, held or controlled by them.[6]

## **Circumvention, enablement and facilitation offences**

The Regulations also include “anti-circumvention” provisions, which are common in sanctions regimes. It is an offence to intentionally participate in activities knowing that the object or effect, whether directly or indirectly, is to circumvent the prohibitions which are the subject of the Offences.[7] It is also an offence to intentionally participate in activities knowing that the object or effect, whether directly or indirectly, is to *enable or facilitate* contravention of the prohibitions which are the subject of the Offences.[8]

## **Exceptions**

Regulation 18 sets out a list of exceptions from the prohibitions, which, for example, enable financial institutions to credit a frozen account with interest or other earnings.

Regulation 19 includes exceptions for certain agents acting on behalf of the Crown to take actions for the purposes of national security or the prevention of serious crime.

## **Licences**

Under Regulation 20, the UK Treasury may issue general or specific licenses that exempt acts covered by the Offences at Regulations 11 to 15.

The Treasury may issue a licence where it deems it appropriate for one of the listed purposes,[9] which include providing basic needs; paying legal fees; maintaining assets; satisfying pre-existing judicial or arbitral decisions; satisfying prior obligations; enabling the functioning of a diplomatic mission; enabling humanitarian assistance; or dealing with “*an extraordinary situation*”.[10]

Provision is also made for local licensing in relation to Guernsey, Jersey, the Isle of Man and the British Overseas Territories.[11]

## **Application**

Liability for the Offences under the Regulations may arise as a result of conduct (i) by any person in the UK,[12] or (ii) by a UK national or legal entity wholly or partly outside the UK.[13]

The Regulations apply to any “United Kingdom person”,[14] which includes citizens of Guernsey, Jersey, the Isle of Man and the British Overseas Territories, as well as nationals falling within historic categories of British nationality such as British National (Overseas) citizens from Hong Kong.[15]

## **Reporting obligations**

The Regulations also set out strict reporting obligations for certain entities in the financial and other re, and carry potential criminal liability for non-compliance.

Under Regulation 25, “relevant firms”, which includes certain financial institutions, law firms, accountants, auditors and estate agents (amongst others) are required to notify the Treasury if, in the

course of carrying on business, they know, or have reasonable cause to suspect, that a person is a designated person or that any person has committed one of the above offences.[16] Certain relevant details must also be provided.[17]

A relevant institution, namely a person that has permission under Part 4A of the Financial Services and Markets Act 2000, must inform the Treasury without delay if it (a) credits a frozen account in accordance with regulation 18(4) (finance: exceptions from prohibitions), or (b) transfers funds from a frozen account in accordance with Regulation 18(6).

Persons that fail to comply with these requirements commit an offence.[18]

Simultaneously with the promulgation of the Regulations, the Office of Financial Sanctions Implementation, which is part of HM Treasury and the UK's primary sanctions authority, published a [Financial Sanctions Notice](#) (the “**Notice**”), which sets out details of the 49 individuals and organisations subject to asset freezes, and directs parties (in practice, those subject to information and records obligations under Part 6 of the Regulations) to:

1. check whether they maintain any accounts or hold any funds or economic resources for the persons set out in the Notice;
2. freeze such accounts, and other funds or economic resources and any funds which are owned or controlled by persons set out in the Notice;
3. refrain from dealing with the funds or assets or making them available (directly or indirectly) to such persons unless licensed by OFSI;
4. report any findings to OFSI, together with any additional information that would facilitate compliance with the Regulations; and
5. provide any information concerning the frozen assets of designated persons that OFSI may request. Information reported to OFSI may be passed on to other regulatory authorities or law enforcement.

OFSI has also published new [General guidance for financial sanctions under SAML A](#).

## **Additional powers for the Treasury**

Under Regulation 27, the Treasury is granted powers to request specified documents or documents of a specified description about funds or economic resources owned, held or controlled by or on behalf of the designated person, or any disposal of such funds or economic resources. Regulation 29 makes it an offence for a person to refuse or fail within the time and in the manner specified to comply with a request under Regulation 27.

## **What is not covered by the Regulations?**

The Regulations are limited to sanctions in relation to involvement in violations of the right to life and the prohibitions on torture, slavery and inhuman or degrading treatment or punishment, and not, at this stage, for involvement in other human rights violations. The Government has also chosen at this stage not to impose sanctions in respect of involvement in corruption. However, the Foreign Secretary has indicated that the current regime may be expanded to cover such issues.

## **Who are the 49 individuals and organisations named?**

The new designations apply to:

- 20 nationals of Saudi Arabia said to be involved in the unlawful killing of journalist, Jamal Khashoggi – 17 of those Saudi nationals are subject to OFAC sanctions pursuant to the U.S. Global Magnitsky and the related [Executive Order 13818](#), an authority separate from the U.S. Magnitsky Act that targets human rights abusers globally. However, the UK has also designated three further Saudi officials in connection with the killing of Khashoggi;
- 25 Russian nationals said were involved in the mistreatment and death of lawyer Sergei Magnitsky. The individuals are already subject to OFAC sanctions pursuant to the U.S. Magnitsky Act;
- 2 Myanmar nationals (both high ranking Myanmar military officials, both of whom are already designated under U.S. Global Magnitsky) said to be involved in atrocities and serious human rights violations committed against the Rohingya population in Rakhine state; and
- 2 North Korean entities said to be involved in human rights violations in the country's political prison camps, both of which are already subject to OFAC sanctions under the North Korea sanctions program.

## **What does this mean for the UK?**

The Regulations mark a cautious departure for the UK in charting a path towards its own, distinct and independent sanctions policy. It is not the first time the UK has acted before other European countries in the field of sanctions, but it is nonetheless an assertion of intent to project the economic power of the UK internationally to pursue its diplomatic and macro-political agenda. As with asset-freezes generally, the regime effectively outsources its day-to-day heavy lifting to the financial sector, but in a manner that financial sector entities will likely be able to absorb without undue difficulty. If the Regulations can be criticised for their modesty of ambition, focussing as they do on only gross violations of human rights which are matters of global notoriety and (in the main) existing U.S. sanctions, this can perhaps be excused by reference to the Government's explicit acknowledgment that it is starting cautiously with a view to ensuring that the regime is working before expanding it. The intention to expand is clear from the Government's rhetoric, with likely future targets including officials who have participated in kleptocratic regimes, suppression of press freedoms and corruption.

The Regulations have been welcomed, including by U.S. Secretary of State Pompeo, as a further step towards the cross-border enforcement of international human rights standards, and the accountability on the international stage of those responsible for gross human rights abuses (although it should also be noted that Russia has indicated an intention to introduce countermeasures in response to the Regulations).

This development is another step forward in advancing cross-border enforcement of international human rights standards, with the UK Government harnessing the power of corporate sanctions compliance programs to exclude undesirable persons from taking advantage of the UK economy. The Regulations are also reflective of a broader trend, which sees growing expectations of, and interconnectedness between, the work of a corporation's financial crime, onboarding, compliance, risk and due diligence teams on matters related to human rights. In addition to financial crime regulation, mandatory non-financial reporting and due diligence requirements in fields such as modern slavery, human trafficking, conflict minerals, biodiversity, environmental standards, and climate change are becoming increasingly commonplace across Europe. With new European-wide legislation anticipated in 2021 which will require mandatory corporate human rights due diligence, these synergies are only set to increase.

Ultimately, however, the acid test of the UK's commitment to establishing its own unique sanctions 'identity' will be its zeal in enforcing this and other new regimes. Promulgating legislation and designating targets is the easy part of sanctions regulation; effective enforcement is much more challenging. The UK has the enforcement tools and institutions to do the job. The future will tell whether commitment will be met with action.

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[1] SAMLA, section 1(1), (2).

[2] Regulation 11, in conjunction with Regulation 32.

[3] Regulations 12 to 15, in conjunction with Regulation 32.

[4] Reg. 11(7), 12(4), 14(4).

[5] Reg. 7(1).

[6] Reg. 7(2).

[7] Reg. 16(1)(a), (2).

[8] Reg. 16(1)(b), (2).

[9] Reg. 20(3).

[10] Sch. 2.

[11] Reg. 21.

- [12] Reg. 3(7).
- [13] Reg. 3(1), (4), (5).
- [14] Reg. 3
- [15] Reg. 2; Act s. 22.
- [16] Reg. 25(1).
- [17] Reg. 25(2), (4).
- [18] Reg. 25(6).



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