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With New Regulator, UK Signals Post-Brexit Sanctions Shift

By **Mark Taylor**

Law360, London (December 15, 2016, 10:54 PM GMT) -- Britain's new financial sanctions watchdog will be coming to life just as the U.K. splits from the European Union, adding further fragmentation and uncertainty to an already volatile landscape, lawyers warn.

International trade and white collar lawyers gave Law360 a primer on the new Office of Financial Sanctions Implementation on Wednesday, and on what might lie ahead in the coming years.

Britain's new financial sanctions watchdog will be coming to life just as the U.K. splits from the European Union. (AP)

"Sanctions are generally EU regulations which enter law when published by the EU, and after Brexit that will change as far as the U.K. is concerned," said Mark Compton, financial regulatory partner at Mayer Brown International LLP.

Britain has been the main driver of EU sanctions and uses the might of its financial district, known as the City, to lend extra leverage to European efforts when cutting off flows of money. Outside of the EU, and with the OFSI coming into force, banks and financial institutions will have an extra pair of eyes watching their moves, and must take additional steps to ensure compliance with the various regimes.

"A lot of past and present EU sanctions have been driven by the U.K., such as those against Ukraine, so EU sanctions may take a different tack when the U.K. is no longer inside the bloc," Compton added.

OFSI, an offshoot of HM Treasury, exists now as a standalone unit to increase awareness of and compliance with financial sanctions. It will attempt to ensure that sanctions breaches are rapidly detected and effectively addressed, and provide a professional service to the public and industry on financial sanctions issues.

"They announced OFSI pre-Brexit but Brexit may have an effect, given we potentially will be responsible for imposing our own sanctions, as opposed to adopting those directed by the EU," said Christopher David, white collar attorney at WilmerHale.

OFSI is consulting on penalties for sanctions breaches, but activity is expected to increase once the regulator is fully operational.

“I do not anticipate a great deal of divergence in the next 12-18 months to two years in terms of the sanctions that are or will be imposed,” said Stacy Keen, litigation attorney at Pinsent Masons LLP. “It may simply not be a priority for a government dealing with the Brexit fallout. It’s a wait-and-see at the moment, it will not be a case of divergence where the U.K. has sanctions against countries but the EU doesn’t.”

From an enforcement perspective it is up to each member state how it applies the financial sanctions, and in that regard there will be no loosening or watering down of the U.K. approach.

HM Treasury is also gathering information to put before lawmakers on the current U.K. stance and how separate from the EU it may pursue other targets.

“We have always been the master of ceremony in deciding how we would administer them, that won’t change,” Keen said. “The new body is still in its infancy, but they are drawing on the experience of those within the Treasury, they now have impetus without perhaps conflicting targets and agendas inside that department, to go out and pursue cases.”

OFSI is consulting until Jan. 26 on the monetary penalties it will hand out under civil law.

“This next year will be about prioritizing for OFSI, and it is helpful to the market they are consulting, it does take time for any new organization to set goals for itself,” Keen said.

Many of the bigger British banks are already on high alert due to the aggression of the equivalent U.S. sanctions body, the Office of Foreign Asset Control, in handing out fines in the billions for transgressions.

OFAC has the power to impose civil penalties and has become notorious in finance for the size of its fines and settlements.

“A lot of banks will have a ‘no deal’ policy with jurisdictions such as Iran, North Korea, Sudan, Cuba, whether transactions are in some way risking violating sanctions or not,” said John Forrest, international trade head at DLA Piper.

“The more that OFSI begins to signal it will also flex its muscles in relation to a higher degree of aggression in sanctions enforcement, the existing nervousness and caution in financial institutions is only going to become more prevalent,” he added.

Much of what OFSI plans to implement is already derived from EU regulation, but lawyers say the U.K. may take a chance to go further once freed from the bloc.

“In the Brexit/post Brexit age, is there going to be more appetite for the U.K. government to go beyond the type of sanctions the EU has imposed?” Forrest said.

Whether the U.K. also wants to increase its reach to echo the extraterritorial elements of U.S. sanctions regulation is also something lawyers expect to play out over the next year.

The new Donald Trump administration in the U.S. will cause international sanctions to be reshaped, experts said, and may also factor into U.K. thinking as Britain shifts to a role between North America and Europe.

“We have seen sanctions activity increase globally in recent years and we may well see changes in the coming years; there is uncertainty in the U.S. regarding Trump’s foreign policy, so it will be very difficult to tell where they head,” said Compton. “Plus where the U.K. heads on its own, and where the EU heads without the U.K.; it will certainly be an interesting time.”

While sanctions compliance is one of the most important and sensitive aspects of a bank’s risk agenda, experts predict they will have some time to take stock before there is too much upheaval in the U.K.

“The new regime will most likely be comparable to the implementation of the Bribery Act and the subsequent delay in prosecutions by the Serious Fraud Office,” said Zia Ullah, financial crime partner at Eversheds LLP. “It has taken a four- or five-year lead-in to the first convictions, because you have to work through the new regime and the legislation and take those necessary investigatory steps to secure a conviction.”

--Editing by Brian Baresch.