

# UK Imposes New Sanctions Disclosure Obligation on Legal Professionals, Certain Other Businesses

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International Trade Controls

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On July 18, 2017, the UK published a new statutory instrument, [The European Union Financial Sanctions \(Amendment of Information Provisions\) Regulation 2017 \(S.I. 2017/754\)](#) (hereinafter, the “AIP Regulation”). The Regulation comes into force on **August 8, 2017**.

The AIP Regulation imposes an affirmative duty on persons operating in certain businesses, including independent legal professionals, to notify HM Treasury if they have knowledge or reason to suspect that a person (1) is a “designated” party, or (2) has committed an offence under certain specified sanctions regulations cited in the AIP Regulation. While the Regulation is not clear, the new notification obligations appear to apply only in relation to financial restrictions in EU sanctions (including, most importantly, the prohibitions on dealings with EU sanctioned parties), but not to export controls-related sanctions restrictions or other non-financial sanctions restrictions.

In addition to independent legal professionals, this new standard also applies to the following sectors:

- certain categories of auditors,<sup>1</sup>
- casinos,
- dealers in precious metals or stones,
- estate agents,
- external accountants,
- tax advisors, and
- trust or company service providers.

Importantly, HM Treasury has confirmed that the new obligations are not intended to override legal professional privilege. Nonetheless, the AIP Regulation has important consequences for

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<sup>1</sup> Specifically, either (1) a statutory auditor within the meaning of Part 42 of the Companies Act 2006 (statutory auditors), when carrying out statutory audit work within the meaning of section 1210 of that Act (meaning of statutory auditor); or (2) a local auditor within the meaning of section 4(1) of the Local Audit and Accountability Act 2014 (general requirements for audit), when carrying out an audit required by that Act.

companies operating in, seeking advice from, or otherwise dealing with persons or entities operating in the above sectors in the UK in connection with EU economic sanctions enforcement and compliance matters. We encourage clients to review this alert carefully.

### **The Disclosure Requirement**

UK statutory instruments implementing EU sanctions regulations have historically required certain types of financial service providers to report known or suspected breaches of EU trade and financial sanctions, as well as information concerning whether a person is “designated” for sanctions under applicable EU sanctions legislation.

The AIP Regulation maintains that reporting obligation with regard to financial service providers, but extends it to the eight sectors identified above—collectively identified as “relevant business[es] or profession[s].” The AIP Regulation requires anyone in those sectors to inform HM Treasury, “as soon as practicable,” if the person “knows or has reasonable cause to suspect” that “a person” either (1) is “a designated person” (which is defined in underlying regulations as a “person, entity, or body listed in” annexes to the various sanctions regulations), or (2) “has committed an offence” under specified sanctions prohibitions set forth in the underlying regulations.

The new disclosure standards in the AIP Regulation apply to financial sanctions restrictions (including the prohibitions on dealings with designated parties). Notably, they do not appear to extend to certain EU sanctions restrictions focusing on export controls and non-financial services, such as, for instance, the oil and gas goods/services restrictions in the EU-Russia sanctions (EC Regulation No. 833/2014, Articles 3, 3a, and 4).

The extension of this reporting requirement to lawyers is unprecedented and unexpected. HM Treasury did not submit the AIP Regulation for public consultation before presenting it to Parliament on July 17 (only three weeks before the Regulation’s entry into force). Given the potential impact of the AIP Regulation, a number of law firms, including Covington, asked HM Treasury to delay its implementation and to hold a public consultation, but HM Treasury declined.

Consistent with the pre-existing UK statutory instruments implementing EU sanctions regulations, HM Treasury has advised some practitioners, including Covington, that the AIP Regulation is not meant to displace or override legal professional privilege. Accordingly, information that is shared with legal professionals in privileged circumstances should remain privileged and should not be subject to the disclosure obligations under the AIP Regulation. It also should be noted that the definition of “independent legal professionals” does not appear, on its face, to cover in-house legal counsel, as it extends to “a firm or sole practitioner who by way of business provides legal or notarial services to other persons, when providing such services.” Clients should consider, in light of these new reporting obligations, whether their communications with external counsel may trigger reporting to HM Treasury, or whether those communications could be protected from disclosure under UK privilege standards.

### **Conclusion**

HM Treasury’s Office of Financial Sanctions Implementation (“OFSI”) is expected to publish guidance on the AIP Regulation on August 8, 2017. If you have any questions concerning the material discussed in this client alert or on OFSI’s subsequent guidance, please contact the following members of our International Trade Controls practice group:

**David Lorello**  
**Lisa Peets**  
**Ezra Steinhardt**

+44 20 7067 2012  
+44 20 7067 2031  
+44 20 7067 2381

[dlorello@cov.com](mailto:dlorello@cov.com)  
[lpeets@cov.com](mailto:lpeets@cov.com)  
[esteinhardt@cov.com](mailto:esteinhardt@cov.com)

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