

EXTENSION OF UK SANCTIONS AGAINST RUSSIA TO INCLUDE PROVISION OF LEGAL ADVICE SERVICES

On 30 June 2023, the *Russia (Sanction) (EU Exit) (Amendment) (No. 3) Regulations 2023 (SI 23/713)* (the "**Amendment**") came into effect, amending the *Russia (Sanctions) (EU Exit) Regulations 2019* (the "**UK Russia Sanctions**"). The newly adopted Amendment extends the ban on the provision of professional and business services to also include the provision of "legal advisory services" in relation to financial and trade activities subject to the UK Russia Sanctions regime. This brings the UK position in line with the existing EU law restrictions on the provision of legal advisory services, albeit going somewhat further in certain areas.

Legal advisory services comprise any non-contentious advice including advice on the application or interpretation of law, advice in relation to commercial transactions, negotiation or acting on behalf of a client before third parties, as well as the preparation, execution or verification of a legal document. This is subject to certain very limited exceptions, as set out below.

Legal services provided in connection to contentious matters are excluded, being those legal services provided in anticipation of, any proceedings before administrative agencies, courts or other duly constituted official tribunals, or arbitral or mediation proceedings.

THE TERRITORIAL APPLICATION OF THE PROHIBITION

The Amendment prohibits the provision of legal advisory services directly or indirectly to any person who is not a UK person in relation to a relevant activity which would be prohibited by the UK Russia Sanctions if carried out by a UK person or in the UK.

As clarified by [updated guidance](#) published by the Export Control Joint Unit and the Department for Business and Trade on 30 June 2023, the scope of the prohibition is broad; it applies to prevent UK persons (wherever located), as well as persons in the UK, from providing legal advisory services in relation to relevant activities. It applies irrespective of the location of the recipient of such services: services provided to a non-UK person present outside the UK are also subject to the prohibition.

As a result, a UK lawyer acting outside of the UK and advising a non-UK client in relation to a relevant activity falls under the scope of the prohibition. Arguably, for example, an EU-national lawyer located in the UK providing advice to a non UK person on a relevant activity, in the course of their UK employment, falls under the scope of the prohibition.

THE SCOPE OF "RELEVANT ACTIVITIES": FINANCE AND TRADE SECTORS AFFECTED

The provision of legal advice services is prohibited in so far as it relates to a "relevant activity". A relevant activity is defined as any of the specified activities which would fall foul of the UK Russia Sanctions regime if it had been carried out in the UK or by a UK person. As such, the purpose of the prohibition of legal advisory services is to deny the Russian economy access to UK legal expertise, as well as restrict the use of UK law, for any transaction connected with Russia.

The prohibition is applicable only to advice which relates to specified finance and trade activities prohibited under the UK Russia Sanctions as well as circumvention activities. Although the restriction to specific activities may appear limited, the scope of activities concerned is in fact very extensive.

Financial matters concerned include: any activities linked to the asset freezes applied to "designated persons" under the UK Russia Sanctions; any activities linked to loans and credit arrangements; loans; investment and trust services caught under the UK Russia Sanctions.

The trade activities concerned comprise activities linked to the trade in "restricted goods" and "restricted technology" under the UK Russia Sanctions, energy-related goods, iron and steel products, coal products, banknotes, the provision of professional services (such as accounting services, business and management consulting services, engineering services, IT consultancy), and others.

The ban on legal advice also relates to any activities which would fall foul of the anti-circumvention provisions under the UK Russia Sanctions if the UK nexus requirement was satisfied. This includes situations where, for instance, an intermediary or a front company is used to disguise an end user that is subject to UK Russia Sanctions.

The Department for Business & Trade published the *Russia sanctions – Trade sanctions circumvention guidance* on 22 May 2023 which includes a list of key risk indicators, such as the nature of the goods procured by a customer, their geographic location, their links to any higher risk jurisdictions, and other considerations seen as indicative of prohibited activity.

EXCEPTIONS

The exceptions to the legal advisory services ban introduced by the Amendment are very limited in scope and restricted to specific types of situation where derogation may be required for operational purposes for the UK Russia Sanctions regime.

Legal advisory services in relation to the discharge of or compliance with UK statutory or regulatory obligations and legal services provided to determine the applicability of the UK Russia Sanctions are excepted.

There is a specific exception in relation to diplomatic activities and to those international organisations enjoying immunities under international law: legal advice may be provided in relation to any act that is necessary for the official purposes of a diplomatic mission or consular post in Russia or of such an international organisation, in accordance with international law.

The prohibition is also subject to a three month period for those affected to effectively wind down their existing relationships: there is an exception applicable to contractual obligations where the instrument creating the obligation was signed before 30 June 2023, provided that the obligation is carried out before the end of 29 September 2023 and that the Secretary of State is notified of its performance by that date.

PENALTY

Non-compliance may lead to a fine and/or imprisonment for a maximum term of 10 years.

DEFENCE

To avoid liability under the ban, a provider of legal advisory services may rely on a defence where they did not know, and had no reasonable cause to suspect, that the activity satisfied the conditions of the prohibition.

Considering the high professional standards applied to lawyers qualifying in the UK, this defence is likely to have a limited scope of application. For instance, the *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* imposes extensive due diligence duties on solicitors taking on new clients. In addition, the Solicitors' Regulation Authority's ("**SRA**") *Code of Conduct's* requirements of competency regarding legal advice given supposes adequate information being requested and obtained from a client. Guidance will be forthcoming in due course but the true defence is more likely limited to cases where a legal services provider is deliberately misled by a client where they have taken and continue to take measures to guard against such an eventuality as provided for by the rules cited.

KEY TAKEAWAYS

UK Enforcement approach

The UK enforcement approach has been strict, and where the provision of legal services is permitted, there are reporting duties and all activity must be carried out in compliance with the Solicitors' Code of Conduct and other regulatory duties, which set high requirements of integrity.

Solicitors providing legal services under a licence from the Office of Financial Sanctions Implementation ("**OFSI**") must report to OFSI where they know or suspect that:

- a breach of the sanctions has occurred;
- a person is a designated person; or
- they hold frozen assets;

if this knowledge or suspicion came to them in the course of business.

In addition to regulatory oversight, professional conduct authorities are also carrying out supervisory activities. For example, in March 2022, the SRA announced spot checks to ensure proper compliance following allegations that certain firms were providing support to designated persons without conducting proper checks.

Contrast with EU position

The UK Russia Sanctions can be usefully contrasted with the EU regime. On 5 October 2022, the EU's Eighth sanctions package was agreed, and banned, amongst other things, the provision of legal services in non-contentious matters.

At first glance, the EU position seems broader as it applies to all legal advisory services provided in non-contentious matters and, unlike the UK framework, is not limited by the specific subject-matter of legal services. However, the UK's restricted activities are broad and of wider territorial application.

The EU prohibition is significantly narrower than that of the UK by virtue of the fact that it only applies to legal advisory services provided to the Government of Russia and legal persons, entities or bodies established in Russia. Furthermore, there is an exception for entities established in Russia and owned by an EU, EEA and/or Swiss person. By contrast, the UK ban is applicable to any person (including a non-UK person) and irrespective of where they are located, as long as the nexus is made with the restricted activity.

Please consult our [UK Russia sanctions update](#) for further information on these sanctions more generally.

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