

## Article

## UK Russian Sanctions Regime and BVI Contentious Proceedings: A Series

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Since Russia's military incursion in Ukraine began on 24 February 2022, the UK has introduced an extensive package of economic sanctions against Russia. By the end of August 2022, over 1,270 persons had been designated and by the end of October 2022, approximately £18 billion of Russian assets had been reported as frozen.

The sanctions regime is intended to encourage Russia to cease actions destabilising, undermining or threatening the territorial integrity, sovereignty or independence of Ukraine, predominately by imposing financial penalties. The primary objective of the sanctions is to *"coerce" Russia, or individuals within/connected to Russia, into "changing their behaviour by increasing the cost on them to such an extent that they decide to cease the offending behaviour"*.

Whilst the sanctions regime is not (explicitly) confiscatory in nature, it has (at times) arguably come close to trespassing beyond its scope. That is particularly the case in the context of legal proceedings which involve sanctioned Russian parties. The practical effect of the sanctions regime has severely impaired the ability of sanctioned Russian parties to enforce their legal rights.

In this series of articles, BVI litigation associate Charles Goldblatt will consider the effect of the sanctions regime on civil proceedings in the BVI Courts involving sanctioned Russian parties and, in particular, the practical difficulties of pursuing and/or defending such claims.

In this first article, we consider (a) the legislative framework of the sanctions regime in effect in the British Virgin Islands (BVI), (b) the prohibitions in effect under the legislation and (c) the application of the sanctions regime beyond the Consolidated List of designated individuals and entities. The second article in this series considers various exceptions to the prohibitions and licensing grounds. In the third article, we consider some recent decisions on sanctions from the English and BVI courts.

*NB: The following is intended as a brief overview/summary of the relevant regimes. Specialist advice on this complex and highly fact-specific area of law is essential.*

# Sanctions Legislation (UK and BVI)

## Legislative Framework

The UK Sanctions Regime comprises the Sanctions and Anti-Money Laundering Act 2018 (“**the Act**”), which provides for sanctions regulations to be made, and the Russia (Sanctions) (EU Exit) Regulations 2019 (“**the Regulations**”), which impose the sanctions.

The Regulations have been amended numerous times and on each occasion the scope of the sanctions has been clarified and/or expanded. Most recently (on 16 December), new prohibitions were introduced barring the provision of services related to trusts (or similar arrangements) to, or for the benefit of, designated (sanctioned) persons, and the provision of new services related to trusts to, or for the benefit of, persons connected with Russia.

The Regulations apply to “*United Kingdom persons*” (a United Kingdom national or a body incorporated or constituted under the law of any part of the United Kingdom), but importantly extend the prohibitions to “*conduct wholly or partly outside the United Kingdom.*”

The Regulations (as amended) are extended to the British Virgin Islands (BVI), and other British Overseas Territories, by the Russia (Sanctions) (Overseas Territories) Order 2020 (“**the Overseas Territories Order**”) with certain modifications, but in effect the Overseas Territories Order applies the UK Sanctions Regime in the BVI and to BVI persons and entities.

## Prohibitions under the Regulations

The regime comprises financial sanctions, trade sanctions and immigration sanctions. There are also specific sanctions relating to aircraft and shipping. Here, we will consider the most common form of financial sanction - an asset freeze.

Where the financial sanction is an asset freeze, a person is generally prohibited from:

- dealing with frozen funds (or economic resources) belonging to or owned, held or controlled by a designated person;
- making funds (or economic resources) available, directly or indirectly, to, or for the benefit of, a designated person; and
- engaging in actions that, directly or indirectly, circumvent the sanctions.

The statutory definition of “*dealing*” is (no doubt intentionally) wide.

- Dealing with funds generally means moving, transferring, altering, using, accessing, or otherwise dealing with them in any way that would result in any change to their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used.
- Dealing with economic resources generally means using the economic resources to obtain funds, goods, or services in any way, including, but not limited to, by selling, hiring or mortgaging them.
- If funds are made available (directly or indirectly) to a designated person, or if economic resources are made available (directly or indirectly) that would likely be exchanged, or used in exchange, for funds, goods, or services, where doing so provides a ‘significant financial benefit’, this may constitute a breach of the financial sanctions (a criminal offence).

“*Financial benefit*” includes the discharge, in whole or in part, of a financial obligation for which the designated person is wholly or partly responsible.

## Ownership and Control

The application of the sanctions regime extends well beyond those individuals and entities named on the consolidated list of asset freeze targets (“**the Consolidated List**”). The financial sanctions also apply to entities owned or controlled (directly or indirectly) by designated persons and/or entities.

There is extensive guidance on the meaning of “*ownership and control.*” However, in general terms, an entity is owned or controlled by a designated person in circumstances where:

- the designated person holds (directly or indirectly) more than 50% of the shares or voting rights in an entity;
- the designated person has the right (directly or indirectly) to appoint or remove a majority of the board of directors of the entity; or
- it is reasonable to expect that the person would be able to ensure the affairs of the entity are conducted in accordance with the person’s wishes.

The third test allows a flexible approach to the issue of ownership of control and must be carefully considered and applied. There is specific guidance on the treatment of minority interests in an entity (held by designated persons), joint interests (held with designated persons), and the aggregation of different holdings in an entity.

## Conclusion

In summary, the sanctions regime - and the asset-freezing provisions in particular - create a number of issues for parties to contentious proceedings which involve sanctioned Russian parties. In particular:

- the ability of sanctioned Russian individuals and entities to pay their own legal practitioners, disbursements (counsel's fees) and court fees; and
- the ability of sanctioned Russian parties to make or receive payments which may be ordered to be paid in the course of contentious proceedings and, in turn, the ability of non-designated parties to enforce judgments (whether interim or final awards) against such parties.

In the next article of this series, we will consider how the sanctions legislation attempts to deal with the above issues by way of exceptions and licensing.

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This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

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