



# THE GUIDE TO SANCTIONS

FOURTH EDITION

**Editors**

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Published in the United Kingdom by Law Business Research Ltd  
Holborn Gate, 330 High Holborn, London, WC1V 7QT, UK  
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[david.samuels@lbresearch.com](mailto:david.samuels@lbresearch.com)

ISBN 978-1-80449-256-7

Printed in Great Britain by  
Encompass Print Solutions, Derbyshire  
Tel: 0844 2480 112

# Acknowledgements

The publisher acknowledges and thanks the following for their learned assistance throughout the preparation of this book:

Akrivis Law Group, PLLC

Baker & Hostetler LLP

Baker McKenzie

Barnes & Thornburg LLP

BDO USA, PA

Bonifassi Avocats

Cravath, Swaine & Moore LLP

Dechert LLP

Eversheds Sutherland

Forensic Risk Alliance

Global Law Office

Jenner & Block LLP

Linklaters LLP

McGuireWoods LLP

Miller & Chevalier Chartered

Acknowledgements

Navacelle

Peters & Peters Solicitors LLP

Ropes & Gray LLP

Steptoe & Johnson

Sullivan & Cromwell LLP

Three Raymond Buildings

Willkie Farr & Gallagher LLP

# Publisher's Note

*The Guide to Sanctions* is published by Global Investigations Review (GIR) – the online home for everyone who specialises in investigating and resolving suspected corporate wrongdoing.

When this Guide was launched, I wrote that we were living in a new era for sanctions: more countries were using them, with greater creativity and (occasionally) self-centredness. I had no idea how true this statement would prove to be. Recent events have supercharged their use, to the point where sanctions never sleep. And that was before Russia invaded Ukraine . . .

Sanctions have become everybody's go-to tool. And little wonder. They are powerful; they reach people otherwise beyond reach. They are easy – they can be imposed or changed at a stroke, without real legislative scrutiny. And they are cheap for governments (as in the cost of making them versus their wider impact); once they exist, others do all the real heavy lifting.

It is on the heavy lifting part where this book can help. The pullulation of sanctions regimes, and sanctions, has created day-to-day headaches and challenges for all nearly all businesses and their advisers. Hitherto, no book has addressed this complicated picture in a structured way. *The Guide to Sanctions* corrects that by breaking down the main sanctions regimes and some of the practical problems they create.

For newcomers, it will provide an accessible introduction to the territory. For experienced practitioners, it will help them stress-test their own approach. And for those charged with running compliance programmes, it should help them to do so even better. Whoever you are, we are confident this book has something for you.

The Guide is part of the GIR technical library, which has developed around the fabulous *Practitioner's Guide to Global Investigations* (now in its fifth edition). *The Practitioner's Guide* tracks the life cycle of any internal investigation, from discovery of a potential problem to its resolution, telling the reader what to think

about at every stage. You should have both books in your library, as well as the other volumes in GIR's growing library – particularly our *Guide to Monitorships* and our new book on money-laundering and anti-money laundering regimes.

We supply copies of all our guides to GIR subscribers, gratis, as part of their subscription. Non-subscribers can read an e-version at [www.globalinvestigationsreview.com](http://www.globalinvestigationsreview.com).

I would like to thank the editors of *The Guide to Sanctions* for shaping our vision (in particular, Paul Feldberg, who suggested the idea), and the authors and my colleagues for the élan with which it has been brought to life.

We hope you find the book enjoyable and useful. And we welcome all suggestions on how to make it better. Please write to us at [insight@globalinvestigationsreview.com](mailto:insight@globalinvestigationsreview.com).

**David Samuels**  
Publisher, GIR  
September 2023

# Foreword

The term ‘sanctions’ is not new. The 90s have been called the ‘decade of sanctions’ of the UN Security Council. Today we are observing the unprecedented expansion of economic, financial, trade, cyber, targeted, individual and other types of sanctions (restrictive measures) applied by states and regional organisations unilaterally without the authorisation of the UN Security Council. Compliance with unilateral sanctions is enforced by multiple tools, including secondary sanctions exposure, criminalisation of sanctions circumvention and maximum pressure campaigns. Pecuniary penalties as a result of civil charges, even after securing settlement agreements with the US Office of Foreign Assets Control, may reach billions of US dollars.

Complicated, confusing and overlapping sanctions regulations, the proliferation of penalising mechanisms, the high risk and severity of penalties, unclear, lengthy, costly and complicated licensing procedures, uncertainties around the scope of humanitarian carve-outs, broad interpretations of the sanctions regimes, complications in delisting procedures and high legal costs all heighten risks and result in the growing de-risking and over-compliance by all actors in sanctioning, sanctioned and third countries.

It is a principled position of the mandate that any unilateral measures can only be taken by states and regional organisations without the authorisation of the UN Security Council if they fully correspond to criteria of countermeasures or retortions under the law of international responsibility. Any other measures qualify as unilateral coercive measures and are illegal under international law. These unilateral measures, independent of their legality, also have enormous humanitarian effects, which are often neglected or considered to be unintended by the sanctioning parties.

At the same time, as a Special Rapporteur I receive multiple complaints not only about the direct impact of sanctions but also often of over-compliance with all types of sanctions for many, if not all, of the reasons stated above.

De-risking and over-compliance have negative effects on all nationals or residents of countries under sanctions, often involving discrimination on the grounds of nationality, place of birth, residence, registration, IP address or any other nexus with these countries. It results in the isolation of countries, their companies and individuals, breach of trade and cooperation networks, and creates challenges to, or uncertainties of, access to justice and to remedies for those affected, and thus a lack of accountability.

I can also cite the detrimental effects on all basic human rights arising from impediments to the delivery of goods that are not subjected to sanctions, including those that are explicitly exempted from sanctions regimes via humanitarian carve-outs, such as food, medicine, fertilisers, medical equipment and spare parts, as well as many other goods necessary for the maintenance and development of critical infrastructure, thus rendering humanitarian provisions de facto almost non-existent. Financial institutions, manufacturers and delivery and insurance companies refer to broad and unclear interpretations of sanctions limitations by states or the compliance sector. They also mention the risks involved in delivering goods that may be perceived as 'dual use' (relevant to many types of medicine, rescue equipment and even simple consumer goods such as toothpaste), the impossibility or challenges of bank transfers, insurance or deliveries due to other elements of sanctions regulations, or the simple risk-aversion by refraining from dealing or cutting ties with any actor suspected of, or perceived as, having relations with the country under sanctions.

In particular, multiple reports refer to the challenges of delivering humanitarian assistance to the countries under sanctions even in the course of global public health crises, including the covid-19 pandemic, or epidemics (dengue), or in the aftermath of natural disasters such as earthquakes. They also refer to sanctions-induced challenges of effectively implementing humanitarian resolutions of the UN Security Council. Over-compliance and its serious adverse impact on humanitarian work persist even after the adoption of specific, targeted and often time-limited humanitarian carve-outs, such as those adopted for Syria by the US, UK and EU in response to its catastrophic earthquakes in February 2023 (UN Security Council Resolutions 2664 and 2615).

Information about the scope of international and unilateral sanctions, counter-sanctions, legal regimes of different countries, and legal assessment of, and challenges in, litigation in sanctions cases is often fragmentary or politicised. As a Special Rapporteur I very much welcome reflections and open dialogue on

all aspects relevant to sanctions and their impact, as well as discussions about mechanisms to ensure protection of the rights of all those affected by unilateral measures, analyses on the various challenges pertaining to humanitarian carve-outs and licensing, and mechanisms of litigation, accountability, responsibility and redress.

In terms of the serious practical implications of international and unilateral sanctions, compliance and over-compliance, I believe that the experience and views of practitioners exposed in *The Guide to Sanctions* will contribute to the international ongoing debate around the above-mentioned and other relevant issues.

**Alena Douhan**

UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights  
September 2023

## CHAPTER 3

# UK Sanctions

Paul Feldberg, Robert Dalling, Karam Jardaneh and Anna Gaudoin<sup>1</sup>

### Introduction

Following the end of the Brexit transition period on 31 December 2020, EU sanctions legislation is no longer directly applicable in the UK. While the UK and the EU continue to cooperate on sanctions policy, along with other countries such as the US, there are now significant differences in terms of both legislation and lists of designated persons. In practice, this means that there is now an additional sanctions regime for multinational companies to comply with, a fact underscored by increasing variations between the EU and the UK with regard to sanctions introduced in response to the Russian invasion of Ukraine. While the approach of the UK and EU has been similar in policy terms, there have been pronounced differences between the two sanctions regimes.

Although EU sanctions legislation is no longer directly applicable in the UK, the United Nations (UN) sanctions regime continues to apply in the UK.

The legislative framework for the UK's sanctions regime is found in the Sanctions and Anti-Money Laundering Act 2018 (SAML A). SAML A is a substantial piece of legislation that has transformed the way in which sanctions in the UK are created, enforced and challenged. In this chapter we look at the shape of the UK's regime under SAML A.

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<sup>1</sup> Paul Feldberg and Robert Dalling are partners, and Karam Jardaneh and Anna Gaudoin are senior associates, at Jenner & Block London LLP.

## UK sanctions bodies and authorities

A number of different entities share responsibility for formulating sanctions policy and implementing, administering and enforcing sanctions legislation in the UK. The Foreign, Commonwealth and Development Office (FCDO) is responsible for overall UK government policy on international sanctions.

Financial sanctions are administered and implemented by His Majesty's Treasury (HM Treasury), and specifically by the Office of Financial Sanctions Implementation (OFSI), which was established in 2016 to 'provide a high-quality service to the private sector, working closely with law enforcement to help ensure that financial sanctions are properly understood, implemented and enforced'.<sup>2</sup> OFSI deals with applications for financial sanctions licences and any necessary notifications and authorisations, and has the power to impose monetary penalties for breaches of financial sanctions.<sup>3</sup> Law enforcement agencies, such as the National Crime Agency, the Serious Fraud Office, the Crown Prosecution Service and HM Revenue and Customs (HMRC), may also investigate and bring enforcement action in respect of sanctions breaches. For further information about the enforcement of UK sanctions, see Chapter 4 of this Guide. Immigration sanctions prohibiting entry into the UK (commonly known as 'travel bans') are administered by the Home Office.<sup>4</sup>

Trade sanctions are administered and implemented by the Department for Business and Trade (DBT). The Export Control Joint Unit (ECJU), which is part of the DBT, administers the UK's system of export controls and licensing for military and dual-use items, as well as licences issued under the UK's various trade sanctions regimes. See Chapter 8 for further information about the UK export control regime.

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2 HM Treasury, 'New body to support financial sanctions implementation launched', [www.gov.uk/government/news/new-body-to-support-financial-sanctions-implementation-launched](https://www.gov.uk/government/news/new-body-to-support-financial-sanctions-implementation-launched).

3 See the Office of Financial Sanctions Implementation (OFSI) guidance 'UK Financial Sanctions – General Guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018' (OFSI General Guidance), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1144366/General\\_Guidance\\_-\\_UK\\_Financial\\_Sanctions\\_\\_Aug\\_2022\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1144366/General_Guidance_-_UK_Financial_Sanctions__Aug_2022_.pdf).

4 Foreign, Commonwealth and Development Office, UK Sanctions Guidance, [www.gov.uk/guidance/uk-sanctions](https://www.gov.uk/guidance/uk-sanctions).

## Sources of UK sanctions

Until recently, the UK largely followed the EU and the UN in terms of substantive sanctions measures, with the UK's autonomous sanctions powers exercised sparingly. While SAMLA facilitates the continued application of UN sanctions in the UK, it also significantly expands the scope of the UK's autonomous sanctions powers.

SAMLA gives powers to the 'appropriate minister' in the UK, defined as the relevant Secretary of State or HM Treasury,<sup>5</sup> to make regulations imposing sanctions. The appropriate minister can make regulations when the minister considers it is 'appropriate', for the following purposes:<sup>6</sup>

- to comply with an obligation that arises as a result of a UN Security Council Resolution;
- to comply with any other international obligation (which could include obligations arising from UK membership of other international organisations (for example, the Organization for Security and Co-operation in Europe) as well as other international treaties or agreements); or
- for other purposes specified in Section 1(2) of SAMLA, including the prevention of terrorism (in the UK or elsewhere); furthering the interests of national security or the interests of international peace and security; furthering a foreign policy objective of the UK; promoting the resolution of armed conflicts or the protection of civilians in conflict zones; deterring gross violations of human rights; promoting compliance with human rights law; preventing the spread and use of weapons and materials of mass destruction; and promoting respect for democracy, the rule of law and good governance.<sup>7</sup>

In line with the discretionary purposes linked to human rights (as listed above), the UK government adopted a Global Human Rights Sanctions regime on 6 July 2020, followed by the Global Anti-Corruption Sanctions regime on 26 April 2021. In addition, in the run up to the end of the Brexit transition period, the UK government laid down secondary legislation under SAMLA

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<sup>5</sup> Sanctions and Anti-Money Laundering Act 2018 (SAMLA), Section 1(9).

<sup>6</sup> *id.*, at Section 1, Paragraphs (1) and (2).

<sup>7</sup> The Economic Crime (Transparency and Enforcement) Act 2022 removed certain additional requirements relating to the making of regulations for any of the discretionary purposes under Section 1(2); namely the requirement that a purpose could only be considered to be 'appropriate' if the minister was satisfied that there were good reasons to pursue the purpose and that the imposition of sanctions was a reasonable course of action for that purpose.

for over 30 sanctions regimes. Through these regulations, which came fully into force on 31 December 2020,<sup>8</sup> the UK government intended to deliver substantially the same policy effects as existing regimes that were implemented by the EU, although the legislation is not identical. Since December 2020, the UK has amended certain regimes extensively (for example, the Russia regime), while other regimes remain unchanged.

## Types of sanctions

SAMLA provides for a wide range of sanctions to be imposed by regulations, including financial sanctions, trade sanctions, immigration sanctions, and aircraft and shipping sanctions.

Financial sanctions made pursuant to SAMLA may contain prohibitions and requirements that are similar but not identical to those found in EU sanctions (covered in Chapter 2 of this Guide). Under Section 3 of SAMLA, regulations may:

- require the freezing of funds or economic resources owned, held or controlled by designated persons;
- restrict the provision of financial services to, or for the benefit of, designated persons (or persons ‘connected with a prescribed country’);
- prevent the making available of funds or economic resources to designated persons (as well as the receipt of funds or economic resources from them);
- prevent certain financial services being offered where they concern financial products issued by designated persons; and
- prevent the ownership or control of designated entities.

A breach of any of these prohibitions may be a criminal offence if the person or entity in question knows or has reasonable cause to suspect that the other person is designated under sanctions legislation and that person engages in prohibited conduct with the designated person, such as making funds available to them without a licence. A breach could also result in monetary penalties even where a person did not know or suspect they were breaching the prohibitions. Most prohibitions imposed by UK sanctions law are supported by prohibitions on circumventing the main prohibitions and on enabling or facilitating the

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<sup>8</sup> For a full list of regimes under SAMLA that came into force on 31 December 2020, see OFSI’s consolidated List Change Notice dated 28 February 2022, at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1057742/280222\\_Consolidated\\_List\\_Change\\_Notice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1057742/280222_Consolidated_List_Change_Notice.pdf).

contravention of the main prohibitions.<sup>9</sup> Taken together, these prohibitions in effect prevent any individual or company subject to UK sanctions law from having any dealings of an economic nature with a designated person, if that individual or company knows or has reasonable cause to suspect that it is dealing with a designated person, even where those dealings would otherwise be perfectly lawful. The various prohibitions apply to dealing ‘directly’ as well as ‘indirectly’ with a designated person.

The OFSI guidance ‘UK Financial Sanctions – General Guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018’ (the OFSI General Guidance), most recently issued in August 2022,<sup>10</sup> warns that the prohibitions relating to ‘financial services’ under UK sanctions regulations will be interpreted more broadly than the prohibitions relating to ‘financial assistance’ under existing EU sanctions regimes. In particular, the prohibitions relating to financial services cover ‘any service of a financial nature, including (but not limited to) payment and money transmission services, charge and debit cards, travellers’ cheques and bankers’ drafts’. Businesses and practitioners should therefore be alive to this difference between the two regimes, to ensure that conduct permissible under one regime does not result in an inadvertent breach of the other. The OFSI General Guidance is not legally binding as it does not form part of UK legislation or judge-made case law. However, it is valuable as an indicator of how the UK government interprets UK sanctions legislation. In the absence of judicial authority on a point of interpretation, it is sensible to follow the OFSI General Guidance. The OFSI General Guidance consolidates definitions already included in SAMLA and regime-specific regulations and provides further guidance and information in relation to its interpretation of these definitions.

- ‘Funds’ mean ‘financial assets and benefits of every kind’, including (but not limited to) cash, cheques, deposits with financial institutions, debts, all types of security (including stocks, shares, bonds, notes, warrants, derivatives contracts), interest, dividends, guarantees, letters of credit, bills of lading and bills of sale.<sup>11</sup>

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9 See, for example, the Russia (Sanctions) (EU Exit) Regulations 2019 (the Russia Regulations), at Regulation 19.

10 See OFSI General Guidance, at Section 3.2.

11 *id.*, at p. 15; SAMLA, at Regulation 60.

- ‘Economic resources’ mean ‘assets of every kind – tangible or intangible, movable or immovable – which are not funds, but may be used to obtain funds, goods or services’. The phrase includes (but is not limited to) precious metals or stones, antiques, vehicles and property.<sup>12</sup>
- The Guidance indicates that cryptoassets will, in OFSI’s view, fall within the definitions of ‘funds’ and ‘economic resources’.<sup>13</sup>
- ‘Dealing with funds’, in the OFSI General Guidance, means ‘moving, transferring, altering, using, accessing, or otherwise dealing with them in any way which 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’.<sup>14</sup>
- ‘Dealing with economic resources’ means exchanging them ‘for funds, goods or services’, or using them ‘in exchange for funds, goods or services (whether by pledging them as security or otherwise)’.<sup>15</sup> The OFSI General Guidance indicates that the phrase covers the use of ‘economic resources to obtain funds, goods, or services in any way, including, but not limited to, by selling, hiring or mortgaging them’. It should be noted that the ‘everyday use by a designated person of their own economic resources for personal consumption is not prohibited’.<sup>16</sup>
- ‘Making available funds or economic resources for the benefit of a [designated person]’ extends only to situations where the designated person obtains, or is able to obtain, a significant financial benefit as a result.<sup>17</sup> A financial benefit includes the discharge of a debt for which the designated person is wholly or partly responsible.<sup>18</sup>

As regards trade sanctions, which are covered in Section 5 and Schedule 1, SAMLA provides a raft of powers, including powers to restrict imports and exports to and from prescribed countries, as well as the power to restrict imports or exports when

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12 *ibid.*

13 *ibid.*

14 *ibid.* This is consistent with interpretative provisions found in sanctions legislation, such as Regulation 11(4) of the Russia Regulations.

15 See, for example, Regulation 11(5) of the Russia Regulations.

16 See OFSI General Guidance, at p. 16.

17 See, for example, Regulation 13(4)(a) of the Russia Regulations.

18 See, for example, *id.*, at Regulation 13(4)(b). In *Celestial Aviation Services Ltd v. UniCredit Bank AG (London Branch)* [2023] EWHC 663 (Comm), the court found (on an *obiter* basis) that payment by a confirming bank to a beneficiary under a letter of credit issued by a designated bank would not amount to a financial benefit for the designated bank.

they are for the benefit of a designated person, and to prevent the transfer of technologies to a designated person, as well as the sale of land to or by a designated person. Services relating to these imports, exports, transfers, sales and acquisitions may also be prevented by powers conferred by SAMLA.<sup>19</sup> See Chapter 8 of this Guide for further information about the UK export control regime.

Immigration sanctions are covered at Section 4 of SAMLA, which confers powers to refuse leave to enter or to remain in the UK.<sup>20</sup> Aircraft and shipping sanctions (covered in Sections 6 and 7, respectively) provide powers in relation to aircraft and ships connected to designated persons or prescribed countries, such as detaining them, preventing them from entering or leaving UK airspace or waters, and preventing their registration in prescribed countries.

The UK government has made extensive use of its powers under SAMLA in introducing sanctions in response to the Russian invasion of Ukraine; for example, the UK:

- expanded the grounds on which it can designate individuals and entities under the Russia (Sanctions) (EU Exit) Regulations 2019 (the Russia Regulations),<sup>21</sup> and, as at 27 March 2023, the UK has made 180 entities and 1,549 individuals subject to asset freezes under the Russia Regulations (see below for further information on designation);

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19 The Export Control Joint Unit will remain responsible for controlling and licensing the export of controlled goods. See [www.gov.uk/guidance/exporting-controlled-goods-after-eu-exit](http://www.gov.uk/guidance/exporting-controlled-goods-after-eu-exit).

20 The UK government has published regulations relating to the exercise of these powers (the Immigration (Persons Designated under Sanctions Regulations) (EU Exit) Regulations 2020).

21 The Russia Regulations originally only provided for the designation of persons who are or have been involved in 'destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine'. Under Regulation 6 of the Russia Regulations, the UK can now designate persons who are or have been 'involved in . . . obtaining a benefit from or supporting the Government of Russia'. This includes persons: (1) carrying on business as a government of Russia-affiliated entity; (2) carrying on a business of economic significance to the government of Russia; (3) carrying on business in a sector of strategic significance to the government of Russia; (4) owning or controlling directly or indirectly, or working as a director, trustee, manager or equivalent of any of (1) to (3); and (5) holding the right, directly or indirectly, to nominate at least one director (whether executive or non-executive), trustee or equivalent of (1) to (3).

- prohibited certain credit or financial institutions from establishing or continuing a correspondent banking relationship with a designated person; or processing a sterling payment to, from or via a designated person, or a credit or financial institution (domiciled anywhere, including the UK) owned or controlled by a designated person;<sup>22</sup>
- enhanced existing capital markets and loan restrictions and prohibited dealings with transferable securities and money market instruments issued on behalf of, and the provision of certain loans or credit to, a wide range of persons, including persons connected with Russia (this includes companies incorporated or constituted under the law of Russia);<sup>23</sup>
- prohibited the provision of financial services for the purposes of foreign exchange reserve and asset management to: (1) the Central Bank of the Russian Federation; (2) the National Wealth Fund of the Russian Federation; (3) the Ministry of Finance of the Russian Federation; and (4) a person owned or controlled directly or indirectly by, or a person acting on behalf of or at the direction of, a person mentioned in (1) to (3);<sup>24</sup>
- introduced wide prohibitions on investments in Russia (including direct acquisition of any ownership interest in Russian land and persons connected with Russia);<sup>25</sup>
- introduced prohibitions on the provision of trusts services to or for the benefit of designated persons or those connected with Russia;
- expanded trade-related restrictions under the Russia Regulations; for example, this includes restrictions on:
  - the export and supply of aviation and space goods and luxury goods to Russia;<sup>26</sup>
  - the import, acquisition and supply of iron and steel products from Russia;<sup>27</sup>
  - the import, acquisition, supply and delivery of Russian oil and oil products into the UK;<sup>28</sup> and

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22 Regulation 17A of the Russia Regulations.

23 Regulations 16 and 17 of the Russia Regulations.

24 *id.*, at Regulation 18A.

25 *id.*, at Regulation 18B.

26 *id.*, at Regulation 46B.

27 *id.*, at Regulations 46C–46F.

28 *id.*, at Regulations 46Z3–46Z6. See also Guidance, 'UK ban on Russian oil and oil products', [www.gov.uk/government/publications/uk-ban-on-russian-oil-and-oil-products/uk-ban-on-russian-oil-and-oil-products](https://www.gov.uk/government/publications/uk-ban-on-russian-oil-and-oil-products/uk-ban-on-russian-oil-and-oil-products).

- maritime transportation of oil and oil products from a place in Russia to a third country;<sup>29</sup> and
- prohibited the direct or indirect provision of professional and business services (accounting, advertising, architectural, auditing, business and management consulting, engineering, IT consultancy and design, and public relations services) to persons connected with Russia.<sup>30</sup>

### Territorial extent and application

The provisions of SAML A and regulations made under it are enforceable against persons within the UK, including the UK's territorial waters.<sup>31</sup> The regulations made under SAML A may extend to:

- 'British ships in foreign waters or international waters';<sup>32</sup>
- 'ships without nationality in international waters';<sup>33</sup> and
- 'foreign ships in international waters'.<sup>34</sup>

The provisions of SAML A also apply to all UK persons, wherever they are in the world. A UK person is a UK national or a body incorporated or constituted under the law of any part of the UK.<sup>35</sup> This means that UK entities and their non-UK

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29 *id.*, at Regulation 46Z9B. However, the UK also introduced a coordinated price cap exception to the maritime transportation and associated services ban. This deprives Russia of access to excess oil revenues by constraining its ability to sell at global market prices, while still enabling Russian oil to flow to the third countries that need it. See also 'UK Maritime Services Ban and Oil Price Cap – Industry Guidance', [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1140563/OFSI\\_Industry\\_Guidance\\_-\\_Maritime\\_Services\\_Prohibition\\_and\\_Oil\\_Price\\_Cap\\_-\\_March\\_2023\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1140563/OFSI_Industry_Guidance_-_Maritime_Services_Prohibition_and_Oil_Price_Cap_-_March_2023__1_.pdf).

30 *id.*, at Regulation 54C. See also Guidance, 'Supplying professional and business services to a person connected with Russia', [www.gov.uk/government/publications/professional-and-business-services-to-a-person-connected-with-russia/professional-and-business-services-to-a-person-connected-with-russia](http://www.gov.uk/government/publications/professional-and-business-services-to-a-person-connected-with-russia/professional-and-business-services-to-a-person-connected-with-russia).

31 SAML A, at Sections 21(1)(a) and 6(1).

32 *id.*, at Section 19(1)(a) and (11). When exercising this power in relation to a foreign ship, the Secretary of State must approve the action. In this instance, the Secretary of State's approval is contingent on either that ship's home state requesting the assistance of the UK or there being a basis for the action under international law. These powers are not extended to aircraft.

33 *id.*, at Section 19(1)(b).

34 *id.*, at Section 19(1)(c).

35 *id.*, at Section 21(1)(b).

branches must comply with UK sanctions law even when their activities take place abroad.<sup>36</sup>

OFSI has published guidance on civil monetary penalties for financial sanctions breaches (the OFSI Monetary Penalties Guidance), most recently issued in March 2023. This sets out OFSI's approach to jurisdictional issues, confirming that it will only seek to enforce breaches of UK financial sanctions where there is a link to the UK.

OFSI considers that:

*a UK nexus might be created by such things as a UK company working overseas, transactions using clearing services in the UK, actions by a local subsidiary of a UK company (depending on the governance), action taking place overseas but directed from within the UK, or financial products or insurance bought on UK markets but held or used overseas.*<sup>37</sup>

The OFSI Monetary Penalties Guidance states that this list is not intended to be exhaustive or definitive. We should note that, although this Guidance relates to civil monetary penalties, we would expect OFSI to adopt a similar approach when considering jurisdictional issues in relation to potential criminal sanctions violations. For further information about the enforcement of UK sanctions, see Chapter 4 of this Guide.

### **Liability in the event of a UK sanctions law breach**

As with breaches of other provisions of UK criminal law, liability under UK sanctions law may attach to both individuals and entities.<sup>38</sup> For further information about the enforcement action that may be taken in response to a breach of UK sanctions law, see Chapter 4.

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36 *id.*, at Section 21(2)(b).

37 OFSI Monetary Penalties Guidance, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1143219/March\\_2023\\_Monetary\\_Penalty\\_and\\_Enforcement\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1143219/March_2023_Monetary_Penalty_and_Enforcement_Guidance.pdf), at Section 3.8.

38 Although the substantive sanctions laws discussed in this chapter have effect throughout the UK (and in some cases have extraterritorial effect), issues of criminal liability are determined by reference to the law of the constituent parts of the UK (i.e., England and Wales, Scotland and Northern Ireland, depending on where criminal proceedings are brought). In this chapter, we deal with liability under the laws of England and Wales (i.e., how issues of liability would be determined in the courts of England and Wales).

There are a number of ways in which criminal liability may arise in respect of UK sanctions laws. First, a person may be prosecuted in any part of the UK for a breach of UK sanctions law where that person is directly involved in the commission of the offence, regardless of where they are in the world when they breach the law.

Second, a person may be liable under ordinary principles of criminal law on the basis of less direct forms of involvement. These alternative routes to liability include:

- encouraging or assisting another person to commit an offence;<sup>39</sup>
- (in relation to many sanctions laws), enabling or facilitating the contravention of a prohibition;<sup>40</sup> and
- conspiring (agreeing) with another person to commit an offence.<sup>41</sup>

Third, certain individuals may be liable as a result of a finding of liability on the part of a company or entity (corporate liability is discussed below). Sanctions laws typically provide that a director, manager, secretary or other similar officer of a body corporate will be liable where the entity commits an offence as a result of the consent, connivance (agreement) or neglect of that individual.<sup>42</sup> These provisions are intended to capture any individual occupying a managerial position within an entity.

A corporate entity may only be prosecuted for a crime in limited circumstances. The law of England and Wales is more restrictive than that of the US, for example, or other jurisdictions that have adopted a broad system of vicarious liability in which a company may be criminally liable for the acts of an employee provided that the employee was acting in the course of their employment.

In the case of a company, criminal liability for breach of sanctions legislation would arise only if:

- a person at a senior level within the organisation, typically at director level, was involved in the commission of an offence in the course of their employment;<sup>43</sup> or

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39 Under Part 2 of the Serious Crime Act 2007.

40 See, for example, Regulation 19 of the Russia Regulations.

41 Under Part 1 of the Criminal Law Act 1977.

42 See, for example, Regulation 81 of the Russia Regulations.

43 See *Tesco Supermarkets Ltd. v. Natrass* [1971] UKHL 1.

- the company's board delegated full authority for a particular activity or category of activities to one or more individuals, and those individuals committed an offence in the course of their employment<sup>44</sup> (again by reference to one of the first two scenarios outlined above).

OFSI also has powers to impose monetary penalties if it is satisfied that on the balance of probabilities a person breached a prohibition or failed to comply with an obligation under UK sanctions law.<sup>45</sup> The UK government introduced the Economic Crime (Transparency and Enforcement) Act 2022 very soon after the Russian invasion of Ukraine. The Act removed the requirement for OFSI to prove that a person must have known or suspected they were breaching UK sanctions law, when considering imposing a financial penalty. All that OFSI is now required to prove on the balance of probabilities, to levy a financial penalty, is that the entity or person breached the prohibition.<sup>46</sup> This effectively makes breaching sanctions a strict liability civil offence.

## Designation process

### Designation lists

The UK currently maintains three lists of designations made under sanctions legislation. OFSI continues to maintain two lists of those subject to financial sanctions, one listing asset freeze designations (the Consolidated List) and the other listing entities subject to capital market restrictions under the Russian sanctions regime (the Investment Ban Targets List).

Post-Brexit, the UK also maintains a third list, the UK Sanctions List, maintained by the FCDO. This is a more extensive list, which consists of all designations made under UK sanctions (financial or otherwise).

### Designation by name

SAMLA empowers relevant ministers to designate individuals and entities where the minister has reasonable grounds to suspect<sup>47</sup> that the person is involved in, or connected to, an activity set out in the regulations for a particular sanctions

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44 See *The Serious Fraud Office v. Barclays PLC & ANR* [2018] EWHC 3055 (QB), [www.judiciary.uk/wp-content/uploads/2020/02/sfo-v-barclays-judgment-12-11-18.pdf](http://www.judiciary.uk/wp-content/uploads/2020/02/sfo-v-barclays-judgment-12-11-18.pdf).

45 Section 146 of the Policing and Crime Act 2017.

46 Section 54 of the Economic Crime (Transparency and Enforcement) Act 2022.

47 In *LLC Synesis v. Secretary of State for Foreign, Commonwealth and Development Affairs* [2023] EWHC 541 (Admin), the High Court found that the statutory threshold for 'reasonable grounds to suspect' is distinct from the standard of review applied by courts when

regime (an involved person<sup>48</sup>).<sup>49</sup> The UK government removed the stipulation that the minister must also consider that it is appropriate to designate that person (this was in response to criticism that its process for designating individuals and entities took too long).<sup>50</sup> It is important to note that an entity can be designated on the basis that it is owned or controlled by another designated person, and the OFSI General Guidance indicates that the UK ‘will look to designate owned or controlled entities/individuals in their own right where possible’.<sup>51</sup> However, as set out in more detail below, even if an entity is not explicitly designated, financial sanctions will also apply to that entity in its entirety if it is owned or controlled by a designated person, meaning that it is effectively designated as well.

In addition, SAML A empowers relevant ministers to designate individuals and entities:

- that have been designated by the UN;<sup>52</sup> and
- on an expedited basis if that individual or entity has been designated by the US, EU, Australia or Canada (or other jurisdiction as specified by relevant regulations) and it is in the public interest to make a designation under the expedited procedure.<sup>53</sup>

Where an individual or entity is designated on an expedited basis, the relevant designation shall only last for 56 days, unless the relevant minister either certifies that the individual or entity continues to be sanctioned by an applicable jurisdiction and it is in the public interest for the designation to continue for a further 56 days, or that the minister has reasonable grounds to suspect that the individual or entity is an involved person.<sup>54</sup>

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considering a designation: the former requires a state of mind rather than a state of affairs. In addition, the information and material open to consideration by the minister in making a decision is not limited to what would be admitted in a court of law but could include hearsay allegations and intelligence.

48 An ‘involved person’ could include an individual, group or organisation involved in an activity, or a person controlled by them, someone acting on their behalf or an associated person.

49 SAML A, at Section 11.

50 See *id.*, at the now repealed Section 11(2)(b) (repealed by the Economic Crime (Transparency and Enforcement) Act 2022).

51 See OFSI General Guidance, at Section 4.1.

52 SAML A, at Section 1.

53 *id.*, at Section 11, as amended by the Economic Crime (Transparency and Enforcement) Act 2022.

54 *ibid.*

When a person has been designated by name, the notification usually required by sanctions regimes created under SAMLA must include a brief statement of reasons. However, the minister does not have to disclose anything that might damage national security or international relations, the prevention or detection of serious crime, or the interests of justice.<sup>55</sup>

### Designation by description

SAMLA also permits a minister to designate persons by description rather than by name. According to the Explanatory Notes to SAMLA, '[t]his power can only be exercised when it is not practicable for the Minister to identify by name all the persons falling within the description, and the description is sufficiently precise that a reasonable person would know whether any person falls within it.'<sup>56</sup>

### Ownership and control

Section 62 of SAMLA permits specific definitions to be inserted into each sanctions regulation on ownership and control. SAMLA itself does not provide a definition for ownership and control. The regulations adopted to date generally contain identical provisions setting out the meaning and thresholds for ownership and control of an entity by a designated person. A company is owned or controlled directly or indirectly by another person if either or both of the following two conditions is met:

- the person holds directly or indirectly more than 50 per cent of the shares or voting rights in the company, or the right, directly or indirectly, to appoint or remove a majority of the board of its directors; or
- it is reasonable to expect that the person would '(if [the person] chose to) be able, in most cases or in significant respects, by whatever means and, whether directly or indirectly, to achieve the result that affairs of [the company] are conducted in accordance with [the person's] wishes'.<sup>57</sup>

The OFSI Monetary Penalties Guidance provides further useful context when assessing the ownership and control of entities. It states that where OFSI determines that an incorrect assessment of ownership and control of an entity is relevant to a breach of sanctions, it will consider the degree and quality of research and due

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55 *ibid.* Section 10(4) of the Act provides that regulations made under SAMLA may make provision as to notification and publicity.

56 Explanatory Notes to SAMLA, Paragraph 58.

57 See, e.g., Regulation 7 of the Russia Regulations.

diligence conducted on the ownership and control of that entity.<sup>58</sup> Appropriate due diligence will be considered a mitigating factor where the ownership and control determination was reached in good faith and was a reasonable conclusion, while failure to carry out appropriate due diligence, or carrying out the due diligence in bad faith, will be considered an aggravating factor.<sup>59</sup> OFSI will also consider whether the level of due diligence conducted was appropriate to the degree of sanctions risk and the nature of the transaction.<sup>60</sup> The guidance includes examples of areas of enquiry that OFSI may expect to be undertaken in establishing whether an entity is owned or controlled by a designated person. This includes the percentage of shares or voting power (or both) of the shareholders; whether the ownership or shareholding has recently been altered or divested; whether there are indications of continued influence by a designated person; or the presence or involvement of proxies, including parties holding assets on behalf of a designated person.<sup>61</sup>

Further provisions on ownership and control are set out in schedules to each of the regulations adopted under SAMLA.

In addition, the definitions of ownership and control for the purposes of asset freezes may not be applicable for the purposes of other provisions of SAMLA and, therefore, they should always be carefully checked. For example, the UK's Russian sanctions regime imposes a slightly more limited test (without the control element) in the context of certain financial restrictions concerning loans and credit arrangements. In that context, an entity is owned by another person if the person holds directly or indirectly more than 50 per cent of the shares or voting rights in the company.<sup>62</sup>

As noted above, an entity owned or controlled by a designated person is liable to be designated expressly by the UK government. The OFSI General Guidance confirms that the 'UK Government will look to designate owned or controlled entities/individuals in their own right where possible'.<sup>63</sup> Further, after the original designation of an entity, it is likely that there will be additional designations under the ownership and control criteria as the Secretary of State becomes aware of individuals or entities linked to the already designated individuals and organisations.

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58 See Section 3.22 of the OFSI Monetary Penalties Guidance.

59 *id.*, at Section 3.24.

60 *id.*, at Section 3.25.

61 *id.*, at Section 3.29.

62 Regulation 16(7) of the Russia Regulations.

63 See Section 4.1 of the OFSI General Guidance. Note that this is only guidance: the actual interpretation of sanctions legislation is a matter for the courts.

However, the prohibitions on making funds or economic resources available directly or indirectly to a designated person also prohibit making them available to an entity that is owned or controlled, directly or indirectly, by the designated person even if that person is not explicitly recorded on the designation list. The OFSI General Guidance makes clear that if the relevant ownership and control criteria are met, ‘and the person who owns or controls the entity is also a designated person, then financial sanctions will also apply to that entity in its entirety (meaning these assets should also be frozen)’. This means even if an entity is not explicitly named in a designation, financial sanctions will also apply to it if it is owned or controlled by a designated person. Therefore, companies will need to conduct significant due diligence when dealing with entities that may be linked to designated individuals and organisations.

Each regime-specific set of sanctions regulations will also need to be read alongside the OFSI General Guidance on ownership and control.<sup>64</sup> The OFSI General Guidance provides guidance on when an entity may become subject to an asset freeze if a designated person owns a minority interest in that entity. There is also guidance on how to deal with funds that are jointly owned by a designated person.

Unlike the EU guidance on ownership and control, the definitions adopted for the purposes of the SAML A regulations are not presented as examples of circumstances in which ownership and control can be presumed unless rebutted, but instead as conclusive indicia of ownership and control for the purposes of the UK autonomous sanctions.

The OFSI General Guidance has been revised to clarify that the ownership of separately designated individuals will not be aggregated, unless (for example) the shares or rights of the designated persons are subject to a joint arrangement.<sup>65</sup> By contrast, the EU’s approach, as clarified in a recent set of frequently asked questions, is to ‘take into account the aggregated ownership’ of an entity.<sup>66</sup> In practice, the level of due diligence conducted by a company with a view to questions of ownership and control is likely to vary depending on its sector and geographic exposure. Companies that are subject to due diligence requirements under anti-money laundering and counterterrorist financing regulations, or that have operated in high-risk sanctions countries such as Russia, are likely to have

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64 See *ibid.*

65 *id.*, at Section 4.1.4.

66 See EU FAQs, ‘Assets freeze and prohibition to make funds and economic resources available’, [https://finance.ec.europa.eu/system/files/2023-05/faqs-sanctions-russia-consolidated\\_en\\_0.pdf](https://finance.ec.europa.eu/system/files/2023-05/faqs-sanctions-russia-consolidated_en_0.pdf).

in place procedures designed to identify the presence of a designated person in a company's ownership structure. Companies that fall outside the scope of anti-money laundering and counterterrorist financing regulations may well not have these types of procedures in place, although they are still subject to sanctions legislation, and will commit an offence if they deal with a designated person when they know, or have reasonable cause to suspect, that they are dealing with such a person.

### Challenging designations and delisting under SAMLA

One of the key differences between the pre- and post-Brexit UK sanctions regimes is the way in which those subject to financial sanctions can challenge their designation. Under the pre-Brexit regime, persons designated under EU sanctions, by virtue of either a UN listing or an EU listing, were only able to challenge their designations at EU level and, to a more limited extent, UN level. SAMLA permits individuals and entities to challenge their listings in the UK or to request the UK's assistance to secure their removal from a UN list.

Although SAMLA provides a mechanism for those listed under UK and UN sanctions regimes to challenge their listing, many persons would also likely be designated under corresponding EU sanctions. As under the pre-Brexit regime, there is no mechanism to challenge EU designations in the UK. However, designation transposed into UK law pursuant to secondary legislation under SAMLA can be challenged in the UK. There are also likely to be complexities in seeking to challenge a designation under the expedited designation process where the UK government is in effect relying on the evidential basis put forward by another jurisdiction as justification for a designation.

### Right to request variation or revocation of designation

SAMLA provides a designated person the right to ask the government to revoke or vary their designation;<sup>67</sup> for example, if a person believes they have been misidentified or considers the designation does not meet the required evidentiary threshold.<sup>68</sup>

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<sup>67</sup> SAMLA, at Section 23(1).

<sup>68</sup> Explanatory Notes to SAMLA, at Paragraph 89.

The evidentiary threshold for designation by name and by description using the standard procedure is set out in Sections 11(2A) and 12(5) of SAMLA, respectively. These requirements are that the appropriate minister has ‘reasonable grounds to suspect’ that the person, organisation or the person falling within that description is an involved person<sup>69</sup> (see above for the meaning of this phrase).

The UK government’s response to the public consultation on the future UK sanctions regime states that the ‘reasonable grounds to suspect’ test is the appropriate evidentiary threshold.<sup>70</sup> This threshold would only be met if there is sufficient information or evidence to enable the government to form a reasonable suspicion.<sup>71</sup> Section 23 of SAMLA allows designated persons access to quick redress, and is labelled as an administrative challenge.<sup>72</sup> In practice, the FCDO is understood to have taken over six months to decide on applications under Section 23 of SAMLA. It is clear from SAMLA that the decision on this kind of request must be made as soon as ‘reasonably practicable’,<sup>73</sup> and the person who makes the request must be informed of the decision and the reasons ‘as soon as reasonably practicable after the decision was made’.<sup>74</sup>

However, this route is not available to persons subject to a UN designation. UN-designated persons must request that the appropriate minister ‘use their best endeavours’ to persuade the UN to remove them from the relevant UN instrument.<sup>75</sup>

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69 See SAMLA, at Section 11(2A) for designation by name, and see Section 12(5)(a) for designation by description.

70 See HM Government response to public consultation on the UK’s future legal framework for imposing and implementing sanctions, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/635101/consultation-uk-future-legal-framework-sanctions-government-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/635101/consultation-uk-future-legal-framework-sanctions-government-response.pdf), at pp. 9–12.

71 *ibid.*

72 Explanatory Notes to SAMLA, at Paragraph 89.

73 SAMLA, at Section 33(2)(a).

74 *id.*, at Section 33(2)(b). The Sanctions Review Procedure (EU Exit) Regulations 2018, which came into force in January 2019, make provision for the procedure applicable to these requests.

75 *id.*, at Section 25.

Once a request has been made, an appropriate minister must decide whether to comply with the request.<sup>76</sup> The same designated persons cannot submit another request upon assessment by the appropriate minister, unless that person can show that there is a significant matter of which the government was not aware.<sup>77</sup>

The appropriate minister who made a designation has the discretion to revoke or vary that designation.<sup>78</sup> Revoking a designation means that the designated person would no longer be subject to the restrictions set out in the relevant regulation.<sup>79</sup> Varying a designation allows the minister to add any changes to the designation, such as updating information used to identify an individual.<sup>80</sup>

However, a minister is obliged to revoke a designation when the required conditions of the relevant designation power are not met.<sup>81</sup> This may be as a result of the government's own review of designations, or if a designated persons seeks reassessment of their designation.

### Designated persons seeking reassessment of their designation

SAMLA also provides designated persons a route to challenge government decisions in the High Court, or in Scotland, the Court of Session.<sup>82</sup>

When considering an application brought under Section 38 of SAMLA, the courts will apply the legal principles of judicial review.<sup>83</sup> If a designated person seeks a revocation or variation of their listing, they must apply for this through the administrative process listed in SAMLA before being able to access the redress through a legal challenge.

The following decisions can be challenged in the relevant courts:

- a decision by the appropriate minister on whether to vary or revoke a designation or to take no action with respect to it (following a request for revocation or variation);<sup>84</sup> or

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76 For UK designations, see SAMLA, at Section 23 and Explanatory Notes to SAMLA, at Paragraph 90. For UN sanctions, see SAMLA, at Section 25 and Explanatory Notes to SAMLA, at Paragraph 93.

77 Explanatory Notes to SAMLA, at Paragraphs 91 and 93.

78 SAMLA, at Section 22(2).

79 Explanatory Notes to SAMLA, at Paragraph 87.

80 *ibid.*

81 SAMLA, at Section 22, Paragraphs (3) and (4).

82 *id.*, at Section 38(2).

83 Explanatory Notes to SAMLA, at Paragraph 111.

84 SAMLA, at Section 38(1), Paragraphs (a) and (b).

- if the appropriate minister did not comply with the request to use best endeavours to persuade the UN to remove them from the relevant UN instrument.<sup>85</sup>

Under proceedings on an application under Section 38 of SAMLA, the courts may not award damages unless the court is satisfied that the decision concerned was made in bad faith.<sup>86</sup> In addition, any damages awarded are limited to a cap in regulations that are yet to be published.<sup>87</sup> This approach is comparable with the current law on awards of damages in sanctions cases within the EU.<sup>88</sup> This Section also confirms that legal challenges are to be dealt with under the provisions in Section 38.<sup>89</sup>

In March 2023, in *LLC Synesis v. Secretary of State for Foreign, Commonwealth and Development Affairs*,<sup>90</sup> the High Court issued a judgment in respect of the first designation challenge under Section 38 of SAMLA. In rejecting the designated person's challenge, the High Court confirmed that it 'cannot stand in the shoes of the [minister] when conducting this review exercise under section 38 of SAMLA. Instead, the Court's role is to examine whether the [minister's] decision was either based on no evidence or was irrational.' In light of the significant number of designations under the Russia Regulations, we expect to see more challenges under Section 38 of SAMLA in the future. However, it took the *Synesis* case over two years from the claimant's designation to reach the High Court in March 2023 and so it may take some time before these cases reach the High Court.

### Periodic government review

The requirement for the government to conduct periodic reviews of sanctions was repealed by the Economic Crime (Transparency and Enforcement) Act in 2022.<sup>91</sup>

### Licensing

Sanctions legislation typically provides for certain exceptions from the prohibitions and restrictions imposed by the legislation. These exceptions may take the form of exempt activities (i.e., conduct that is expressly permitted by the

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85 *id.*, at Section 38(1)(c) and Explanatory Notes to SAMLA, at Paragraph 110.

86 SAMLA, at Section 39(2) and Explanatory Notes to SAMLA, at Paragraph 113.

87 SAMLA, at Section 39(2A).

88 Explanatory Notes to SAMLA, at Paragraph 113.

89 SAMLA, at Section 39(1).

90 *LLC Synesis v. Secretary of State for Foreign, Commonwealth and Development Affairs* [2023] EWHC 541 (Admin).

91 Economic Crime (Transparency and Enforcement) Act, at Section 62.

sanctions legislation in question without the need for any licence or authorisation). Sanctions legislation may also provide for licences and authorisations to be granted to permit conduct that would otherwise be in breach of a prohibition.

OFSI and the ECJU are responsible for issuing licences in connection with UK financial sanctions and trade sanctions, respectively. Those subject to immigration sanctions can request to travel in exceptional circumstances using the visa application process.

The OFSI General Guidance confirms that specific licences issued while the UK was bound by EU sanctions ‘will be treated as if they had been issued under the relevant [SAML] Regulations’ and can be relied upon until they expire.<sup>92</sup>

The OFSI General Guidance contains a useful explanation of the approach taken by OFSI in relation to licensing grounds that are relevant to UK sanctions.<sup>93</sup> These include the following.

- Satisfying the basic needs of designated persons: OFSI considers the following: ‘Expenditure to meet basic needs of an individual should be expenses which are necessary to ensure that designated persons or financially dependent family members are not imperilled.’ For entities, this includes the payment of insurance premiums, reasonable fees for property management services, remuneration of employees, tax payments, rent or mortgage payments and utility charges. OFSI does not consider that this ground should be used to enable designated persons to continue the lifestyle or business activities they had before they were designated.
- Fees for the provision of legal services: OFSI states that these fees must be reasonable. In addition, OFSI considers that the Supreme Court Cost Guides, or the sums that could be expected to be recouped if costs were awarded in litigation, ‘provide a useful starting point for assessing the reasonableness of legal fees and disbursements’. This is separate to the general licence under the Russia and Belarus sanctions regimes, which permits the payment of legal fees owed by designated individuals and entities (see further detail below).

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<sup>92</sup> OFSI General Guidance, at Section 6.16.

<sup>93</sup> *id.*, at Section 6.5. The regulations relevant to specific sanctions regimes include the licensing grounds relevant to the specific sanctions regime. For example, the Russia Regulations, at Schedule 5, include the relevant licensing grounds. However, the OFSI General Guidance refers to the definitions used in the Russia Regulations but also provides further information on OFSI’s interpretation of the grounds; for example, the ‘basic needs’ grounds are expanded on in the OFSI General Guidance.

- Routine maintenance of frozen funds and economic resources: these are fees or service charges that must be reasonable and ‘result in the routine holding or maintenance of frozen funds or economic resources’.
- Extraordinary expenses: OFSI states that these must be extraordinary in nature (unexpected or unavoidable and so not recurring or easily anticipated). This ground cannot be used where other grounds are more suitable or as a way of avoiding the clear limitations of those other grounds.
- Satisfaction of pre-existing judicial decisions: OFSI’s position is that the judgment or decision must have been given before the date of designation and be enforceable in the UK, and cannot be for the benefit of a designated person.
- Satisfaction of prior contractual obligations of the designated person: again, OFSI contends that the contract or obligation must have arisen prior to the date of designation and cannot result in funds or economic resources being made available to the designated person.
- Humanitarian assistance activities: OFSI states that this ground ‘enables payments to facilitate any humanitarian activity; or where applicable, any activity where its purposes are consistent with the objectives of UN Security Council Resolutions’. OFSI considers humanitarian assistance to include the work of non-governmental organisations carrying out relief activities for the benefit of civilians. Importantly, OFSI notes that a licence may still be required despite an activity using government funds.
- Diplomatic missions: OFSI sets out that a licence may be granted to ensure the ‘proper functions of a diplomatic mission or consular post’. A pre-requisite for this licence is compliance with international law.
- Extraordinary situations: this licensing ground applies to non-UN-designated persons, and is intended to enable ‘anything to be done to deal with an extraordinary situation’. The OFSI General Guidance makes it clear that this is intended to cover ‘disaster relief or provide aid’ and for situations that ‘must be extraordinary in nature (unexpected, unavoidable and not recurring)’. This licensing ground cannot be used ‘where other grounds are more suitable’ or in an attempt to circumvent a limitation present in respect of another ground.

The OFSI General Guidance also notes a number of exceptions (i.e., areas where prohibitions do not apply), which include:

- crediting frozen accounts, which allows for a firm to:
  - credit a frozen account with interest, so long as the funds are frozen immediately;
  - transfer funds to credit a frozen account to discharge obligations that were concluded or arose prior to designation; or

- credit a frozen account with third-party payments, so long as the incoming funds are frozen immediately and OFSI is informed;<sup>94</sup>
- transfers in the interest of independent persons: allowing an independent person to transfer an interest in frozen funds or resources to another person where:
  - the independent person is not a designated individual;
  - they do not hold the interest jointly with a designated individual;
  - they are not controlled by a designated individual; and
  - the independent person holds the interest in the funds or resources;<sup>95</sup> and
- ring-fencing funds: the OFSI General Guidance also confirms that UK autonomous sanctions will contain an exception to allow large financial institutions to transfer funds held or controlled by a designated individual to comply with the ring-fencing requirements imposed under the Financial Services (Banking Reform) Act 2013.<sup>96</sup>

The OFSI General Guidance also provides further details about legal advice, court fees and investments.<sup>97</sup>

- OFSI notes that generally there is no prohibition on providing legal advice when an asset freeze is in place, but ‘the payment for legal services and the provision of legal services on credit do require an OFSI licence’. The OFSI General Guidance also notes that in certain circumstances, such as where sanctions prohibit specific actions, a lawyer should carefully consider whether the advice being provided is to help the client comply with the sanctions regime or to facilitate a breach.
- OFSI states that court fees and payments into courts for security for costs ‘can be licensed under the reasonable legal fees licensing grounds’. Separate licensing grounds are required for the payment of security for damages into court and, in the event a court fee will be invoiced to a designated individual as a disbursement, this can be paid ‘without a licence only if the payment is “not significant”’. Whether a court fee is ‘significant’ is a factual matter.<sup>98</sup>

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94 *id.*, at Section 6.1.

95 *id.*, at Section 6.2.

96 *id.*, at Section 6.3.

97 *id.*, at Section 6.6.

98 *PJSC National Bank Trust & anor v. Mints & ors* [2023] EWHC 118 [Comm] confirms that a court can enter judgment in favour of a designated person. However, other activities involved in the conduct of litigation (for example, payment of an adverse costs order,

- OFSI confirms that generally frozen funds, and any profits from frozen funds, cannot be invested. The OFSI General Guidance states that exceptions or licensing grounds are unlikely to allow for this activity. However, the OFSI General Guidance does note that in certain circumstances ‘some asset management may be permitted, under the “basic needs” licensing ground, to ensure that the existence of the business or the frozen assets is not imperilled’. This type of application will be considered by OFSI on a case-by-case basis.

In addition to the supplemental licensing grounds above, the OFSI General Guidance and recent OFSI activity illustrates a divergence of approach between the UK and EU as regards licensing in two further aspects.

First, autonomous UK sanctions, in contrast with EU sanctions, include a power to issue general licences, as opposed to specific licences (authorisations granted to an individual or entity that has applied in writing).<sup>99</sup> The OFSI General Guidance indicates that the UK government will make use of these licences in unforeseen circumstances to support policy priorities. As set out in the OFSI General Guidance, each general licence will include requirements for prior notification of use, record-keeping and reporting. Any party using a general licence must check the terms of that licence and comply with its conditions. Following the Russian invasion of Ukraine, OFSI dramatically increased the number of general licences issued. Between 1 January 2021 and 24 February 2022, OFSI issued two general licences. Between 23 February 2022 and 28 March 2023, OFSI issued around 50 licences to cover a range of issues.<sup>100</sup> A number of the licences provided a wind-down period for transactions with designated persons. For example, upon the designation of a number of banks, OFSI issued a licence that allowed for a 30-day wind-down period of transactions with the designated banks.<sup>101</sup> In addition, OFSI has issued general licences to deal with the position of UK subsidiaries owned by designated persons. For example, OFSI issued a licence allowing any subsidiary of VTB to make payment for: its basic needs or reasonable fees or service charges arising from routine holding and maintenance of its frozen funds and economic resources; or reasonable professional fees for

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payment of security for costs and payment of a cross-undertaking in damages) require a licence. This judgment has been appealed but the appeal remains outstanding.

<sup>99</sup> OFSI General Guidance, at Section 6.8.

<sup>100</sup> [www.gov.uk/government/collections/ofsi-general-licences](https://www.gov.uk/government/collections/ofsi-general-licences).

<sup>101</sup> General licence – INT/2022/1295476, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1058766/04.03.22\\_banks\\_asset\\_freeze\\_Publication\\_Notice\\_INT-2022-1295476.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1058766/04.03.22_banks_asset_freeze_Publication_Notice_INT-2022-1295476.pdf).

the provision of legal services. The licence also allowed these entities to make, receive or process any payments, or take any other action, in connection with any insolvency proceedings.<sup>102</sup> Finally, in October 2022, as a result of the significant increase of new designations under the Russia Regulations, and the correlating increase in the number of those seeking a licence from OFSI for the payment of legal fees, OFSI issued a general licence to permit the payment of legal fees owed by individuals and entities designated under the Russia Regulations.<sup>103</sup>

Second, SAMLA introduced the concept of directions. A direction may be issued under SAMLA in respect of a statutory requirement and can provide an exception to a requirement.<sup>104</sup> These directions are only available for certain sanctions regimes and are applied for using a form available through OFSI's website.<sup>105</sup> Directions may be conditional and can be varied by OFSI at any time.

Licences relating to trade sanctions are dealt with through a separate process. It should be remembered that some transactions may require licences in respect of applicable financial sanctions as well as applicable trade sanctions. The Department for International Trade maintains a web page containing links to a substantial body of guidance relating to the licensing regime for trade sanctions. Export control licence applications are processed through an online system called SPIRE. See Chapter 8 of this Guide for further information about the UK export control regime.

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102 General licence – INT/2022/1280876, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1070783/INT.2022.1280876publication\\_notice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1070783/INT.2022.1280876publication_notice.pdf).

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104 SAMLA, at Section 15(2)(c).

105 See OFSI General Guidance, at Section 6.18.

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ISBN 978-1-80449-256-7