

Russia/Ukraine crisis: Guernsey Sanctions Regime one year on

Briefing Summary: As the Russian invasion of Ukraine persists, the sanctions regime in Guernsey against those with a Russian nexus continues to tighten.

Service Area: Dispute Resolution and Litigation

Location: Guernsey

Created Date: 01 March 2023

Since the amendments made on 10 February 2022 pre-empting the invasion of Ukraine as discussed in our last briefing note, matters have progressed, and the scope of what Guernsey businesses can and cannot do in relation to dealing with assets, persons and entities connected with Russia has reduced.

Guernsey's legislative framework

Guernsey adopts UK sanctions as a matter of course by way of the *Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020* (the **Implementation Regulations**). EU sanctions that were in force prior to Brexit have been repealed and replaced by the corresponding UK sanctions.

EU and UK sanctions were largely aligned this time last year, but whilst the UK works through its divergence from EU foreign policy, there is the potential that the UK may continue its trend of sanctions robustness. We have seen this development in "real time" in respect of sanctions against Russia. As an exercise in jurisprudence, if nothing else, this evolution of policy and legislation has been fascinating.

Asset Freeze

Where a person is sanctioned by the UK, they become known as a designated person, and their assets are frozen. That designation has effect in Guernsey. As a result, various prohibitions bite on non-designated persons:

1. dealing with funds or economic resources owned, held, or controlled by the designated person is prohibited if they know or have reasonable cause to suspect, that they are dealing with such funds or economic resources; and

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- making funds or economic resources available directly or indirectly to the designated individual (including to a person who is owned or controlled directly or indirectly) or to any person for the benefit of the designated individual is prohibited if they know or have reasonable cause to suspect that they are making the funds so available. Funds are made available only if that person obtains, or can obtain a significant financial benefit, which includes the discharge, even partially, of a financial obligation for which the designated individual is wholly or partly responsible.

These prohibitions are regulated by the Russia (Sanctions) (EU Exit)

Regulations 2019 (SI 2019 No 855) (the **UK Regulations**) and are given effect in Guernsey by the Implementation Regulations. A failure to comply with the UK Regulations, the Implementation Regulations or the *Sanctions (Bailiwick of Guernsey) Law, 2018* (the **Sanctions Law**) is a criminal offence, which is punishable with imprisonment and/or a fine.

Notification

Section 14 of the Sanctions Law requires that a relevant institution must notify the Policy and Resources Committee (the **Committee**) as soon as it knows or has reasonable cause to suspect that a person is sanctioned or is linked to a sanctioned person where the information on which this suspicion is based came to it in the course of carrying on its business. The Guernsey Financial Services Commission (**GFSC**) also asks that regulated entities notify them in addition to the Committee.

Where a person becomes designated, it may be important to consider whether a notification that a person is designated triggers the need for a Suspicious Activity Report. This will depend on whether the designation is purely political or linked to crime and corruption.

Investment Restrictions

Regulations 16 and 17 of the UK Regulations restrict loans and trade in shares or other transferable securities and money-market instruments, with a view to minimising funding to Russian entities.

The reach of Regulation 16 is intentionally broad and encompasses everything from shares to bonds, and "*any other securities giving the right to purchase or sell...*" any such shares or bonds.

Regulation 17 further references loans and credit agreements, noting that a person must not directly or indirectly grant a relevant loan if they know, or have reasonable cause to suspect, that the person is granting a relevant loan. Further, agreements to enter into such loans are prohibited under Regulation 17. The reach of "relevant loans" is wide, and any Russian nexus will result in the need for careful consideration.

Regulations 16 and 17 have been broadened dramatically since the beginning of the crisis. By early March 2022, regulation 16 had been amended to include that transferable securities or money-market instruments could not be dealt with if they had been issued by any person connected with Russia. This further includes those entities which are owned by a person connected with Russia, or any entity which is acting on behalf of a person connected with Russia. Regulation 17 now has some 6 categories of loans to which it applies.

Regulation 18B prohibits any investments that relate to Russia. There are prohibitions on acquiring ownership interests or control in land, companies, or other entities, or providing investment services regarding such activity.

Circumvention

Circumvention of the prohibitions is dealt with by Regulation 19 of the UK Regulations. Regulation 19 sets out that:

A person must not intentionally participate in activities knowing that the object or effect of them is (whether directly or indirectly)

1. *to circumvent any of the prohibitions in regulations 11 to 18, or*
2. *to enable or facilitate the contravention of any such prohibition.*

Emphasis should be drawn to the use of the word "knowing" in regulation 19. Actual knowledge is not the same as assumption; "knowing" might include the blatant ignorance of the obvious, but it is certainly not the same as a reasonable suspicion.

Further updates to the regime

Since Carey Olsen's last briefing note on the impact of the sanctions legislation in Guernsey, a number of individuals have been designated by the UK. On the one-year anniversary of the start of the invasion of Ukraine, it was announced that a further 92 people were added to the list of sanctioned individuals. The regime is constantly evolving, and the noose continues to tighten on Russian individuals and those connected with Russia.

From 16 December 2022 there is now a prohibition on the provision of "new" trust services to any person connected with Russia and an immediate ban on the provision of trust services to designated persons. "Trust services" means the creation of a trust or similar arrangement; the provision of a registered office or similar arrangement; the operation or management of a trust or similar arrangement; or acting or arranging for another person to act as a trustee of a trust or similar arrangement.

There are exemptions to the restriction, but the application of these requires very careful thought.

There are also restrictions on directly or indirectly providing to a person connected with Russia, any accounting services, advertising services, architectural services, auditing services, business and management consulting services, engineering services, IT consultancy and design services, or public relations services.

The prohibitions on imports and exports relating to Russia have become considerably more restrictive.

Licences for Guernsey businesses

There are a number of ways in which local businesses are caught by the sanctions regime. To deal with these frozen assets by, for example, paying employees or covering various other administrative costs, the business will probably have to apply for a licence. A licence is a written authorisation from a named competent authority to allow an activity which would otherwise be prohibited under the sanctions regime where the business is so affected. The relevant competent authority for Guernsey is the Committee.

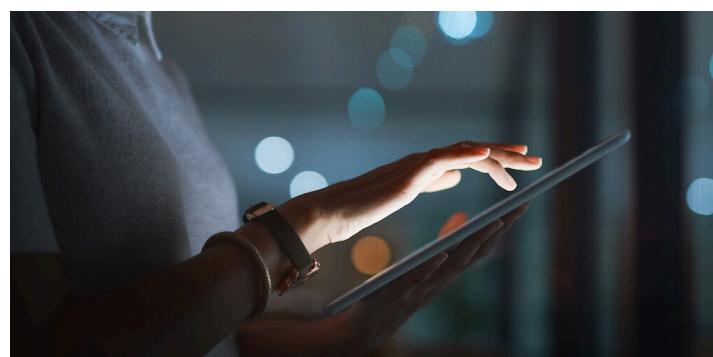
Licence applications are being dealt with quickly and efficiently in Guernsey, with even the most complicated applications being attended to. The Committee is, furthermore, receptive to discussing any issues that arise. This is a real boon for Guernsey and not necessarily reflective of other jurisdictions.

Conclusion

The sanctions regime is constantly evolving, and we are starting to see case law on the interpretation of provisions from England and Wales. Careful thought is now required in respect of any dealings or proposed dealings with an entity, asset or person connected in some way to Russia. It seems unlikely that this position will become any less complex in the near future.

Please note the information above is based on the legislation and guidance in force on 28 February 2023.

Please note that this briefing is intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen (Guernsey) LLP 2026



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