



## Russia/Ukraine crisis: New sanctions regulation in force in Guernsey

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Sanctions are ever present in the minds of financial services businesses in Guernsey. The Island's attraction as an international business hub also makes it particularly susceptible to sanctions risks.

Increased sanctions can be imposed with exacting speed when an international tension erupts, and the current Russia/Ukraine crisis is a case in point. You cannot turn on or read the news without mention of Russia's possible invasion of the Ukraine, and President Biden threatening tough new sanctions against Russia - and even against President Putin personally.

As the world stands poised to implement new sanctions in the event that Russia does invade the Ukraine, governments have been readying their legislative arsenals. Guernsey is no exception, with amendments having come into effect in Guernsey on 10 February 2022, which have potentially wide-ranging consequences to Guernsey businesses.

### Guernsey's sanctions regime

To understand the recent amendments, it is important to bear in mind how sanctions are implemented in Guernsey.

Brexit brought about a significant shift in how Guernsey imposes its sanctions regime. Prior to Brexit, Guernsey implemented the EU's sanctions, as well as any UN sanctions. However, with Brexit coming into force, Guernsey no longer implements EU sanctions but rather adopts UK sanctions as a matter of course.

This is done via the Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020, by which the States of Guernsey's Policy & Resources Committee (which

administers sanctions in Guernsey) (the PRC) repealed all of the EU sanctions in force and implemented the corresponding UK ones in their place.

Although the UK and EU sanctions are largely aligned at the moment, there is the potential for that to change as the UK's foreign policy diverges with that of the EU. The UK has already shown a readiness to be more robust than the EU with sanctions.

### The Russian/Ukraine sanctions

One of the UK regulations implemented following Brexit was the Russia (Sanctions) (EU Exit) Regulations 2019, which empowers the OFSI (as the UK's sanctions administrator) to designate a person (an "involved person") involved in destabilising Ukraine or undermining/threatening Ukraine's territorial integrity or independence.

The new amending regulation which came into force last Thursday broadened significantly the meaning of "involved person" to cover a person who *"is or has been involved in... obtaining a benefit from or supporting the Government of Russia"*. This includes carrying on a business as a Government of Russia-affiliated entity and/or of economic significance or in a sector of strategic significance to the Russian Government, as well as directly/indirectly controlling or working as a director, trustee or equivalent of any such business.

Although the regulations need to be read in their entirety, there are two notable amendments for Guernsey. The first is that one of the defined *"sectors of strategic significance"* is financial services. The second is that a Government of Russia-affiliated entity means an entity (other than an individual) in which the

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Russian Government holds directly or indirectly a minority interest – this has the potential to catch a wide range of non-Russian companies.

Of course, it must be borne in mind that the amending regulation does not designate any person. Rather, those amendments create the framework and criteria for the PRC to do so. At this time, no such designations have been made but that could change overnight. No doubt there is a draft list of names already doing the rounds within the halls of government.

## EU/US sanctions

Although EU and US sanctions have no legal force in Guernsey, they are still relevant and can impact on Guernsey businesses.

US sanctions almost invariably have extra-territorial reach, in that they usually extend to US dollar transactions, US citizens/residents wherever located, US entities and branches, subsidiaries of US companies, and (in certain cases) the distributors of US origin goods.

In particular, the US utilises foreign banks' reliance on US correspondent banks as a sanctions tool. Even if a US dollar transaction takes place outside of the US involving non-US parties, the US can freeze the parties' foreign bank(s) accounts with the US correspondent bank, so that the transaction cannot proceed.

In January, the US also introduced a bill to facilitate the imposition of sanctions in the event of a Russian invasion of the Ukraine, in the form of the Defending Ukraine Sovereignty Act of 2022.

## What can Guernsey businesses do now?

As there is not yet any designated persons under the Russia/Ukraine regulation, Guernsey businesses are not required to take any action legally. However, we have set out below some practical steps that businesses can do now to ready themselves for possible sanctions:

- Undertake a review of existing structures and asset holdings to identify potential links to the Russian Government, including where it may hold a minority interest.
- Analyse contractual arrangements which involve Russian-connected parties, to ensure relevant protections are in place if a party is sanctioned.
- Consider restructuring or ring-fencing the Russian element of a larger transaction or structure.
- Insofar as US dollars are involved, investigate whether US dollar positions or holdings can be ring-fenced or even exchanged into a different currency that does not involve a US correspondent bank.
- Check whether there are any impending capital calls or payments due from a possible target of the Russian/Ukraine sanctions.
- Refresh CDD to ensure that it is up-to-date and that, in the case of Russian-connected parties, the business knows sufficient information about the parties' sector and business operations.
- Start thinking about whether a licence application may be needed.

Carey Olsen would be happy to discuss further what specific precautions your business may be able to take.



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