



TWENTY
ESSEX

SANCTIONS – HOW ARE YOU TO SUPPORT CLIENT OBJECTIVES OVER SANCTIONS? WHAT ARE THE REQUIREMENTS AND THE RELATED RISKS?

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TOPICS

- Source and scope of sanctions – When do they apply?
- Scope – What do they apply to?
- Penalties for non-compliance
- Force majeure and sanctions clauses
- Payment obligations
- Impact of the Blocking Regulation

SOURCE AND SCOPE OF SANCTIONS

Source - Russia (Sanctions) (EU Exit) Regulations 2019 (SI 2019 No. 855) (“The Regulations”)

Scope – Sanctions apply to conduct in the United Kingdom and also to conduct by United Kingdom persons worldwide: Section 21 SAMLA

- “(a) conduct in the United Kingdom or in the territorial sea by any person;
- (b) conduct elsewhere, but only if the conduct is by a United Kingdom person.
- (2) In subsection (1) “United Kingdom person” means—
 - (a) a United Kingdom national, or
 - (b) a body incorporated or constituted under the law of any part of the United Kingdom.”

TO WHOM AND WHAT DO THEY APPLY?

Who?

Sanctions apply to a **Designated Person** and a person “**owned and controlled**” by a Designated Person

What?

Asset freeze – Regulation 11

Making funds available to Designated Person prohibited – Regulation 12

Making funds available for benefit of Designated Person prohibited – Regulation 13

Making economic resources available for benefit of Designated Person prohibited –
Regulation 14

Penalties – Criminal offence – fines and imprisonment – Regulation 80

MEANING OF OWNED OR CONTROLLED

“ 7.—(1) A person who is not an individual (“C”) is “owned or controlled directly or indirectly” by another person (“P”) if ...

(2) The first condition is that P— (a) holds directly or indirectly more than 50% of the shares in C, (b) holds directly or indirectly more than 50% of the voting rights in C, or (c) holds the right directly or indirectly to appoint or remove a majority of the board of directors of C. ...

(4) The second condition is that it is reasonable, having regard to all the circumstances, to expect that P would (if P 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 C are conducted in accordance with P's wishes.”

NBT v BORIS MINTS AND ORS [2023] EWCA Civ 1132

“225. ...The judge evidently put an impermissible gloss on the language of the Regulation because of a concern on her part that, if the appellants were correct about the construction of the Regulation, the consequence might well be that every company in Russia was “controlled” by Mr Putin and hence subject to sanctions. If, as may well be the case, that is a consequence of giving Regulation 7 its correct meaning, then the remedy is not for the judge to put a gloss on the language to avoid that consequence, but for the executive and Parliament to amend the wording of the Regulations to avoid such a consequence.”

FOREIGN OFFICE GUIDANCE ON MINTS –

The Government is carefully considering the impact of the Court of Appeal’s judgment ... , in particular the Court’s views that PJSC National Bank Trust is ‘controlled’ by Designated Persons by virtue of their political office, noting that the case was not decided on this point.

FCDO would look to designate a public body where possible when designating a public official if FCDO considered that the relevant official was exercising control over the public body.

There is no presumption on the part of the Government that a private entity based in or incorporated in Russia or any jurisdiction in which a public official is designated is in itself sufficient evidence to demonstrate that the relevant official exercises control over that entity.

In the interests of reducing any uncertainty, we are exploring the options available to the Government in clarifying this position further.

LITASCO SA V DER MOND OIL AND GAS AFRICA SA & LOCAFRIQUE HOLDINGS SA [2023] EWHC 2866 (COMM)

“70. ... the better interpretation of Regulation 7(4) is that it is concerned with an existing influence of a designated person over a relevant affair of the company ... , not a state of affairs which a designated person is in a position to bring about. Were matters otherwise, it would follow that President Putin was arguably in control, ... of companies of whose existence he was wholly ignorant, and whose affairs were conducted on a routine basis without any thought of him. ... While I accept that the Chancellor at [233] lends some limited support to a view that being "at the apex of a command economy" might be sufficient for Regulation 7(4) purposes, and that "Mr Putin could be deemed to control everything in Russia", these observations were couched in tentative terms, and, in my view, necessarily reflected the particular context in which they were made (see [67]).”



FORCE MAJEURE AND SANCTIONS CLAUSES

- MUR v RTI [2022] EWCA Civ 1406
- Gravelor Shipping Ltd v. GTLK Asia M5 Ltd [2023] EWHC 131 (Comm)
- Kuvera Resources Pte Ltd v JPMorgan Chase Bank, NA [2023] SGCA 28

PAYMENT OBLIGATIONS

- Celestial Aviation Services v UniCredit Bank [2023] EWHC 663 (Comm)
- MUR v RTI [2022] EWCA Civ 1406
- Gravelor Shipping Ltd v. GTLK Asia M5 Ltd [2023] EWHC 131 (Comm)
- Kuvera Resources Pte Ltd v JPMorgan Chase Bank, NA [2023] SGCA 28

BLOCKING REGULATION (SI 2020 No 1660)

- Prohibits compliance with certain US secondary sanctions against Iran and Cuba
- Applies to UK and EU nationals – Article 11
- “ Article 5

No person referred to in Article 11 shall comply, whether directly or through a subsidiary or other intermediary person, actively or by deliberate omission, with any requirement or prohibition, including requests of foreign courts, based on or resulting, directly or indirectly, from the laws specified in the Annex or from actions based thereon or resulting therefrom. “

- **Bank Melli Iran v Telekom Deutschland GmbH** (C124/20)



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