

RUSSIAN SANCTIONS: WHAT YOU NEED TO KNOW //

In light of Russia's invasion of Ukraine and the resulting sanctions that have been enacted, this month's Bulletin reviews the framework of UK sanctions against Russia and sets out key resources to stay up-to-date with developments as and when they occur. (For background to the UK's post-Brexit sanctions framework, see the [September 2021 Global Investigations Bulletin](#).)

The UK's legal framework and application

Sanctions are measures of foreign policy designed to place economic pressure on a target, by prohibiting activities that citizens can undertake with the target country. The UK has had sanctions in place against certain Russian persons and entities since its invasion of Crimea in 2014. At the time, those sanctions were in force via the UK's membership of the EU. On 31 December 2020, following the UK's exit from the European Union, the [Russia \(Sanctions\) \(EU Exit\) Regulations 2019](#) (SI 2019/855) (the "2019 Regulations") came into force to replace (with substantially the same effect) the EU regulations. The 2019 Regulations also provided the legal framework for the UK to enact further sanctions against Russian parties under the overarching legislation contained in the [Sanctions and Anti-Money Laundering Act 2018](#).

The UK's sanctions legislation applies to dealings with sanctioned parties by all persons (natural and legal) within the UK territory, and all UK persons (natural and legal) anywhere in the world. In addition, anyone conducting activities within the UK, regardless of whether they are a UK person, must comply with the relevant legislation. This is referred to as having a "UK nexus".

New measures introduced since February 2022

UK government changes the designation criteria

On the 10th of February, the UK amended the criteria to designate further Russian parties under the 2019 Regulations via the [Russia \(Sanctions\) \(EU Exit\) \(Amendment\) Regulations](#) (SI 2022/12) (the "10 February Regulations"). The 10 February Regulations broadened the prior designation criteria, contained in regulation 6 of the 2019 Regulations, to specify additional activities for which a party could now be designated and sanctioned.

The prior criteria was that a party was involved in destabilising Ukraine or threatening the territorial integrity, sovereignty or independence of Ukraine. The 10 February Regulations extended this criteria to include anyone obtaining a benefit from or supporting the government of Russia. It also includes: entities owned or controlled, directly or indirectly, by a person who has been so involved; parties acting on behalf of or at the direction of someone who has been so involved; or a person who is a member of, or associated with, a person who has been so involved.

New sanctions issued in response to Russian invasion

Since the passage of the 10 February Regulations and in response to Russia's invasion of Ukraine, the UK government [has issued a large number of designations](#) under the new criteria, which include both targeted (i.e. list based) and non-targeted, or sectoral, sanctions (i.e. banning broader categories of activity, such as particular types of trade or travel). The Russian sanctions regime imposes financial, trade, transport, and immigration sanctions on Russian targets.

Financial sanctions refer to measures that restrict the dealings in money and the provision of financial services to designated parties. This involves freezing the funds and economic resources (such as property or vehicles) of the designated parties, and ensuring that funds and economic resources are not made available for these parties, directly or indirectly.

Trade sanctions refer to trade prohibitions or other measures that restrict the import from, and export to, a country of goods, technology, and non-financial services. This often includes an arms embargo and other restrictions to prohibit the trade of materials that can be used for military or defence technology purposes.

Transport sanctions include those relating to the transport of goods between countries (such as allowing docking or inspecting cargos) and the designation or prohibition of vessels. Immigration sanctions ban a person from entering or leaving a country.

The new sanctions issued since 22 February are extensive. The most up-to-date resource for checking which Russian entities may be subject to sanctions is the UK's [consolidated list search tool](#).

Enforcement

It is a criminal offence to breach sanctions legislation, and to enable or facilitate a breach of, or to circumvent, sanctions legislation. The Office of Financial Sanctions Implementation ("OFSI"), a division of Her Majesty's Treasury established in March 2016, is responsible for implementing and enforcing sanctions. Penalties that may be imposed depend on the precise regulation that is breached, but may include imprisonment and/or paying a substantial fine. In January, OFSI [updated its guidance on enforcement](#), including its approach, the penalty process and procedure, the right of ministerial review, and the right to appeal any decision.

On 1 March 2022, the draft [Economic Crime \(Transparency and Enforcement\) Bill 2022](#) (the "Bill"), which strengthens sanctions enforcement legislation, was presented to Parliament. As of the time of writing, the Bill (as amended) permits OFSI to financially penalise parties for breaching sanctions on a strict liability basis and simplifies the designation process by removing the requirement to consider the "likely significant effects" that designation would have on that person. It also permits parties to be sanctioned on an urgent basis for 56 days, even if there are no reasonable grounds to suspect that they were involved in sanctionable conduct, but they are subject to similar restrictions under the US, EU, Canadian, or Australian regimes. Finally, it limits the amount of financial compensation available to parties if the government is found to have acted in bad faith. Progress on the Bill's passage can be viewed [here](#).

Additional resources

A number of additional resources are available if further guidance is needed:

- Detailed [guidance to the Russia sanctions framework](#) (updated as of 8 March), including exceptions to the prohibitions and which licences may be available.
- Specific [guidance](#) to the 2019 Regulations (updated as of 4 March 2022).
- [Notices](#) containing details of new designations, which are later transposed into statutory instruments.

RECENT NEWS //

Sanctions update: Clear Junction drops appeal, prevents valuable insight into OFSI sanction enforcement; HM Treasury publishes Guidance on monetary penalties

The Office of Financial Sanctions Implementation (“OFSI”) [revealed](#) on 21 February that that it had imposed a £36,400 fine against Clear Junction, a London-based global payments company, in February 2021 for processing 15 transactions to bank accounts held within the Russian National Commercial Bank (“RNCB”). RNCB had been sanctioned by the EU in 2014 following Russia’s annexation of Crimea. The year-long delay in publication of the penalty resulted from Clear Junction first challenging the fine via ministerial review, and then launching a further appeal, which has now been withdrawn. The appeal would have resulted in valuable insight into OFSI’s approach to sanctions enforcement. Clear Junction said in a [statement](#) that the sanctions breaches were the result of a defective sanctions screening tool used by the company.

Earlier this year, OFSI published updated [Guidance](#) on “Monetary penalties for breaches of financial sanctions.” OFSI imposes penalties for sanctions breaches pursuant to the [Policing and Crime Act 2017](#) (the 2017 Act), as amended by the [Sanctions and Anti Money Laundering Act 2018](#). The Guidance provides an explanation of the powers given to HMT (exercised by OFSI) in the 2017 Act and a summary of OFSI’s compliance and enforcement approach. It also contains an overview of how it will assess whether to apply a monetary penalty, the process that will decide the level of penalty, and an explanation of how it will impose a penalty, including timescales at each stage and rights of review and appeal. The Guidance applies from 28 January 2022, replacing guidance for all cases where OFSI becomes aware of a potential breach after 28 January 2022.

Draft Economic Crime Bill reaches Parliament

After several years of delay, a draft of the [Economic Crime \(Transparency and Enforcement\) Bill 2022](#) (the “Bill”) was published on 28 February and presented to Parliament on 1 March. The legislation is being fast-tracked as part of the UK’s response to Russia’s invasion of Ukraine and will likely be passed in the coming days. The proposals strengthen the UK’s efforts to combat economic crime, with key proposals being to introduce a register of overseas entities; strengthen the sanctions enforcement framework; and reduce the financial liability for prosecutors for bringing unsuccessful cases under the Unexplained Wealth Orders framework. The Bill does not contain any provisions on the widening of corporate criminal liability for economic crimes more generally, but could be amended after the [Law Commission releases its findings](#) on possible reform in this area (expected in the coming months). Follow the Bill’s passage [here](#).

SFO commences investigation into collapsed broadcaster Arena TV

The SFO has begun a [criminal investigation](#) into Arena Television, the collapsed broadcast media company accused of borrowing £282 million against non-existent assets. The SFO, in coordination with the National Crime Agency, searched three properties and arrested two individuals for questioning.

FCA update: statements and reminders regarding new Russian financial sanctions; former Redcentric executive jailed for misleading investors

On 23 February 2022, the Financial Conduct Authority (“FCA”) published a [statement](#) on the government’s new Russian sanctions, reminding firms that its expectations for systems and controls relating to financial sanctions compliance are set out in [chapter 7 of its Financial Crime Guide \(“FCG”\)](#). This chapter includes examples of good and poor practices relating to firms’ governance, risks assessment, and approaches to financial sanctions screening. Firms that carry on trade finance activities are referred to the [FCA’s September 2021 Dear CEO letter](#), which provides additional guidance on sanctions considerations. Where the FCA identifies failings in financial crime systems and controls, it can impose restrictions or take enforcement action, or both (the FCA’s sanctions enforcement framework exists alongside OFSI’s).

The FCA [also reminded](#) issuers of securities admitted to trading on UK venues that they must follow disclosure obligations under the [UK’s Market Abuse Regulation](#). Stating that the new sanctions would have “multiple impacts” on companies with securities admitted to UK markets, the FCA reminded companies of their obligation to disclose inside information as soon as possible, unless they have a valid reason under the regulation to delay doing so. The FCA warned that they would “continue monitoring the market carefully to ensure these obligations are met in full”.

On 3 March 2022, the FCA [announced](#) that the former Chief Financial Officer of Redcentric was sentenced to five and a half years’ imprisonment and disqualified from being a director for ten years, after being convicted of two counts of making a false or misleading statement contrary to section 89(1) of the Financial Services Act 2012, and three counts of false accounting, contrary to section 17(1)(a) of the Theft Act 1968. Redcentric was found to have issued false and misleading unaudited interim results in November 2015, and false and misleading audited final year results in June 2016. When the true position was revealed, shareholders suffered immediate losses in the value of their shares. Coleman was found to have inflated the cash position that was presented to Redcentric’s board and then used the same false figures to reassure key investors about its financial position, persuading them not to sell down their investment in the company. Mark Steward, FCA Executive Director of Enforcement and Market Oversight, commented that the sentence handed down reflects the seriousness of the crimes and should serve as a deterrent to anyone considering committing similar offences. The guilty verdict follows the company’s [public censure](#) by the [FCA](#) in June 2020, after which Redcentric agreed to offer compensation to affected investors. A former finance director of the same company was previously sentenced to three years’ imprisonment, having pleaded guilty to charges of making false or misleading statements and false accounting.

Supreme Court rules on reasonable expectation of privacy before a criminal charge

The Supreme Court published its judgment in the case of [Bloomberg v ZXC \[2022\] UKSC 5](#), concerning whether an individual under criminal investigation has a reasonable expectation of privacy. ZXC, the Respondent, is a US citizen who worked for a company that operated overseas. He and his employer were the subject of a criminal investigation by a UK Legal Enforcement Body, which sent a letter of request to the authorities of a foreign state seeking, among other things, information and documents relating to the Respondent. Bloomberg obtained a copy of the letter of request and published an article reporting details of the matter the Respondent was being investigated for. At first instance, ZXC

brought a successful claim against Bloomberg for misuse of private information. The Court of Appeal dismissed Bloomberg's appeal, and the Supreme Court upheld that decision: as a legitimate starting point, a person under criminal investigation has, prior to being charged, a reasonable expectation of privacy in respect of information relating to that investigation; and, in all the circumstances, this was a case in which that applied and there was such an expectation. The Court said that the rationale for such a starting point was that publication of such information ordinarily caused damage to the person's reputation together with harm to multiple aspects of the person's physical and social identity, all of which are protected by the right to privacy under [Article 8 of the European Convention on Human Rights](#).

Finance Act 2022 published: economic crime levy provisions

The [Finance Act 2022](#) was published on 1 March 2022, after Royal Assent was received on 24 February. Among other things, Part 3 of the Act contains provisions relating to the new economic crime (anti-money laundering) levy. The levy will be imposed on businesses subject to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ([SI 2017/692](#)), and will be used to help fund new government action to tackle money laundering and ensure it delivers on reforms set out in the [Economic Crime Plan 2019-22](#). The FCA will collect the levy from firms it supervises. The provisions in Part 3 will take effect for the financial year beginning with April 2022.

Australia's Crown Resorts faces A\$1.3 billion fine

In a case which could mark out Australia as a major new anti-money laundering enforcement player, the Australian Transaction Reports and Analysis Centre (AUSTRAC) [announced](#) on 1 March that it had commenced penalty proceedings in the Federal Court of Australia against Crown Melbourne and Crown Perth (Crown). AUSTRAC CEO Nicole Rose said that the gambling company failed to meet the relevant AML/CTF obligations, making their business and Australia's financial system vulnerable to exploitation. AUSTRAC alleges 382 contraventions of Australia's AML legislation. Each contravention attracts a civil penalty between A\$18 million and A\$22 million, meaning Crown may be facing penalties over one billion Australian dollars.

OECD Working Group on Bribery Chair speaks about risk of misuse for corporate bribery settlements; new guidance adds passive bribery to list of priorities

Drago Kos, Chair of the Organisation for Economic Co-operation and Development's ("OECD") Working Group on Bribery, [said](#) that the group is conscious of the risk of companies misusing negotiated settlements such as deferred prosecution agreements. At an online conference hosted by the International Bar Association on 2 February, Kos said "We are not asking countries to introduce [non-trial resolutions] on a mandatory basis. This is because we have been approached by one or two countries saying, 'Listen, if we introduce this into our system, it will be heavily misused. Don't ask us to do it mandatorily, because we will have a big problem. All the companies will be off the hook immediately...We know that [settlements] can be misused. We will be very sensitive when evaluating countries in this area.'" Kos' statement came in response to concerns raised by Susan Hawley, of the NGO Spotlight on Corruption, that opening the door to settlement agreements in all cases presents a risk that "too much carrot and not enough stick comes into play in foreign bribery enforcement."

On 9 December 2021, the OECD's new secretary-general formally launched the [OECD Anti-Bribery Recommendation](#) (the "2021 Recommendation"), which adds passive bribery - the request or demand of a bribe (rather than the payment of said bribe) - to the priorities of the Working Group on Bribery "WGB"). From a policy perspective, this means a major shift and an expansion of the scope of the WGB

and the [OECD's Anti-Bribery Convention](#) (the "Convention"). The Convention is an agreement between 44 countries that creates legally binding obligations to criminalise the bribery of foreign public officials in international business. The WGB scrupulously monitors each country's progress on the implementation of anti-corruption legislation, including the UK's [Bribery Act 2010](#), and coordinates cooperation among law enforcement partners.

Horizon Scanning

Look out for:

March: Proposed passage of Economic Crime Bill (see above)