

Sanctions against Russia

Economic sanctions have been imposed on Russia by the UK government due to the Russian invasion of Ukraine on 24th February 2022. These powers stem from the Sanctions and Anti-Money Laundering Act 2018.

The Russia (Sanctions) (EU Exit) Regulations 2019 introduced financial sanctions on certain banking institutions. Members need to ascertain if this has an impact on them.

The second wave of sanctions were implemented by the Russia (Sanctions) (EU Exit) (Amendment) (No3) Regulations. This, in effect prohibits the export, supply and delivery, making available of and transfer of dual-use items to, or for use in, Russia, irrespective of the end-user (as well as the provision of related technical assistance, financial services, funds and brokering services). This prohibition applies equally to the supply of critical industry goods and critical industry technology such as specified computers, electronics, lasers and sensors, telecommunications equipment and goods and technology related to aviation, aerospace and information security. Full details are listed in Schedule 2 of the 2019 Regulations. The above regulations also prohibit the provision of technical assistance, financial services, funds and brokering services in relation to dual-use goods and technology and critical-industry goods and technology. There are some very small exemptions under Regulation 60A of the 2019 Regulations allowing items for personal use for a person travelling to Russia or on diplomatic missions. This export ban applies even if the immediate destination is not Russia.

A third wave introduced shipping sanctions under the Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2022. These prohibit any of the following, access to any port in the United Kingdom:

- A ship flying the Russian flag,
- A ship registered in Russia,
- Any ship owned, controlled, chartered or operated by a “designated person”,
- Any ships owned, controlled, chartered or operated by persons connected with Russia

The regulations give the Secretary of State or Harbour Authority the power to issue a port entry direction or a movement direction. It also gives the Harbour Master or the Secretary of State the power to detain a ship.

Under the 2019 Regulations a “designated person” is any person that the Secretary of State may designate persons by name. Those already designated include Roman Abramovich, Oleg Deripaska and Igor Sechin.

It is a criminal offence under the 2019 regulations if any of the sanctions are breached, with the potential outcome being a heavy fine or a custodial sentence.

Whilst it will be easy to identify a ship registered in Russia or flying the Russian flag, what will prove difficult in practice is establishing if a ship is controlled or chartered by a “designated person” or by “persons connected with Russia”. Members should create a paper trail of their efforts to establish the identities of these parties. The explanatory note to the regulations indicates an expectation that investigating parties look into the identity of subsidiary companies to establish whether, ultimately the

owner is connected to Russia for the purposes of the regulations. The only exemptions to the sanction are ships in need of assistance due to an emergency, or where a port entry or a movement direction has been given, presumably to either allow a vessel to dock with the intention of detaining it, or where a vessel has been asked to leave port. Ships on the way to the UK will have to re-route as a consequence, irrespective of contractual obligations.

With regards to contractual obligations, the trade and economic sanctions which came into effect on the 1st March 2022 has immediate effect. Members may already be in the midst of assessing their business links with Russia, Russian suppliers and “designated people”.

Members should scrutinise their contracts to see if they have reserved the right to terminate the agreement. This could be on notice, which is not ideal as there is a liability to pay during the notice period and this is most likely to be affected, in turn, by the economic sanctions which has led to the freezing of at least 5 Russian banks because the regulations prohibit direct and indirect dealings with the identities – corporate or individual - on the government list.

A Force Majeure clause may be better as it will excuse members from the performance of a contract due to matters beyond their control, however the language will have to be carefully scrutinised as the United Kingdom is not at war with Russia.

A potential, but remote possibility - purely due to the nature of the most common types of dealings that members engage in - is a material adverse changes or MAC clause which would permit them to cut immediate ties.

If there are no contractual provisions, then members will need to take advice on exploring whether an argument for frustration of contract can be made out. This is a common law remedy that, when applicable can release both parties from continuing the contract. Frustration may apply when an unexpected event occurs which renders it physically or commercially impossible to fulfil a contract. Alternatively, the unexpected event could transform the obligation to perform the contract into something radically different from what was originally agreed. Case law interprets these cases narrowly, so specialist advice may need to be taken.

The Office of Financial Sanctions Implementation (OFSI) publish an updated sanctions list on-line which can be used to check names added to the list at: <https://www.gov.uk/government/publications/the-uk-sanctions-list> . Members should also check the scope of their legal expenses cover in case of a legal challenge.

Members have access to a 24/7 telephone legal advice line to get advice on all business related legal issues, including questions related to this article. Contact details for the helpline are found in the membership area of the British Marine website. For details of the BusinessCare helpline, you can also call the British Marine membership team on **01784 223663**.