MAPLES GROUP

UPDATE

Russian Sanctions Regime: Court Issues Further Guidance to Legal Practitioners

In a judgment published by the British Virgin Islands ("BVI") Commercial Court this week, the Honourable Mr Justice Jack has issued fresh guidance on the circumstances in which a legal practitioner will be permitted to cease acting for an entity or individual that is subject to economic sanctions.

Background

The court's judgment in *AO Alfa-Bank v Kipford Ventures Ltd* results from an application by a firm of BVI practitioners, who are retained as counsel by a sanctioned Russian bank (the "Applicant Firm" and "the Bank", respectively), to formally come off the record. The application was made on the ground that the Applicant Firm was unable to continue to act for the Bank without breaching, or risking committing a breach of, the sanctions regime imposed by the British Government following Russia's invasion of Ukraine (the "Sanctions Regime").

In another recent decision of Justice Jack in *VTB Bank v Taruta*, in which Maples and Calder, the Maples Group's law firm, acted for the defendant who is a Ukrainian businessman and politician, the court dismissed an almost identical application by the claimant's legal practitioners to come off the record, and held that a legal practitioner acting on an existing retainer has a duty to make an application to the Governor's office for a licence to continue to act.

On the basis of that decision, the Applicant Firm duly applied for a licence to continue acting for the Bank, which licence is now with the Secretary of State for consideration. The Applicant Firm was not prepared to act *pro bono* except insofar as its duties required it to do so.

The court recognised that many law firms have found, and continue to find, themselves in a similar position acting for entities caught by the Sanctions Regime. It further recognised that the principal concern of law firms in this situation is that, by working in the expectation of receiving payment once a licence is granted, said firm might be providing 'credit' to the sanctioned entity during the period between the firm undertaking legal work and receiving the licence to enable payment of their fees. Providing credit to a sanctioned person, within the meaning of the Russia (Sanctions) (EU Exit) Regulations 2019, constitutes a criminal offence.

The Judgment

Having invited submissions from the Attorney General's chambers, in an *amicus curiae* capacity, Justice Jack held that:

- The provision of legal services and then billing for the services in the usual way does not amount to the giving of credit, within the meaning of the legislation;
- As a matter of ordinary language, a provider of services who does work and then bills for it, is not advancing a credit to the client;
- This is so whether or not the client subsequently pays for that work;
- If there is doubt about the true construction of a statutory provision which creates a criminal offence, the provision must be interpreted in favour of the liberty of the subject;
- The sanctions regime does not displace a sanctioned person's constitutional rights; and
- Sanctioned persons can only be given a fair hearing if they have access to counsel, especially in the Commercial Division where a corporate entity must appear by a BVI-admitted legal practitioner (per CPR 69B.4(4)).

Comment

This judgment provides further clarity on the practical consequences of the Sanctions Regime for legal practitioners, and the expectation that a firm retained by a sanctioned entity should apply for a licence *and* await the decision of the Secretary of State on that application before it will be permitted to cease acting.

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July 2022