

Update on Russian Sanctions in the BVI

Sanctions continue to apply against Russian individuals and entities in the British Virgin Islands ("BVI"). A number of recent developments provide insight on how law firms and litigants are navigating the sanctions regime.

Effect of the Sanctions

By way of recap, the UK's sanctions regime has been extended to the BVI by the Russia (Sanctions) (Overseas Territories) Order 2020 (S.I. 2020/1571) (the "OT Order"), as amended. Persons in the BVI are prohibited from dealing with any funds or economic resources owned, held or controlled by a designated person or entity. Since 22 February 2022, the British Government has introduced over 1200 new designations under the Russian sanctions regime.

The effect of the sanctions has meant that law firms are unable to charge designated persons for legal services. The Office of Financial Sanctions Implementation ("OFSI") has confirmed that payment for legal services, including payment for legal services provided on credit, requires a licence from OFSI. In the Virgin Islands, the Office of the Governor is responsible for the licensing regime.

In March 2022, in one of the first judgments¹ published following the introduction of the OT Order, Jack J refused an application by a BVI law firm to come off the record for JSC VTB Bank ("VTB Bank"), a designated entity. Jack J found that it was incumbent on the legal practitioners to apply for a licence to continue acting. The Judge expressed his view that "*even pariahs have rights*". In that judgment, Jack J was faced with an application for the discharge of a receivership order made in favour of VTB Bank. The Judge held that the receivership order 'altered' the judgment debt and thus any discharge would amount to dealing with funds owned by VTB. Jack J held that it was not possible lawfully to discharge the receivership order, nor to allow the receivers to take steps to get in the assets for VTB. He concluded that both steps would require a licence from the Governor.

Licence to Receive Payment from Designated Persons

In order to obtain funds from a designated entity, a BVI law firm must apply for a specific licence from the Governor's Office. At least one such licence has been granted to BVI legal practitioners to enable a designated person to pursue legal proceedings. In *Alfa-Bank v Kipford*², an application for a licence was made

¹ BVIHCM 2014/0062 JSC VTB Bank v Sergey Taruta, 22 March 2022 <https://www.eccourts.org/jsc-vtb-bank-v-alexander-katunin-4/>

² BVIHCM 2022/0007, Alfa-Bank v Kipford, 27 September 2022 <https://app.justis.com/case/ao-alfabank-v-kipford-ventures-ltd/overview/aXmdm3qdnZudl>

to the Governor on 1 April 2022. Alfa-Bank's London-based leading counsel made an application for a licence to OFSI around the same time. The BVI Governor's Office granted the licence on 28 July 2022. However, due to a backlog in the UK, the OFSI had not processed Alfa-Bank's leading counsel's application by the time the matter came back before the Court on 27 September 2022.

On 28 October 2022, OFSI issued a general licence ("General Licence") to permit the payment of legal fees owed by individuals and entities designated under either of the Russian and Belarussian sanctions regimes. As a result of the General Licence, a UK legal firm or UK Counsel who has provided legal advice to a person designated under either the Russia or Belarus regime, will not have to wait for an OFSI specific licence before they can receive payment from that designated person, provided that the terms of the General Licence are met.

The General Licence distinguishes between legal fees in relation to 'pre-designation' work, and work started 'post-designation'. Each designation has a £500,000 cap. For work commenced post-designation, there is a cap of £500,000 that applies to a designated person's total legal fees per case and the cap can be used separately by multiple legal firms involved in a case. The OFSI press release accompanying the General Licence states that the caps can be combined, meaning if work is undertaken for a designated person that involves fees for legal work carried out in satisfaction of a prior obligation (£500,000 limit) and work commenced post-designation (£500,000 limit), up to £1 million (inc. VAT) could be paid under the General Licence. Practitioners receiving payments under the

General Licence are subject to a reporting requirement when their use of the General Licence has ended, or upon the expiration of the General Licence.

Importantly, the General Licence has not been extended to the BVI.

Issues with the General Licence

In a judgment³ delivered on 4 November 2022, Foxton J made some comments on the General Licence. He noted the following:

- The General Licence does not refer to payments made to meet costs orders in favour of the other side or to comply with an order for security for costs;
- It was noted that paragraph 7 of the General Licence provides that if at any point in an individual case the limits for the professional legal fees, counsel's fees or expenses are anticipated to be exceeded, the licence will not apply to any further payment of any nature in relation to the entirety of the legal services. Foxton J noted that the effect of this provision appears to be that the General Licence will not apply at all (rather than simply not applying to the excess) after the point when it is estimated that the limits will be exceeded;
- The Judge also cast some doubt on whether the limits could be combined so that £1 million (inc. VAT) could be paid pursuant to the same engagement, before and after designation. The Judge noted that Part A of the General Licence, concerning pre-designation work,

³VTB Commodities Trading DAC v JSC Antipinsky Refinery, [2022] EWHC 2795 (Comm)
<https://www.bailii.org/ew/cases/EWHC/Comm/2022/2795.html>

contemplated the limit applying to the combination of past and future fees, given the reference in paragraph 3 of Part A to "*Legal Services which have been provided, or which are being provided*". The Judge further noted that paragraph 5 suggests that the £500,000 Part A limit applies to amounts paid during the period of the licence, i.e. up to 28 May 2023 ("*must not exceed £500,000 in total for the duration of this licence*"), and hence applies to ongoing work.

Foxton J's comments raise concerns for UK practitioners undertaking work for designated persons pursuant to the General Licence.

Further Developments in the BVI

On 7 November 2022, an appeal against Jack J's decision in *VTB Bank v Taruta* was heard by the Court of Appeal. VTB Bank was unrepresented following an order from the Court of Appeal giving VTB's BVI legal practitioners

permission to come off the record. Judgment has been reserved by the Court of Appeal. For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

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