

07 / 17 / 23

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Introduction

In response to the continued invasion of Ukraine, the United Kingdom has added to its measures targeting Russia by introducing a ban on the provision of certain legal advisory services.

While the UK government [press release announcing the measure](#) stated that it would “prevent UK lawyers from advising Russian companies in certain business deals,” the legal services ban is significantly wider, and applies to UK persons and persons located in the UK (both in-house and in private practice) providing legal advisory services to **any** non-UK person.

UK Legal Services Ban

On June 29, 2023, the UK published [legislation that introduced a ban on the provision of certain legal advisory services](#). The ban came into force on June 30, 2023.

The ban applies to all UK persons (*i.e.*, UK nationals and entities incorporated or constituted under UK law), wherever they are located, and all persons present in the UK.

UK persons are prohibited from directly or indirectly providing legal advisory services to any non-UK person¹ in relation to activity that would be prohibited by UK financial and trade² sanctions **if** the activity was undertaken (i) by a UK person or (ii) within the UK. The effect of this is that non-UK persons undertaking a transaction that **does not** have a UK nexus, but that **would** breach UK sanctions if it did have such a nexus, would be unable to obtain legal advice from a UK person (unless an exception applied or licence could be obtained).

The definition of “legal advisory services” is broad, and includes the provision of legal advice to a client in noncontentious matters, involving any of the following:

- i. The application or interpretation of law.
- ii. Acting on behalf of a client or providing advice to a client on or in connection with a commercial transaction, negotiation or any other dealing with a third party.
- iii. The preparation, execution or verification of legal documents (*i.e.*, any document governed in whole or part by law, or which satisfies a legal requirement).

The ban currently relates to legal advisory services provided in connection with noncontentious matters (*e.g.*, transactional legal advice), but appears to include a carve-out for legal services related to contentious matters, such as litigation and arbitration.³

¹ *i.e.*, an individual that is not a UK national, or an entity that is not incorporated in the UK.

² The ban applies to advice in relation to activity that would be prohibited by (i) the financial sanctions in Regulations 11 to 18C (*i.e.*, asset freeze, loan/credit and investment prohibitions), (ii) the trade sanctions in Chapters 2 to 6 and 6B of Part 5 of the Regulations (*i.e.*, export, import and professional service prohibitions) and (iii) the circumvention prohibitions in Regulations 19 and 55. The ban excludes activity that would be prohibited by Chapter 6A of Part 5 of the Regulations (which prohibits providing internet services to, or for the benefit of, designated persons).

³ The definition of legal advisory services states that it does not include representation, advice, preparation of documents or verification of documents undertaken as part of legal representation services provided in, or in anticipation of: (i) any proceeding before administrative agencies, courts or official tribunals; and (ii) arbitration or mediation.

UK Introduces Legal Services Ban

The UK Office of Financial Sanctions Implementation (OFSI) has not — at the time of this writing — issued a General License⁴ related to the ban, and there has been no indication by UK regulators that such a licence is forthcoming. However, the legislation does include certain exceptions, including a grace period for existing matters under an engagement letter or other contract concluded before June 30, 2023, provided such matters are concluded by September 29, 2023, and notification is made to the secretary of state before that date. The other exceptions to the ban are:

- i. Legal advisory services provided in relation to any act undertaken for the official purpose of a diplomatic mission or consular post in Russia or of an international organisation.
- ii. Satisfying an obligation where the legal services are provided in relation to the discharge of, or compliance with, UK statutory obligations.
- iii. Providing legal advice to any person regarding whether an act or proposed act would comply with the UK's Russia sanctions regulations. As currently drafted, this exception would appear to apply only to UK sanctions compliance advice relating to the regulations, and not compliance with other sanctions laws. Absent clarity from OFSI, a UK person providing advice related to compliance with other international sanctions regimes may not be able to benefit from the exception.
- iv. Providing legal advice in relation to dealing with an emergency.⁵

In addition, the legislation includes a defence to the prohibition if persons can show that they did not know, or had no reasonable cause to suspect, that the activity to which the legal advice relates would breach UK sanctions if it had the necessary links to the UK.

Guidance

The UK has updated its [guidance on complying with professional and business services prohibitions](#) to include the ban on legal advisory services.

The guidance notes that existing rules on circumvention already prevented persons from intentionally providing legal services where the object or effect of the services circumvents prohibitions imposed by the Russia (Sanctions) (EU Exit) Regulations 2019 (the “Russia Regulations”). However, given the territorial application of the Russia Regulations, the prohibitions on circumvention generally only apply to legal advisory services provided in relation to prohibited activity undertaken in the UK or by a UK person.

⁴ For details about OFSI's original list of sanctions-related licences, see our December 5, 2022, client alert “[Latest UK Sanctions Against Russia](#)”.

⁵ *I.e.*, to assist with the the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health or safety, infrastructure or the environment.

The introduction of the legal services ban extends this to activity with no such connection to the UK, as long as the legal advice given by a UK person is provided to a non-UK person.

The UK has also updated its [guidance on Russia sanctions](#) to outline the available licensing grounds in relation to the legal services ban. The guidance states that a licence may be granted for the provision of legal advisory services where either (i) a licensing ground would apply to the prohibited activity in relation to which the legal advice is being given or (ii) a licensing ground would apply to the activity in relation to which the legal advice is being given if such activity was done by a UK person or taking place in the UK.

This differs from the approach taken to the licensing grounds available in relation to prohibited professional services, and means that the available grounds under the legal services ban appear slightly wider in scope. For example, a licence can be obtained for the provision of legal advice related to activity where a prior obligation or extraordinary situation licensing ground would apply. These grounds are not listed in the guidance as being applicable to other professional services. (For details about the UK regulations' restrictions on providing professional services to persons connected with Russia, see our December 22, 2022, client alert “[UK Expands Prohibitions on Providing Services to Russian Entities and Adds Investment Restrictions](#)”.)

In a webinar held on July 4, 2023, OFSI committed to publishing further guidance on the ban in conjunction with the Law Society of England and Wales, particularly related to the sanctions-compliance exemption, which we hope will provide greater clarity about the operation of the ban.

Comparison With EU sanctions

On October 7, 2022, the EU introduced its own ban on providing certain legal advisory services.⁶

In contrast with the UK's ban, the EU's ban is limited to the provision of certain legal advisory services to Russia. The ban prohibits natural and legal persons from providing legal advisory services directly or indirectly to (i) the government of Russia or (ii) legal persons, entities or bodies established in Russia.⁷

⁶ See Council Regulation (EU) 2022/1904 of 6 October 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (as amended from time to time, “Regulation 833”). The legal services ban is contained in Art. 5n(2) of Regulation 833.

⁷ In general, pursuant to Art. 13 of Regulation 833, EU sanctions targeting Russia apply (i) within the territory of the EU, (ii) on board of any aircraft or vessel under the jurisdiction of an EU member state, (iii) to EU nationals, (iv) to any legal person, entity or body outside the territory of the EU that is incorporated or constituted under the law of an EU member state and (v) to any legal person, entity or body regarding any business conducted in whole or in part within the EU.

UK Introduces Legal Services Ban

The meaning of “legal advisory services”⁸ for the purpose of the EU’s ban is broad and, as with the UK’s definition, is limited to advice provided in relation to noncontentious matters. In particular, the EU’s definition includes:

- i. The provision of legal advice to customers in noncontentious matters, including commercial transactions, involving the application or interpretation of law.
- ii. Participation with or on behalf of clients in commercial transactions, negotiations and other dealings with third parties.
- iii. Preparation, execution and verification of legal documents.

The EU’s ban also contains certain exceptions, which are designed to preserve access to justice and the right of defence. Legal services provided in relation to the following activities are excluded from the ban:

- i. The termination by January 8, 2023, of contracts concluded before October 7, 2022, that were not compliant with the legal services ban, or of ancillary contracts necessary for the execution of such contracts.
- ii. The exercise of the right of defence in judicial proceedings and the right to an effective legal remedy.
- iii. Activity that ensures access to judicial, administrative or arbitral proceedings in an EU member state, or activity to recognize or enforce a judgment or an arbitration award rendered in an EU member state.⁹

⁸ The term “legal advisory services” is circumscribed in the recitals to Council Regulation (EU) 2022/1904 of 6 October 2022.

⁹ Provided that such provision of services is consistent with the objectives of Regulation 833 and of Council Regulation (EU) No 269/2014 (as amended).

The EU also included an exemption for legal services provided to Russian subsidiaries of entities incorporated or constituted in certain western jurisdictions. In particular, the ban does not apply to advice intended for the exclusive use of legal persons, entities or bodies established in Russia that are owned or controlled by a legal person, entity or body that is incorporated or constituted under the law of (i) an EU member state, (ii) a country member of the European Economic Area, (iii) Switzerland or (iv) one of the partner countries listed in Annex VIII to Regulation 833.^{10,11} In this regard, the EU’s ban is narrower in scope than the UK’s, which applies to advice provided to all non-UK persons.

However, in other respects, the EU’s ban is broader than the UK’s. (For further details on the EU’s recently expanded sanctions, see our July 10, 2023, client alert “[EU Increases Russia-Related Restrictions and Expands Anti-Circumvention Measures in 11th Package of Sanctions](#)”). In particular, the EU prohibits the provision of legal advisory services regardless of the subject matter of the advice. This means that if the services fall within the meaning of legal advisory services, such services are prohibited, regardless of whether the subject matter to which the legal advice relates would be prohibited for EU persons.

¹⁰ The list of partner countries includes the United States, Japan, the UK, South Korea, Australia, Canada, New Zealand and Norway.

¹¹ Joint ownership or control is sufficient for the exemption to apply (see Item 8.16. of the Commission Consolidated FAQs on the implementation of Council Regulation No 833/2014 and Council Regulation No 269/2014 (last update: July 6, 2023)). EU Commission guidance also suggests that the relevant entity to consider is the ultimate beneficial owner (UBO) of the Russian entity that is the direct recipient of the legal advisory services. For example, if the Russian entity to which legal advisory services are provided is owned by another Russian company but that Russian company is owned by an EU entity, the exemption should still be available.

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