

Sanctions Risk Assessment 2023

INTRODUCTION

The information in this sanctions risk assessment is designed to assist our firms in:

1. setting their own policy on whether to represent sanctioned individuals and entities and;
2. carrying out their own sanctions risk assessment.

It reflects some of the risks to which firms may be exposed based upon intelligence gathered from a variety of sources and was updated in July 2023.

We have split it into four sections:

- Understanding sanctions
- Our Expectations
- Risk factors
- Key points to remember

CILEx Regulation takes its responsibilities very seriously to help implement coherent and effective compliance with the sanctions regime. This means both CILEx Regulation and our supervised firms focusing efforts where risks are highest. In that way we can best protect the integrity of the legal sector and the wider public.

UNDERSTANDING SANCTIONS

Sanctions Regime

The sanctions regime imposes serious and extensive restrictions on dealing with people or entities who are listed. Under the legislation they are referred to as “designated persons”. The law restricts you from:

- receiving payment from or making funds available to persons on the sanctions list
- dealing with their economic resources
- making even legitimate payments to those persons

It does not prevent sanctioned individuals or entities accessing legal services or justice.

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Sanctions Legislation

The following are the key pieces of legislation on which the sanctions regime is based.

The [Sanctions and Anti-Money Laundering Act 2018](#) provides the main legal basis for the UK to impose, update and lift sanctions. Some sanctions measures apply through other legislation, such as the [Immigration Act 1971](#), the [Export Control Order 2008](#) and the [Terrorist Asset-Freezing etc. Act 2010](#).

Recent legislation has been aimed at encouraging Russia to cease actions destabilising, undermining, or threatening the territorial integrity, sovereignty or independence of Ukraine.

[The Russia \(Sanctions\) \(EU Exit\) Regulations 2019](#) came fully into force on 31 December 2020. You should review and stay up to date with the following legislation to find out about the amendments made to the regulations:

- [Russia \(Sanctions\) \(EU Exit\) \(Amendment\) Regulations 2022](#),
- Subsequent Sanctions (EU Exit) (Miscellaneous Amendments) 2022

However, you should remember that sanctions do not just apply to Russia and Russian individuals.

Ban on Legal Advisory Services

From 30 June 2023; [the Russia \(Sanctions\) \(EU Exit\) \(Amendment\) \(No. 3\) Regulations 2023](#) prevents lawyers from providing legal advisory services, directly or indirectly, in relation to certain financial or trade activity. Lawyers must not provide legal advisory services to any person who is not a UK person in relation to, or in connection with, specified activity which would be prohibited under the UK sanctions regime if the activity was done by a UK person or was taking place in the UK.

(1) “Legal advisory services”

a) means the provision of legal advice to a client in non-contentious matters, involving any of the following:

- (i) the application or interpretation of law;
- (ii) acting on behalf of a client, or providing advice on or in connection with, a

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commercial transaction, negotiation or any other dealing with a third party;
(iii) the preparation, execution or verification of a legal document;

b) do not include any representation, advice, preparation of documents or verification of documents undertaken as part of legal representation services provided in, or in anticipation of

- (i) any proceedings before administrative agencies, courts or other duly constituted official tribunals, or
- (ii) arbitral or mediation proceedings.

(2) In sub-paragraph (1)—

- (a) “legal document” includes any document which is governed in whole or in part by law, or which satisfies a legal requirement;
- (b) “legal representation services” include advice given in relation to a dispute or potential dispute, and on the settlement of a dispute, whether or not proceedings referred to in sub-paragraph (1)(b) are commenced in relation to the dispute.”

The Government has [confirmed](#) that “The restrictions on legal services do not include legal representation for Russian nationals using UK legal expertise, ensuring that allowing everyone to access legal support remains a core aspect of the rule of law across the UK.”

OFSI

[The Office of Financial Sanctions Implementation \(OFSI\)](#) helps to ensure that financial sanctions are properly understood, implemented, and enforced in the United Kingdom.

OFSI publishes a list of all those subject to financial sanctions imposed by the UK which it keeps updated.

ANY PERSON OR ORGANISATION INVOLVED IN A TRANSACTION WITH THOSE SUBJECT TO FINANCIAL SANCTIONS WILL FIRST NEED A LICENCE FROM OFSI.

SINCE 31 OCTOBER 2022 A NEW GENERAL LICENCE ALLOWS LAW FIRMS TO GET PAID FOR SPECIFIC ACTIVITIES RELATED TO RUSSIA & BELARUS REGIMES, INCLUDING FUNDS NEEDED TO MEET BASIC NEEDS OF THE INDIVIDUALS AND ENTITIES AND PAYMENT OF FEES FOR ANY LEGAL REPRESENTATION THAT THEY MIGHT SEEK. THERE ARE CONDITIONS RELATED TO THE USE OF THIS LICENCE.

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Who or What can be the target of sanctions?

Sanctions can be focussed on a variety of different targets in an attempt to influence the activities of a particular state, regime or group of individuals. There is a perception that sanctions relate only to non-UK individuals and entities – this is not correct. Targets can include (amongst other things):

Individuals: particular individuals or groups of individuals can be targeted by various measures such as an asset freeze and/or travel ban.

Companies and other entities: companies and other entities (such as terrorist groups) can be subject to asset freezes or more targeted restrictions.

Industries: restrictions can be implemented against industries linked to a particular state.

Vessels/aircraft: certain vessels or aircraft may be blacklisted.

State-wide: comprehensive sanctions are sometimes implemented against an entire state.

The developing sanctions regime

Sanctions lists are evolving constantly

As governments increasingly rely on sanctions as a tool for political foreign policy, new entities are added to, and removed from sanctions lists, all of the time, so keeping up to date with lists is vitally important.

The nature of sanctions is becoming more complex

Whereas they previously targeted only specific named entities (states, ships, aircraft, organisations and individuals), now sanctions have been introduced targeting specific sectors and prohibiting specific activities, which are more open to interpretation.

Sanctions aren't limited to the entities themselves

Organisations owned or controlled by sanctioned entities also need to be in scope of sanctions lists and compliance programmes. Additionally, customers who aren't on a sanctions list but have a relationship with a sanctioned entity could also present a risk.

There are multiple sanctioning bodies with their own sanctions lists

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The multitude of sanctioning bodies, including sovereign states, regional unions and international organisations such as the UN, each publish their own sanctions – which don't always align.

OUR EXPECTATIONS

Who must understand the sanctions regime?

We want our firms to ensure that their clients and the legal system are protected and not just adopt a tick box approach to compliance with sanctions.

Unlike with money laundering regulations, all firms and individuals must take appropriate steps to identify and assess their risk of being used by sanctioned individuals and entities (designated persons).

Irrespective of whether you ever intend to act for a designated person, you need to have the checks in place to ensure that you or your firm cannot be used to break any sanctions.

We will ask to see your firms' written risk assessment and policies, procedures and controls as part of our initial authorisation and routine supervision.

Reputational impact

We would expect to see a firm's appetite to engage with work on behalf of designated persons or entities reflected in their own risk assessment and policies. Where a firm is considering offering legal services it would have needed to [apply for a licence](#) from OFSI.

Since 31 October 2022 a new general licence has allowed law firms acting for a person designated under either the Russia or Belarus regimes to get paid for specific activities, including funds needed to meet basic needs of the individuals and entities and payment of fees for any legal representation that they might seek. The current general licence expires on 28 October 2023.

Details of the background to the licence and how firms must operate under it are set out in the OFSI guidance on the Legal Fees General Licence. Those who use the licence must report to OFSI when the use of the General Licence has ended or under expiry of the licence on 28 October 2023.

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If a law firm breaches the licence, then they are subject to criminal or monetary penalties.

WE WOULD EXPECT FIRMS TO CONSIDER VERY CAREFULLY THE REPUTATIONAL IMPLICATIONS OF CARRYING OUT THIS WORK AND TO NOTIFY US IF THEY DO MAKE AN APPLICATION OR RELY UPON A GENERAL LICENCE.

All CILEX members and firms should assess their own exposure and put in place processes to check sanctions that are in force to manage any identified or anticipated risks of breaching sanctions.

Checking your clients

Firms are expected to carry out checks against the latest sanctions lists and identify any potential or actual breach of financial sanctions to OFSI.

As there may be efforts to access frozen assets, firms should check the beneficial ownership of all clients and be wary of agents acting on behalf of third parties.

It is good practice to check:

- your existing clients against OFSI's Consolidated List
- all new customers prior to providing any services or transactions
- any updates to the OFSI's Consolidated List
- any changes to your client's details
- include directors, beneficial owners of corporate customers and any third-party payees in your checks.

Use of verification tools

If you use electronic identification and verification tools to conduct sanction checks, please refer to Chapter 7 of the [Anti-Money Laundering Guidance for the legal sector](#). This contains additional information to help you manage risk if you use third party services or tools to conduct your sanctions checks.

Your own risk assessment

In carrying out the risk assessment this will help you understand the risks you face and means that you should be better prepared to counter them if your firm were to be targeted.

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You must take into account:

- a) information made available to you by CILEx Regulation, including this risk assessment; and
- b) risk factors including factors relating to—
 - I. general considerations
 - II. type of work carried out
 - III. your consumers and clients
 - IV. potential evasion of sanctions

A small firm may demonstrate awareness of the sanctions regime and where it is vulnerable, even if the risk assessment is brief.

Ultimately by engaging fully you will be understanding the risks your firm may face, and how you can protect your firm and maintain your reputation.

What should a Sanctions Policy include?

Defining sanctions

Start by explaining what sanctions are.

Comparing sanctions to anti-money laundering

The sanctions regime is not the same as the Anti-Money Laundering regime and it is important for staff to know the difference. This section should explain this difference.

Who is responsible for the sanctions policy?

Give details of who is responsible for ensuring the policy is adhered to by all staff.

Risk assessment

Has your organisation carried out a sanctions risk assessment? The risk assessment procedures, and any results to note should be included here.

Company procedures

Your organisation should have clear sanctions procedures in place and include those procedures in the policy. Set out whether you ever intend to act for sanctioned individuals or entities.

What training is provided on sanctions?

Your policy should outline the training your staff will be given on sanctions.

Consequences of non-compliance

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Are your staff aware of the importance of adhering to the sanctions policy? This should be highlighted by pointing out the implications of non-compliance, which could result in disciplinary action or even dismissal.

How will we ensure compliance?

CILEx Regulations' Supervision Team, when reviewing the policies and processes that you have in place to ensure compliance, will consider the following:

- What is your documented policy on dealing with sanctioned individuals and entities?
- What is the risk that, in your practice, you will engage with clients that are subject to sanctions? Have you conducted a risk assessment and how is it kept up to date?
- What processes do you have in place to make yourself aware of current sanctions that are in place and how do you keep up to date with changes?
- What processes are in place to check the consolidated list of sanctions when engaging with a new client?
- At what stage are clients screened?
- Do you take a risk-based approach? For example, are there enhanced due diligence checks for clients (and their beneficial owners) from countries that are covered by the sanctions regime?
- Have you documented your policy and processes for screening clients (and their beneficial owners) and ensured that staff have received appropriate training?
- Have you reported to OFSI any designated person you have identified as a potential client?
- Are you or have you relied upon any general licences? If so, have you complied with all the necessary reporting requirements
- Is any work related to sanctioned clients covered by your Professional Indemnity Insurance?

RISK FACTORS

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In looking at these risk factors, we are considering the inherent level of risk before any mitigation that you put in place. These are the ones we consider to be significant for our firms and your firm's risk assessment will need to address these.

1. GENERAL CONSIDERATIONS

It's difficult to categorise the clients that may need to be checked simply by their nationality or country of residence. UK nationals and UK residents can be on the sanctions lists, so you may still be at risk even if you only act for local clients.

The regimes list can help you assess risk but bear in mind there may be some retainers where it's not immediately apparent that a person or entity may have some connection to a relevant regime.

You should consider the following facts about financial sanctions:

- Standard anti-money laundering checks do not screen clients against the OFSI's Consolidated List. Firms should not confuse the Government's financial sanctions regime with anti-money laundering procedures.
- Financial sanctions apply to all transactions, there is no minimum financial limit.
- Politically Exposed Persons (PEPs) are not necessarily financial sanction targets.
- Most listed individuals and entities are aware that they are on the OFSI's Consolidated List, which is publicly available. The issue of 'tipping off' (as set out in the Proceeds of Crime Act 2002) should therefore not generally arise.
- The Government's financial sanction regime is not the same as our enforcement action. OFSI is responsible for implementing, administering and enforcing compliance with the financial sanctions regime.

Link to your AML risk assessment

When you carry out your firm's anti-money laundering (AML) risk assessment, you should consider how likely it is that your clients may be on the sanctions lists.

Clearly there can be a single risk, or a combination of risks, that can impact on your assessment of a client or transaction.

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2. TYPE OF WORK RISK

Sanctioned individuals and entities will look at the services that you offer to assess whether you may be suitable to help them.

You cannot limit your risk assessment to the work regulated under the AML regulations. Examples of unregulated work that the sanctions regime may affect include:

- payment of personal injuries settlements
- property settlements following a divorce

You'd also need a licence from OFSI to use legal aid payments for the benefit of a person on the list.

3. CLIENT RISK

Each client should be considered separately, as each will have their own individual risk-profile. Remember to consider the risk posed by the beneficial owner, so make sure you know who you are dealing with.

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The regimes list can help you assess risk but bear in mind there may be some retainers where it's not immediately apparent that a person or entity may have some connection to a relevant regime.

Having effective ongoing monitoring of all clients is the best way to mitigate these risks.

Factors affecting the type of client risk

Factors that may increase the risk of a person being on the sanctions list, and so increase the reason for checking the list, include:

- clients or transactions with links to jurisdictions subject to sanctions, even if the clients are based in the UK. UK nationals and UK residents can be on the sanctions

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list, so your firm may still be at risk if client checks are focused on nationality or country of residence.

- clients or transactions involving politically exposed persons (PEPs) from jurisdictions subject to sanctions.
- clients or transactions involving complex business structures and ultimate beneficial ownerships in jurisdictions in the sanctions regime.
- clients who seem unable to receive funds or send funds from a bank account in their name, for no good reason.
- clients who seem not to be able to evidence the source of funds or wealth.
- clients who make frequent and regular travel to sanctioned jurisdictions.
- clients who have connections to others related parties in sanctioned jurisdictions.

Use of agents or third parties

Firms can only carry out paid work under licence, so there is the risk that a designated person may indirectly approach a firm or use an agent to conceal ultimate beneficial ownership.

Referrals also pose a risk if there is a presumption that the referring party has carried out checks.

The risk is raised when they are seeking to access frozen assets.

Managing client risk

If your firm has a low general risk of working for clients on the sanctions list, but individual clients have higher risks, you can [check directly against the Treasury's consolidated list](#).

If a client comes up as a possible sanctions match, you should review all the client identity information you hold against the sanctions list, to make sure you do not have a false positive identification. The UK sanctions list includes information on:

- name
- date of birth
- nationality
- passport or identity card numbers
- last known address

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If your firm has a higher risk of dealing with clients on the sanctions list, you may want to use an e-verifier. These services incorporate the sanctions list into the databases they use to check identity information.

You should also have processes in place to help you find out whether key beneficial owners, or the intended recipient of funds from a transaction you're undertaking, are subject to the restrictions.

If you decide you still want to act, you'll need to apply for a licence from OFSI before proceeding.

You must:

- suspend the transaction while you wait for advice from OFSI
- contact OFSI to get a licence to deal with the funds
- consider whether you have a suspicion of money laundering or terrorist financing which requires a report to the [National Crime Agency \(NCA\)](#)
- Advise CILEx Regulation

You can discuss the person's sanctioned status with them without being concerned about [tipping off](#), as the sanctions list is public information.

4. SANCTIONS EVASION RISK

Identifying the risks involved in a transaction is helped by being alert for unusual activity or requests that don't make commercial sense.

You may be faced with requests to carry out transactions that will enable a designated person to evade sanctions that are in place

Possible indicators of evasion

- Russian clients communicating changes to the beneficial ownership of their companies to non-Russian or dual national family members
- Requests to transfer assets between national/dual-national family members
- Use of trust arrangements, with circumstances of transfers calling into question whether the original owner retains indirect control or otherwise could retain a benefit from the assets transferred

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- Clients seeking to move all their assets to other financial institutions and closing their accounts in London
- Clients domiciled in sanctioned countries asking whether they can make transfers to a London account
- Attempts to purchase sanctioned securities, which have drastically fallen in price
- Payments received by UK businesses, often in innovative areas, also with some elements of ownership by Russia nationals or other sanctioned individuals
- Payments via companies with Russian investor nexus
- High net worth individuals who are already on international sanctions lists (but not UK list) and/or who anticipate that they may become a sanctions target, transferring assets to family members and/or close associates such as employees
- Change in address and names for Russian entities one day prior to invasion
- Change of ultimate beneficial owners to other nationalities

KEY POINTS TO REMEMBER

SANCTIONS EXIST.

Breaching sanctions can have a big impact on you and your business. For example, breaching financial sanctions is a criminal offence and can result in a civil monetary penalty being imposed on your business or you, with imprisonment of up to 7 years.

IT IS YOUR RESPONSIBILITY TO CHECK.

Firms are expected to undertake due diligence and risk assessments about their clients to know who they are dealing with, both directly and indirectly, for example, looking at ownership and control of an organisation. This includes checking that clients are not listed in the sanctions lists.

YOU MAY NEED A LICENCE.

In certain circumstances, the government may grant a licence to permit an activity that would otherwise be prohibited. It is up to the licensing authority to determine whether a licensing application is in line with the purposes.

RELYING ON A GENERAL LICENCE.

A general licence has responsibilities and reporting requirements you need to follow, as otherwise you could be committing an offence.

YOU MUST REPORT ANY SUSPECTED OR ACTUAL BREACHES OF FINANCIAL SANCTIONS TO OFSI.

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If you believe that you are dealing with an individual or organisation that is or was subject to sanctions at the time of the activity, you must [report this to OFSI](#), not deal with or make funds or economic resources available to them and not do anything that would circumvent the asset freeze.

PROTECT YOUR REPUTATION

Firms need to consider the reputational impact of any involvement with a sanctioned person or entity and whether they have the necessary controls and processes to work under a licence. Also will your PII cover working with or for sanctioned individuals or organisations.

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