

# THE IMPACT OF RUSSIA SANCTIONS ON BVI LEGAL AND INSOLVENCY PRACTITIONERS



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## Introduction

Following Russia's invasion of Ukraine, the UK government, along with other key global stakeholders, have issued a raft of sanctions targeting entities and individuals connected with the Russian state. Those subject to the sanctions would have had their UK assets frozen, be prohibited from travelling to and from the UK and no UK citizen or company may do business with them. The UK government has also imposed import duties on various Russian goods, as well as a ban on exports of a number of goods to Russia.<sup>1</sup>



## The financial sanctions regime in the BVI

As a British Overseas Territory, the Virgin Islands implement all UK sanctions regulations which have been made and modified under the Sanctions

and Anti-Money Laundering Act 2018. The sanctions imposed by the British Government have been extended to the Virgin Islands by virtue of new Overseas Territories Sanctions Orders.

To help businesses and individuals comply with the financial sanctions regime, the Office of Financial Sanctions Implementation, as part of Her Majesty's Treasury, maintains a consolidated list of all asset freeze targets listed under UK autonomous financial sanctions legislation and UN resolutions (the "**Consolidated List**"). The Consolidated List is endorsed and adopted by the BVI Financial Services

<sup>1</sup> <https://www.gov.uk/government/collections/uk-sanctions-on-russia>

Commission and contains those persons and entities against whom a sanctions regime has bitten.

Once a designation for financial sanction is made, a relevant person carrying on relevant business (as defined in the Anti-Money Laundering Regulations 2008) is required to, amongst other things, refrain from dealing with funds or assets of a sanctioned person or entity, or to otherwise make themselves available to such persons or entities unless licensed by the Office of the Governor.

Recently, the BVI Courts have provided comments to how parties, officeholders and legal practitioners should act in circumstances where a sanctioned entity or person is involved. The guidance to which is summarised and set out below.

## Acting for Russian clients under the current sanctions

In March 2022, Mr. Justice Jack handed down judgment on a BVI legal practitioner's application to come off record for reasons related to the sanctioning of its client. Justice Jack also considered whether a receivership order may be discharged for sanctions related reasons and how a receiver may carry out its powers under the receivership order in the circumstance. The judgment is a useful commentary on how legal and insolvency practitioners should approach the issue of sanctions.

The judgment was delivered following an application by legal practitioners, under rule 63.6 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000, to come off record as the legal representatives of JSC VTB Bank ("VTB") – a recently sanctioned party as a result of Russia's invasion of Ukraine<sup>2</sup>. The principal ground for seeking to come off the record was as a result of VTB having been sanctioned by the UK (which were applicable within the Virgin Islands for the reasons set out above), and any breach of those sanctions would be a criminal offence.

The Court refused the application - it was satisfied that obtaining appropriate licences from His Excellency the Governor should protect the firm from any risks of criminal offences being



committed. It was possible to apply for a licence covering a whole year and no fee would be charged for such applications.

Responding to the concern about committing a criminal offence for extending credit to VTB by carrying out work without payment on account, Justice Jack's view was that given the large amount of work done so far for VTB, a short period during which the legal practitioners could not bill whilst obtaining the appropriate licence should not be overly onerous.

Whilst Counsel accepted that the firm's termination right under the terms of their retainer by VTB were not determinative of the Court's approach to its application, Justice Jack agreed that the Court should be slow to go behind the arm's length agreement of the parties if the terms permitted for the termination of the retainer. Having factored in commercial considerations, the Court attached greater weight to the legal practitioners' professional obligation and VTB's right to legal representation.

Justice Jack pointed out that the legal practitioners had a duty to continue to act – the varying degrees of unsavouriness manifested by defendants in criminal proceedings had never been a ground for withdrawing from a retainer, and in his view, the same standard should apply to civil proceedings. In fact, in the Judge's view, it was precisely because VTB had now been stigmatised by sanctions, that

they needed the legal practitioners' best endeavours to advocate for them.

***Counsel also relied on the guidance given by the Law Society of Jersey, which provided that "the Law Society considers that, in the current circumstances and specifically in relation to Russian or Belarusian clients, reputational concerns or issues may, additionally, be considered to represent 'just case' to justify termination of a relationship."***

However, the Court took the view that the guidance did not confer a right to withdraw from representing a client in existing proceedings.

The Court acknowledged that there may be a need to release the legal practitioners from their professional obligation if they could not obtain the appropriate licence to legitimise payment to them by VTB. However, Justice Jack observed that it was too early in the sanctions regime to know fully what the practicalities of payment were.

**The Court referred to the Code of Ethics in the Virgin Islands Legal Profession Act 2015, which stated: “A legal practitioner shall defend the interests of his or her clients without fear or judicial disfavour or public unpopularity and without regard to any unpleasant consequences to himself or herself or to any other person.”<sup>3</sup>**

In the end, the Court found that the legal practitioners’ duties as officers of the Court outweighed other considerations and refused the firm’s application to come off record as VTB’s legal representatives.

Turning to the issue of whether a receivership order may be discharged without a financial sanctions licence, the

Court confirmed that a licence would not be required if active measures were not being taken to ingather assets. Receivers were, however, required to apply for an appropriate licence before realising assets belonging to sanctioned individuals or entities. The Court made clear that not obtaining a licence did not automatically discharge a receivership order. This is because a receivership order in itself had a substantial value to a judgment creditor and discharging a receivership would have an impact on the value of a judgment debt.

### The SRA perspective

The SRA has issued its own guidance around this issue<sup>4</sup>, noting that it is highly unlikely to be a regulatory matter and that where firms are considering terminating client retainers there is a common law requirement that there is a “good reason” for such a termination. The SRA has therefore indicated that, as in the BVI, it will be a matter for the English courts to determine on the facts of individual cases whether solicitors can terminate existing client retainers

### Conclusion

In justifying its approach, the Court in *JSC VTB Bank* recognised that the sanctions regime was aimed exclusively at freezing assets, as opposed to confiscating assets. Provided their assets were frozen, sanctioned entities and individuals retained all their civic rights including full access to the Court and an entitlement to have their rights determined by the Court. In the context of international dispute resolution, not only does this judgment help the legal and insolvency profession navigate the complexities surrounding the sanctions regime, but it also serves as important reminder to legal practitioners and insolvency practitioners of their professional obligations.



3 Paragraph 5 of the Code of Ethics, Legal Profession Act 2015

4 [www.sra.org.uk/sra/news/russian-conflict-and-sanctions/](http://www.sra.org.uk/sra/news/russian-conflict-and-sanctions/)