

Monday, July 24, 2023

UK Sanctions On Legal Advisory Services

On 30 June 2023, the UK Government brought into force a new prohibition on the provision of legal advisory services, under The Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2023 (SI 2023 No. 713).

The Foreign, Commonwealth & Development Office had been concerned about the potential for UK legal services provider to support commercial activity which advances the interests of Russia, where that activity does not have sufficient connection to the UK to be prohibited under the UK sanctions regime. They appear to have had in mind that English law is often chosen as the law governing international commercial contracts, that UK lawyers frequently advise on such contracts, and that the parties to and the performance of the contract might be outside the jurisdiction or territorial scope of UK sanctions (which typically apply to UK persons or to things done within the UK).

The new ban means that no UK person or person in the UK can provide legal advisory services in relation to certain financial or trade activities 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. In other words, UK lawyers now cannot generally give legal advice about prohibited activities, whatever the nationality of the actors or clients and wherever the activities may occur.

The activities on which advice/advisory services cannot be given are activities prohibited by:

- regulations 11 to 18C of Part 3 (Finance) - basically, transactions involving assets owned or controlled by or benefitting sanctioned persons, finance and investment benefitting Russia, and trusts services.
- Chapters 2 to 6 or Chapter 6B of Part 5 (Trade) – basically, the full range of trade sanctions except those relating to internet services.

(These are references to The Russia (Sanctions) (EU Exit) Regulations 2019.)

The ban is limited to “legal advisory services” and does not cover “representation, advice, preparation of documents or verification of documents undertaken as part of legal representation services provided in, or in anticipation of any proceedings before administrative agencies, courts or other duly constituted official tribunals, or arbitral or mediation proceedings”. “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 are commenced in relation to the dispute.

The prohibited advice or services are not confined to any system of UK law, so a dual-qualified lawyer working in the UK will not be able to advise on (e.g.) EU or US law.

The prohibition applies to services provided to any person (including a non-UK person) and irrespective of where they are located. By contrast, EU prohibitions only apply to advice given to the Government of Russia and legal persons, entities or bodies established in Russia.

Exceptions to the UK ban include legal advice (a) related to compliance with the sanctions regime itself, (b) dealing with an emergency (i.e. 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 prohibition is subject to a three-month grace period to allow lawyers to conclude their existing advisory mandates in an orderly way and to allow clients to make alternative arrangements.

For further information, please feel free to contact us at: lsaa@candey.com

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