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# Kluwer Arbitration Blog

## Navigating UK Sanctions Against Russian Persons in International Arbitration

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Russia's invasion of Ukraine has created an environment ripe for controversy and disputes, some of which may be resolved in arbitration. International sanctions against Russia have been previously discussed on the Blog from the perspective of the EU ([here](#) and [here](#)), the US (see [here](#)) and in relation to [potential investment claims](#) (in particular under [MFN clauses](#)).

While UK sanctions imposed as a result of Russia's invasion of Ukraine do not generally restrict arbitration proceedings, they may pose obstacles to the appointment of arbitrators and counsel as well as the administration of disputes by arbitral institutions, resulting in delays in dispute resolution. The overall effect of the UK sanctions regime may also mean that the successful party will encounter issues with enforcement in the UK. In this blog post we discuss how to navigate and mitigate these issues.

### Background to the UK Sanctions Regime

As discussed in an article (available on [Herbert Smith Freehills' website](#)), the UK has implemented a series of sanctions against Russian entities following Russia's invasion of Ukraine on 24 February 2022. The UK sanctions regime comprises mainly the [Sanctions and Anti-Money Laundering Act 2018](#) and the [Russia \(Sanctions\) \(EU Exit\) Regulations 2019](#), as amended (the "**Regulations**"). An extensive and wide-ranging array of sanctions have been introduced by the Regulations, but the type most relevant to arbitration proceedings seated in England and Wales is the targeted freezing of assets. While immigration sanctions (also known as 'travel bans') may affect international arbitration proceedings to the extent the designated individuals will be unable to enter the UK (for example, to attend an arbitration hearing), their effect may be mitigated by the flexible nature of international arbitration, which allows proceeding to take place virtually or in a physical location other than the legal seat.

The asset freezes restrict access to funds and economic resources of persons (whether individuals or entities) designated pursuant to the Regulations. On their designation, such persons are added to the [Consolidated List of Financial Sanctions Targets](#) maintained by the [Office of Financial Sanctions Implementation](#) ("**OFSI**"). Those on the list are known as "**Designated Persons**" and are primary targets of the freezes. However, importantly, the asset freeze restrictions also extend to

entities owned or controlled, directly or indirectly, by a Designated Person. References in this post to restrictions applying to Designated Persons should be taken also to apply to entities owned or controlled (within the meaning of the Regulations) by Designated Persons. The asset freeze restrictions are, however, subject to certain listed exceptions, and in particular acts which would otherwise breach the restrictions may be licensed by OFSI.

## **When Will UK Sanctions Apply to an International Arbitration?**

The Regulations apply within the territory of the UK and, additionally, regulation 3 of the Regulations sets out an extended extra-territorial scope whereby the Regulations apply to the conduct of “UK persons” (as defined) in respect of conduct outside the UK, and to conduct in the territorial sea. OFSI takes a relatively broad view of the sanctions’ jurisdictional scope, as described in [OFSI’s General Guidance](#) and [Monetary Penalties Guidance](#). The UK asset freeze regime will therefore be relevant in an arbitral context where one of the parties is a Designated Person and one of a range of connecting factors to the UK is present. That will include:

- where the seat of an arbitration is in the UK (even if only non-UK nationals are involved in the arbitration);
- one of the other parties is a UK entity, or a non-UK entity but represented by UK nationals;
- one or more of the arbitrators are UK nationals; or
- one of the law firms involved is established under UK law or operates within the UK’s territory (or UK nationals will be working on the case).

## **Arbitration Proceedings Affected by the UK Sanctions Regime**

### *Commencing Arbitration Proceedings Affected by the UK Sanctions Regime*

The application of UK sanctions to arbitration proceedings raises a number of potential practical issues which can make parties reluctant to pursue such proceedings or lead to delays, although the licensing regime (discussed further below) seeks to mitigate the related ‘access to justice’ considerations. All parties will need to be satisfied that they are not in breach of sanctions in pursuing or defending any claim. For example, parties will need to be able to make payments to arbitral institutions for the handling of their case; and institutions will need to be satisfied that they may receive and handle such funds and make necessary payments to arbitrators.

The ability to make payments related to arbitration proceedings may be further hindered following the designation of many Russian banks, and the [removal](#) of others from the SWIFT system. The UK sanctions regime also restricts provision of third-party funding to Designated Persons.

### *Arbitral Award and Enforcement*

As in the case of enforcement of money judgments, the successful party in the arbitration is likely to encounter issues enforcing an arbitral award ordering the Designated Person to pay against frozen assets.

## Mitigations and Exceptions Allowed Under the UK Licensing Regime

### *Considerations When Commencing Arbitration Proceedings Affected by the UK Sanctions Regime*

As noted above, the UK sanctions regime includes a licensing system administered by OFSI. Persons affected by the UK sanctions regime may apply for an individual licence or rely on an existing general licence.

On 17 October 2022, OFSI issued a [general licence \(INT/2022/1552576\)](#) in respect of certain payments to and from the London Court of International Arbitration (LCIA). One of the effects of the licence is that it permits Designated Persons to transfer funds to the LCIA to cover arbitration costs. The LCIA may use these to pay, amongst other things, the arbitrators' fees. The LCIA has [commented](#) that it welcomes the general licence, which enables the LCIA “*to perform its obligations in relation to binding arbitration clauses in furtherance of the rule of law*“. This licence will cover all cases administered on the basis of the LCIA Rules. An individual licence will be required for cases where the LCIA merely acts as fundholder or performs services in disputes adjudicated under the UNCITRAL Rules.

In addition, as [anticipated](#), OFSI has recently issued a further [general licence \(INT/2022/2252300\)](#) to permit the payment of legal fees owed by Designated Persons, subject to a number of requirements, such as a requirement to provide a report to OFSI and hourly rate caps, as well as an overall cap. The licence took effect on 28 October 2022, and is due to expire on 28 April 2023. This licence does not prevent the Designated Person and/or the law firm applying for an individual licence in respect of activity which falls outside the scope of the general licence.

### *Considerations When Enforcing an Arbitral Award Against a Designated Person*

Schedule 5 of the Regulations provides that a licence may be granted to enable the use of a Designated Person's frozen assets to satisfy an “*arbitral decision*” provided that the decision was made before the date on which the person became a Designated Person. This ground will not apply, and there is no equivalent licensing ground, in circumstances where an arbitral award is obtained after the date of designation. In such cases it would be necessary to consider whether a licence application can be made on any other grounds.

## Conclusion

As with all international sanctions regimes, the UK sanctions regime, where applicable, is likely to affect the course of the arbitration proceedings, as well as the enforcement proceedings that follow the issuance of an arbitral award. Delays in resolving the dispute and enforcing an arbitral award, as well as the additional administrative burden, may be difficult to avoid – however, the effects of the sanctions regime are, at least to a certain extent, mitigated by the UK licensing regime, which offers both general and individual licences, thereby enabling the disputing parties to resolve their dispute through arbitration in line with their agreement. Enforcement against assets of a sanctioned entity should also be possible, depending on the jurisdiction(s) where such assets are located. As the sanctions against Russia continue to unfold, it remains to be seen how various aspects of the arbitration proceedings will be affected.

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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